

18720 *Shipman*

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-202426

DATE: July 8, 1981

MATTER OF: Jones Motor Company, Inc.

DIGEST:

1. Evidence of carrier's failure to deliver same quantity or quality of goods at destination as received at origin and amount of damages establish liability of carrier for loss in transit; burden is then on carrier to rebut prima facie case of liability.
2. Carrier's delivery of item free astray at one destination does not explain shortage of different item at another destination.

Jones Motor Company, Inc. (Jones), in effect, requests review of the disallowance by our Claims Group of Jones' claim for refund of \$1,266.67 recovered by administrative setoff by the Department of the Air Force for the loss in transit of one pallet of printed paper forms plus unearned freight.

On January 9, 1979, Jones accepted without exception a shipment of printed paper forms, weighing 3,210 pounds, for transportation from the Air Force Publications Distribution Center, Bengies, Maryland, to Dover Air Force Base, Delaware, under Government bill of lading (GBL) S-0526518. The shipment checked short one pallet, weighing 2,130 pounds, when delivered at destination on January 16, 1979. The agency determined from the shipping document, AF Form 717, that the missing pallet contained 75 cartons, costing \$16 each, for a total cost of \$1,200. This shortage was noted on the GBL and on Jones' shipping document 2638780-2.

The Air Force states that on or about November 5, 1979, one skid, consisting of 18 cartons, was delivered by Jones to the Air Force Publications Distribution Center at Bengies, Maryland, on Jones' free astray bill 99-02108. Jones contends that this delivery free astray of one skid of 18 cartons satisfied the shortage under

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GBL S-0526518 of the pallet of 75 cartons. For several reasons, the Air Force disagreed: records of the Distribution Center show that the contents of the 18 cartons are not the same as the forms shipped on the missing pallet; marks on the skid show that it was consigned to Otis Air Force Base, Massachusetts; and the weights of the pallet and skid were different. The Air Force, therefore, claimed \$1,200 plus unearned freight charges. Upon failure of Jones to pay the claim, the damages were recovered by deduction.

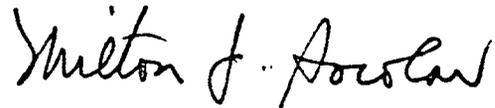
Jones claimed refund of the amount deducted. The claim was denied by our Claims Group in a Settlement Certificate, dated December 17, 1980, on the grounds that a prima facie case of liability for loss in transit had been established by the Government and not refuted by the carrier.

A showing that a carrier failed to deliver the same quantity or quality of goods at destination as received at origin and proof of the amount of damages establish a prima facie case of carrier liability for loss in transit. Once that has been established, the burden of presenting evidence in rebuttal shifts to the carrier and remains there. See Jones Truck Lines, Inc., B-181871, February 11, 1977.

Jones has not shown that the skid of 18 cartons delivered to the Distribution Center on Jones' free astray bill is the same as the pallet of 75 cartons of AF Form 2005 paper short in the shipment under GBL S-0526518. Delivery on a free astray basis at one terminal does not explain the shortage of a different item at another destination. See St. Johnsbury Trucking Co., Inc., B-193007, November 9, 1978, and Pacific Intermountain Express Co., B-190147, November 15, 1977. Jones, therefore, has failed to satisfy its burden of evidence.

In response to the question raised by Jones in its request for review, the Government does not know where Jones got the skid of 18 cartons of paper since Jones has presented no evidence of its source.

The Settlement Certificate, dated December 17, 1978, by which our Claims Group disallowed the claim of Jones has not been shown to be erroneous and is sustained.

A handwritten signature in cursive script, reading "Milton J. Aoustan".

Acting Comptroller General
of the United States