118558

DECISION

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

FILE: B-205084 DATE: June 2, 1982

MATTER OF: Paul Arpin Van Lines, Inc.

DIGEST:

A prima facie case of carrier liability is not established where the shipper furnishes no substantive evidence to support his allegation that he tendered to the carrier property that he later claims was lost.

Paul Arpin Van Lines, Inc. (Arpin) appeals the disallowance by our Claims Group of its claim for $69 under Government Bill of Lading (GBL) M-2910820. That amount represents the sum subtracted by the Department of the Army from money otherwise owed Arpin after the Army allowed an Army member's claim for several items allegedly lost in the transportation of the member's household goods from one duty station to another. Arpin contends that it should not be liable for those items because of the absence of any proof that they were tendered to Arpin for transportation. Arpin also believes that the method by which the Army computed the setoff was improper.

We sustain the appeal.

The items allegedly lost were a telephone, a remote control television changer, a velvet hat, and two china figurines. The Army allowed the member's claim against Arpin for those items apparently because Arpin was responsible for packing the member's household goods and because the member acknowledged in writing the criminal penalties for filing a false claim. Since the detailed inventory of the member's household goods, prepared by Arpin, did not specifically list the items claimed to be lost, the Army determined the amount of the setoff by assigning each of those items to a shipping carton that held related items and calculating Arpin's liability based on the weight of that carton. Our Claims Group agreed that Arpin was liable, and also determined that the Army's method of calculating the setoff was proper.

Arpin argues that it should not be liable for the items allegedly lost because of the absence of any evidence that those items were tendered to Arpin for transportation. We agree.

To establish a prima facie case of carrier liability, the shipper must show: 1) that he tendered the property to the carrier in a certain condition; 2) that the property was not delivered by the carrier or was delivered in a more damaged condition; and 3) the amount of loss or damage. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134 (1965). Only then does the burden of proof shift to the carrier to show that it was not liable for the loss or damage.

The inventory here did not indicate that the items allegedly lost were tendered to Arpin, which is why the Army had to assign the items arbitrarily to cartons before calculating the setoff. Clearly, proof of tender--the first element of a prima facie case--is established where the inventory lists the items that the shipper later claims are lost. Since the burden of establishing a prima facie case against a carrier for lost property rests with the shipper, it is advisable for the shipper to ensure that the inventory is as detailed as is practicable.

In addition, the record shows that Arpin delivered all of the cartons listed on the inventory. Nowhere does the record suggest that any of the cartons had been opened before delivery to the member at his new duty station.

Finally, Army regulations suggest that a shipper normally should declare in writing to the transportation officer, at the time of application for shipment, any household goods having a value of over $50. See Army Regulation 55-71, Section V (May 14, 1976) (which applies regardless of whether the goods are packed by the shipper or by the carrier). Although the replacement costs of the telephone and the hat in issue were $65 and $51, respectively, there is no indication in the record that the member declared them in writing before shipment.

Under these circumstances, we believe that allowing the member to establish tender of his household goods on the strength of his unsupported, self-serving acknowledgement places an unreasonable burden on the carrier with regard to its ability to rebut the claim. Cf. Global Van

Lines, Inc., B-198815, April 13, 1982 (involving shipper-packed goods). Therefore, we conclude that the record does not establish a prima facie case of carrier liability in this instance. The appeal is sustained.

Because we have sustained Arpin's appeal, we need not address the question of whether the Army's method of calculating the setoff was proper. We are instructing our Claims Group to allow Arpin's claim for $69.

for Milton J. Socolar
Comptroller General
of the United States