DECISION

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

27607

FILE: B-213089 DATE: March 6, 1984

MATTER OF: Southeastern Freight Lines

DIGEST:

1. A shipper establishes a prima facie case of carrier liability for damaged goods when the shipper establishes that the goods were tendered in good condition and were received from the carrier in damaged condition. The fact that the consignee's delivery receipt does not note the damage does not in itself overcome the presumption of carrier liability, since the terms of a delivery receipt may be varied or explained as the actual facts become known.

2. The fact that a carrier claimed responsible for damage to transported engines was unable to inspect the damage fully because the carrier delayed inspection until after the engines, which were priority items, were repaired and mounted, so that the carrier could only inspect the damaged parts, does not affect the shipper's prima facie case of carrier liability.

3. Under the Interstate Commerce Act, a shipper can file a claim for damage to transported goods against either the originating or the delivering carrier, irrespective of which one had the goods when they were damaged; the carrier paying the claim then has the right to pursue recovery from the responsible carrier.

Southeastern Freight Lines appeals our Claims Group's denial of the firm's claim for funds withheld from Southeastern because of damage to two jet engines delivered

by the claimant to Myrtle Beach Air Force Base, South Carolina, after shipment from the Naval Air Station in Alameda, California. Southeastern contends that the damage occurred after delivery, and complains that it did not have the opportunity to inspect the damage.

We affirm the Claims Group decision.

The government bill of lading was issued to Lee Way Motor Freight, Inc. in Alameda, which subsequently transferred the engines to Southeastern for delivery. The only damage noted on the delivery receipt was a broken tie rod (for which Southeastern concedes liability). The Air Force, however, states that inspection at delivery also disclosed that,

> ". . . the tongue of the engine dolly that was loaded in the rear of the van was wired up against the spinner cap on the nose of the engine (evidently to save space). The tongue tore the covering and worked a groove into the tip of the spinner cap. This engine came loose from improper blocking and bracing and shifted forward in the trailer against the engine loaded in the front of the van. When the rear engine dolly shifted forward, it hit the rotor blade, causing damage."

The Air Force states that on the day after delivery, Southeastern's local representative, a Ms. Thompson, was advised of the damage, and was requested to inspect the engines, which the agency repeated in writing 5 days later. Southeastern did not attempt inspection until 7 days after delivery, by which time the engines had been moved two blocks to a hangar. The record is not clear, but it appears that the engines, for which repairs were needed on a priority basis, also had been repaired as necessary and mounted, and consequently could not be inspected fully by Southeastern; Southeastern therefore was able to view only the damaged parts.

Southeastern contends that it should not be held liable since the engine damage, which Southeastern argues

should have been visible at delivery, was not noted on the delivery receipt, and since the firm was not able to confirm the claimed damage by full post-delivery inspection.

Where a shipper shows that goods were tendered to the carrier at origin in good order and condition, and were received from the carrier at destination in a damaged condition, a prima facie case of carrier liability has been established. The carrier, to relieve itself of liability, must show that it was free from negligence and that the damage to the cargo was due to one of the excepted causes set forth in section 20(11) of the Interstate Commerce Act, 49 U.S.C. § 11707 (Supp. IV 1980), formerly 49 U.S.C. § 20(11). Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134 (1964); Trans Country Van Lines, Inc., 57 Comp. Gen. 170 (1977). Moreover, the prima facie case of liability does not extend only to those damages indicated on a delivery receipt. A clear delivery receipt is only a piece of evidence, not conclusive evidence, of the condition of goods at destination, since the terms of the receipt may be varied or explained as the actual facts become known. See National Trailer Convoy, Inc., B-199156, March 5, 1981, 81-1 CPD 168.

The record includes a statement by the shipping section supervisor at the Alameda Naval Air Station that "[t]he material tendered to the carrier was 'A' condition, Ready for Issue"; a statement from the Traffic Management Officer at Myrtle Beach Air Force Base describing the damage to the engine; photographs of the damage; and a statement of the amount of damages. This record obviously is sufficient to establish a prima facie case of the carrier's liability.

We recognize that Southeastern's ability to rebut the presumption of its liability is limited because when it arrived to inspect the damage the engines had been moved and, apparently, repaired and mounted. In this respect, there is a dispute in the record as to when Southeastern first was advised of the damage and invited to inspect. As stated above, the Air Force asserts it telephoned Southeastern's Ms. Thompson the day after delivery; the written notice to Southeastern purports to confirm that telephone conversation. The record, however, also includes an affidavit from Southeastern's claims agent that the

first notice of damage was received 6 days after delivery. (Significantly, there is no statement in the record from Southeastern's Ms. Thompson to the effect that the Air Force did not advise her of the damage the day after delivery.)

We have stated that where there is a dispute as to a fact between a claimant and administrative officers of the government, we will accept the officers' statement absent clear and convincing evidence to the contrary. See McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415, 419 (1978); 48 Comp. Gen. 638, 644 (1969). Consequently, we must conclude that Southeastern could have performed a more timely inspection than it did, perhaps before the engines were repaired and mounted. In any event, Southeastern in fact was able to inspect the damaged parts, and has offered no evidence to rebut the fact or amount of the damage, or the presumption of the firm's liability. Southeastern thus has not carried its burden to prove it was not responsible.

Finally, to the extent the engine may have been damaged while in the initial carrier's possession, section 20(11) of the Interstate Commerce Act permits a claim for damage to be filed against either the originating or delivering carrier, and either is liable for the full loss irrespective of who may have possession of the goods when damaged. However, section 20(12), 49 U.S.C. § 11707(b) (Supp. IV 1980), formerly 49 U.S.C. § 20(12), gives the carrier paying the claim the right to pursue recovery from the responsible carrier.

The Claims Group decision is affirmed.

Milton J. Socolar

for Comptroller General
of the United States