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

FILE: B-214554 **DATE:** December 14, 1984

MATTER OF: Continental Van Lines, Inc.

DIGEST:

1. Prima facie case of carrier liability is not established where shipper provides no substantive evidence to support allegation that he tendered items to the carrier which shipper later claimed were lost while in the carrier's possession.

2. Prima facie case of carrier liability is not established where written notice of loss and damage provided to carrier does not specify item in question, and there is no other contemporaneous evidence to support shipper's allegation that the item in question was not delivered by the carrier.

Continental Van Lines, Inc., (Continental), appeals a settlement by our Claims Group disallowing its claim for $52 of $76 set off under government bill of lading (GBL) No. AP-481359. The $76 was withheld by the Navy from money otherwise due to Continental because Continental was found liable for loss and damage to items in a shipment of household goods belonging to a member of the Navy, which were transported by Continental and its agents from Gales Ferry, Connecticut, to Virginia Beach, Virginia. Continental contends that it is not liable for the loss of two items, a tent and certain pieces of silverware, because there is no proof that these items were tendered to Continental for transport; Continental asserts that it is not liable for the loss of a third item, a chair, because timely notice was not filed for this particular item within 45 days of delivery.

We sustain Continental's appeal.

Continental was given a notice of loss and damage (DD Form 1840) 1 week after delivery. The form 1840 advised Continental that the owner intended to file a claim for loss or damage and requested tracer action by the carrier

on only two items. These were referenced on the form as silverware missing from a carton listed in the shipping inventory as item 59 and a missing 4-man tent which references inventory item 168, with the note that this is incorrectly listed on the inventory as poles. The carrier was notified by the Navy's demand for payment as a subrogee, approximately 10 months after delivery, that item 154, a desk chair, was also lost during shipment. After communications back and forth between Continental and the Navy, Continental denied liability for the items in question and the Navy set off $76, representing released valuation of 60 cents per pound for the items in question for a total of $52, plus $24 for damage to a table which is not in issue. Our Claims Group agreed that Continental was liable.

Continental argues that it should not be held liable for the missing silverware and tent because there is no evidence that these items were actually tendered to Continental for transport. We agree.

To establish a prima facie case of carrier liability, the shipper must show: (1) that the property for shipment was tendered to the carrier in a certain condition, (2) that the property either was not delivered by the carrier, or was delivered in a condition worse than when tendered, 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. Here, the record fails to establish one of the three elements, i.e., that the property was tendered to the carrier.

The shipping inventory prepared at origin did not provide any indication that either silverware or a tent was tendered to Continental. The member subsequently stated that he believed that the silverware had been packed by the carrier in a container listed on the inventory simply as a carton, item 59. The member also asserted that he had seen the tent packed, with poles tagged as item 168, in a carton inventoried as item 154 (which we note is actually listed on the inventory as a chair). The Navy permitted the member to establish tender of these items on the basis of his sworn statement, which is unsupported and self-serving. We have specifically held that this is an impermissible method of proving tender since it places an

unreasonable burden on the carrier with respect to its ability to rebut the claim. B-205084, June 2, 1982, aff'd, B-205084, June 8, 1983. Accordingly, we sustain Continental's appeal with respect to these two items which represent $42 of the setoff.

Regarding the loss of the chair, inventoried as item 154, it was not originally listed as missing on the form 1840, and there is no other contemporaneous evidence that it was lost by the carrier. We find that the form 1840 did not provide the carrier with sufficient notice, and that notice given to the carrier 10 months after the alleged loss was insufficient to meet the evidentiary requirement of showing that property tendered to the carrier was not delivered by the carrier. Accordingly, since the shipper has not established a prima facie case of carrier liability, we sustain Continental's appeal with respect to item 154, which constitutes $10 of the setoff.

Continental has also argued that it should not be liable for the loss of certain gold rings. However, the record discloses that while the Navy originally made demand for payment for the loss of these rings, it subsequently determined that liability could not be established, and no setoff was taken in this regard.

We are instructing our Claims Group to allow Continental's claim for $52.

for Milton J. Socolar
Comptroller General
of the United States