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

FILE: B-215507 **DATE:** October 11, 1984

MATTER OF: Continental Van Lines, Inc.

DIGEST:

1. Written notice of damage which gives bill of lading number and informs carrier that property owner intends to file a claim for damages is sufficient to rebut presumption that clear delivery receipt is correct.

2. Where carrier has supplied no evidence to demonstrate that goods were not damaged while in the carrier's possession, carrier has not met its burden of proof and, therefore, request for return of withheld funds is denied.

Continental Van Lines, Inc. (Continental), has appealed our Claims Group's denial of its claim for a refund of $90, which the United States Marine Corps, Department of the Navy (Navy), withheld from Continental for damage incurred during transport by Continental of seven items of household goods owned by Marine Corps Lieutenant Tyson. We affirm the Claims Group's decision.

Continental picked up the goods from Pensacola, Florida, on July 28, 1982, and delivered them to Whidbey Island, Washington, on August 13. The goods were unpacked upon delivery and Continental was given a delivery receipt (DD Form 619-1), which did not indicate that any goods were lost or damaged. Lieutenant Tyson, later inspected the goods and determined that seven items were damaged. On September 10, Continental received a notice of loss and damage (DD Form 1840), which stated that an unknown number of items shipped under government bill of lading (GBL) No. CP-981,943 and belonging to Lieutenant Tyson, were damaged. The notice also indicated that the estimated value of the damage was greater than $100 and afforded Continental the opportunity to inspect the goods. On January 27, 1983, Continental informed the Navy that it was denying liability because the notice of damage was not timely. On March 2, the Navy notified Continental that Continental's denial of liability was not acceptable and that if payment was not received within 30 days, the Navy would institute a setoff action. Continental did not respond to this notice and the Navy withheld $90 from money owed to Continental.

As a common carrier, Continental's liability is controlled by the Carmack Amendment of 1906, section 20(11) of the Interstate Commerce Act, 49 U.S.C. § 11707 (1982), formerly 49 U.S.C. § 20(11), which makes carriers liable for the actual loss or damage caused by them to property they transport. In an action to recover damages for a shipment, the shipper establishes a prima facie case of carrier liability by showing delivery to the carrier in good condition, arrival at the destination in damaged condition, and the amount of damages. The burden is then shifted to the carrier to show both that it was free from negligence and that the damage was due to an excepted cause. The B&B Lines, B-213840, Feb. 28, 1984, 84-1 C.P.D. ¶ 251.

Continental asserts that the Navy has not made out its prima facie case because the Navy has not shown that the goods were delivered in damaged condition. Continental notes that the general rule is that a clear delivery receipt is prima facie evidence that goods were not damaged while in the possession of the carrier. Continental further notes that pursuant to a Military/Industry memorandum of understanding (memorandum), the presumption that the delivery receipt is correct is overcome if, within 45 days after goods are delivered, the carrier is advised in writing of the discovery of damage to the goods. Continental acknowledges such notice would place on the carrier the burden of proving that the goods were not damaged while they were in the carrier's possession. Continental agrees that it received the written notice of damage within 45 days after Lieutenant Tyson's goods were delivered. Continental asserts, however, that the notice was not sufficient because the damaged items were not individually listed. Continental thus argues that in accordance with the clear delivery receipt and the memorandum, the damage is presumed not to have occurred while the goods were in Continental's possession and the Navy has not proven otherwise. Continental concludes that thus it is entitled to have the $90 returned to it.

We find that Continental's position regarding whether the Navy established its prima facie case that the goods were damanged upon delivery is without merit. As Continental acknowledges, a clear delivery receipt is not conclusive evidence of the condition of the property at the

time of delivery to destination and, thus, does not preclude proof that the goods, in fact, were damaged when received from the carrier. The B&B Lines, B-213840, supra. In this regard, the memorandum, by its terms, establishes a procedure by which a carrier will be notified of loss or damage to goods which was not discovered at the time the goods were delivered. Pursuant to this memorandum, if the carrier is given written notice that goods have been damaged within 45 days after their delivery, the presumption that the delivery receipt is correct is overcome and, consequently, such notice places on the carrier the burden of proving that the damage did not occur while the goods were in the carrier's possession. See Starck Van Lines of Columbus, Inc., B-213837, Mar. 20, 1984, 84-1 C.P.D. ¶ 337.

Continental acknowledges that it received the written notice of loss or damage within 45 days after it delivered Lieutenant Tyson's goods, but denies that the notice was adequate. In addressing the adequacy of the notice of loss and damage, the courts have held that a notice of claim is sufficient if it notifies the carrier of an intention to claim damages by reason of loss, damage or delay in respect to a particular shipment so that the carrier may promptly make such investigation as the facts of the case may require. Kvasnikoff v. Weaver Bros., Inc., (Alaska) 405 P.F.2d 781, 783 (Supp. Ct. Alaska 1965). Thus, notice is sufficient if it is written, timely and in content sufficient to alert the carrier that damage has occurred for which reparation is expected. Novelty Enterprises, Inc. v. Hurin Transportation Co., 258 S.2d 151, 152 (Ct. Appeals, La. 1972); Delaware, L. & W.R. Co. v. United States, 123 F. Supp. 579, 582 (S.D.N.Y. 1954).

In this case, the notice of loss or damage sent to Continental informed Continental that goods owned by Lieutenant Tyson shipped under GBL CP981943 and delivered on August 13 had been lost or damaged. The notice further advised Continental that the owner of the property intended to file a claim estimated at more than $100 and that Continental could inspect the property. We find that this notice complies with the standard noted above. Therefore, Continental received notice of damage within the required time, but chose not to investigate the claim. Consequently, we find that the notice rebutted the presumption that the

delivery receipt was correct and made out the Navy's prima facie case that the goods were damaged at the time they were delivered by Continental. Since Continental has offered no evidence to demonstrate that the goods were not damaged while they were in Continental's possession, Continental has not met its burden of overcoming the Navy's prima facie case. Accordingly, we affirm our Claims Group's decision that the money withheld should not be returned to Continental.

for Comptroller General
of the United States