Shipping PL I

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

FILE: B-216053 DATE: December 4, 1984

MATTER OF: CVL Forwarders

DIGEST:

Loss or damage not discovered within 45 days after delivery is presumed, under the terms of a Military-Industry Memorandum of Understanding, not to have occurred in the possession of the carrier in the absence of evidence to the contrary. This presumption applies to a government claim for unearned freight charges as well as a claim for loss or damage.

CVL Forwarders (CVL) requests review of our Claims Group decision to disallow CVL's claim for refund of freight charges of $245.67 that the government recovered by setoff as unearned in connection with the shipment of a United States Marine Corps (USMC) member's household goods under government bill of lading No. AP-092,475. The charges were recovered because the USMC determined that a part of the shipment was irreparably damaged in transit.

We find that CVL is entitled to the refund.

No exception to the condition of the household goods was noted on delivery of the shipment, and the first notice to CVL of damage in transit was receipt of a claim 77 days after delivery. CVL's claim is based on its contention that pursuant to a Military-Industry Memorandum of Understanding, damage is deemed not to have occurred in transit if the damage is not discovered within 45 days after delivery. (In fact, the USMC canceled a claim for the damage because the damage was not discovered within the 45-day period.) The USMC contends, however, that the 45-day reporting requirement applies only to a claim for damage to the shipment and argues that failure to meet the 45-day reporting requirement thus does not preclude a claim for unearned freight charges. Our Claims Group agreed with the USMC.

The Interstate Commerce Commission regulations applicable to the shipment, 49 C.F.R. § 1056.26 (1983), provide that a common carrier of household goods shall not

collect or retain freight charges on the portion of a shipment that is lost or destroyed in transit. However, the shipper bears the burden of proving, inter alia, that the carrier failed to deliver the same quantity or quality of goods at destination as received at origin. Julius Klugman's Sons, Inc. v. Oceanic Steam Nav. Co. Ltd., 42 F.2d 461 (1930). Ordinarily, this is established by the notation of discrepancies on the bill of lading or other delivery document at the time of delivery. United States v. Mississippi Valley Barge Line Company, 285 F.2d 381, 388 (1960); Sigmond, Miller's Law of Freight Loss and Damage Claims 206 (4th ed. 1974).

However, associations representing carriers of household goods have entered into the Memorandum of Understanding with the military departments, which provides:

> "To establish the fact that loss or damage to household goods owned by members of the military was present when the household goods were delivered at destination by the carrier, it is agreed that the rules set forth below will be implemented . . .."

One of those rules is that all loss or damage is to be noted on the delivery document, the inventory form, or the Defense Department Statement of Accessorial Services, DD Form 619. The parties have also agreed that if exception to the delivery has not been taken at the time of delivery,

> ". . . later discovered loss or damage . . . dispatched not later than 45 days following delivery, shall be accepted by the carrier as overcoming the presumption of the correctness of the [clear] delivery receipt."

On the other hand, loss or damage to household goods discovered more than 45 days after the date of delivery will be presumed not to have occurred in the possession of the carrier. This presumption is rebuttable by the presentation of evidence substantiating in-transit damages.

By its express terms, the Memorandum of Understanding is for the purpose of establishing the fact of loss or damage in transit in general and is not, as the USMC suggests, limited in application to claims for damage to household goods. Also, by the Memorandum's terms, loss or

damage not discovered within 45 days of delivery is presumed not to have occurred in the carrier's possession in the absence of contrary evidence. The USMC has not presented any contrary evidence.

Since the USMC has not shown that the irreparable damage occurred in transit, CVL is entitled to refund of the freight charges collected by the USMC from CVL as unearned.

for Milton J. Socolar
Comptroller General
of the United States