



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Andrews Forwarders, Inc. - Loss and Damage to Household Goods

**File:** B-229312

**Date:** October 31, 1988

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### **DIGEST**

Under a Military-Industry Memorandum of Understanding, notice of loss or damage to a shipment of household goods discovered after delivery of the shipment must be "dispatched" to the common carrier not more than 45 days after delivery of the shipment or the carrier is presumed not to be responsible for the loss or damage. However, the presumption can be overcome by the presentation of evidence substantiating that the loss or damage occurred in transit, and the circumstances of this case indicate that the carrier is responsible for in-transit loss and damage.

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### **DECISION**

Andrews Forwarders, Inc., has appealed our Claims Group's denial of its claim for \$271.50 the Army set off from Andrews's account for loss and damage to several items of a service member's household goods shipment that Andrews transported.<sup>1/</sup> We sustain the denial.

Andrews accepts liability for damage to four items that were specifically noted as damaged on the Army's delivery receipt. It denies liability for the later-discovered loss and damage solely because notification allegedly was

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<sup>1/</sup> The goods belonging to Warrant Officer Max L. McGaughey were shipped by the Army from nontemporary storage in Baltimore, Maryland, to Fort Riley, Kansas, on Government Bill of Lading BP396771 in September 1982.

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"dispatched" more than 45 days after the delivery date of the shipment. Andrews relies on a Military-Industry Memorandum of Understanding which creates a presumption that loss or damage to the shipment did not occur in transit if notice to the carrier is not dispatched within 45 days of the shipment's delivery.

Andrews correctly cites the Military-Industry Memorandum of Understanding as establishing that for loss or damage discovered after delivery of the shipment, notice to the carrier must be dispatched not later than 45 days following delivery or such loss or damage will be presumed not to have occurred while in possession of the carrier. However, it is important to note that the presumption is rebuttable, and evidence can be presented to demonstrate that loss and damage did in fact occur in transit, regardless of the date of dispatch of the notice. CVL Forwarders, 64 Comp. Gen. 126 (1984). Therefore, it is not necessary to resolve the dispatch issue in this case<sup>2/</sup> because the evidence produced and surrounding circumstances here have demonstrated that the loss and damage did in fact occur in transit and that Andrews was properly held liable.

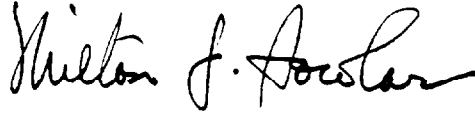
The delivery receipt, which specially mentioned damage to four items, also contained this statement, concurred in by Andrews's driver: "Whole shipment has been wet due to leak in truck. All items and cartons subject to inspection for further damage." That establishes that the household goods became wet and possibly water damaged during transit. The statement was also supported by photos that were taken at delivery. Most of the money the Army deducted was due to mildewed or rusted household goods resulting from water damage. The small amount deducted for missing parts of

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<sup>2/</sup> Andrews offers a photocopy of an envelope from the Transportation Officer, Fort Riley, Kansas, postmarked November 4 at Fort Riley, more than 45 days after delivery of the shipment on September 16, for proof that notice of loss and damage had been dispatched more than 45 days after delivery. The Army offers a copy of a detailed notice bearing a date of September 30, only 2 weeks after delivery, it claims it dispatched on that date. It also states that there is no proof that the envelope postmarked November 4 was the one used to dispatch the notice.

larger items that were delivered was de minimis. Therefore, we conclude that the presumption that the damage did not occur in transit has been overcome.

Accordingly, the Claims Group's denial of Andrews's claim is sustained.

A handwritten signature in cursive script, reading "Milton J. Fowler".

**Acting** Comptroller General  
of the United States