Billard

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: PIE Nationwide, Inc. - Damages for Loss of an Atomic Clock

File: B-229329.2

Date: September 29, 1989

DIGEST

1. An affidavit by the shipper's employee, who has personal knowledge of the facts, stating that a missing carton was loaded on the carrier's vehicle, establishes receipt by the carrier. Since the carrier offers no other explanation for the loss of the carton, a prima facie case of carrier liability for loss is established.

2. A notice of loss called a discrepancy report, sent by the Department of the Air Force to the carrier 10 weeks after receipt of a carton by the carrier, identifying the lost property, its value, and stating the intention to hold the carrier liable, substantially complies with normal claims-filing requirements. Other circumstances indicating the carrier's awareness of the loss demonstrate that the carrier was not prejudiced by a 2-year delay in filing a formal claim.

3. A carrier's tender offered to transport Freight All Kinds, except articles of "unusual value." This exception is limited to items of intrinsic value, such as precious metals; it does not cover items such as scientific equipment which are expensive but lack intrinsic value. Therefore, an atomic clock valued at over $600 per pound cannot be viewed as an article of "unusual value" within the meaning of the tender exception since it possesses no intrinsic value.

4. In the absence of a written agreement reducing the carrier's liability, it was indebted for a high-value clock's full actual loss. Even though the clock has no market value, that loss is measured by its cost, the practicability and expense of replacing it, and other factors that affect its value to the owner. Since the Air Force's determination of full actual loss was based on these elements, it was not excessive.

DECISION

PIE Nationwide, Inc., appeals our Claims Group's determination, Z-2861141, March 12, 1987, that the carrier was indebted to the United States in the amount of $63,749.83 for the loss of an atomic clock. The Department of the Air Force recovered that amount by setoff. We sustain these administrative actions.

BACKGROUND

On August 25, 1983, Ryder/PIE Nationwide, Inc. (PIE), received a shipment at Dover Air Force Base, Delaware, destined to Newark Air Force Station, Ohio. PIE's driver signed the Government Bill of Lading (GBL), No. T-0194785, and added "SLC-SW," indicating the commercial term, "shipper's load and count." The GBL described the shipment as one carton of Freight All Kinds (FAK), weighing 94 pounds; it also referred to PIE's rate tender "RYPI 78" (Tender 78). Air Force records show that the carton contained an atomic cession, master regulating clock used as a time-keeping source for a survival, low-frequency communications system that was en route from Europe for repairs when it was reported missing.

On November 4, 1983, Newark Air Force Station issued a discrepancy report (Standard Form 361). A copy of the report was sent to PIE indicating that the loss was discovered on September 16, 1983, when a routine records check showed that the expected shipment had not yet arrived. The report also indicated that PIE was first notified of the loss on September 21, 1983, and that the clock's value was $93,774. The carton was never found, and on August 5, 1985, the Air Force presented a formal claim to PIE, which was reduced in amount to $63,749.83, by amended claim, on October 3, 1986. PIE appeals our Claims Group's determination, which resulted in the Air Force's collection of its claim, on five grounds.

DISCUSSION

First, PIE contends that the Air Force has failed to satisfy its burden of proving that PIE actually received the carton. We disagree. The Air Force furnished a sworn statement by the warehouse foreman at Dover Air Force Base, where the GBL was issued, indicating that the carton was actually loaded on the carrier's equipment. An affidavit furnished by the shipper's employee having personal knowledge of the facts fulfills the shipper's burden of proving receipt by the

carrier for our Office's claims purposes. Consolidated Freightways, B-185132, Dec. 22, 1976. Although PIE disputes receipt of the carton, we have accepted the statements of government agents on similar disputed factual questions in the absence of compelling contrary evidence. Pacific Intermountain Express, B-190147, May 31, 1978. PIE has presented no such evidence. Thus, the Air Force has satisfied its burden of showing that the carton was received by PIE.

Second, PIE contends that it was prejudiced in its effort to verify the loading of the carton, trace its whereabouts, and calculate its value by the Air Force's delay of nearly 2 years in presenting a claim. We conclude that the copy of the discrepancy report that the Air Force sent to the carrier on November 4, 1983, or about 10 weeks after the date of shipment, substantially complied with the normal claim-filing requirements. See Taisho Marine & Fire Ins. Co. v. Vessel Gladiolus, 762 F.2d 1364, 1368 (9th Cir. 1985). Further, based on PIE's own tracing action in October 1983 and other efforts by the Air Force after discovery of the loss to address PIE's concerns, we see no prejudice to the carrier by the Air Force's procedures.

Third, PIE contends that because it did not agree to transport the clock under Tender 78, it should be relieved of liability. Tender 78 offered transportation of FAK, but it specifically excepted from the definition of FAK articles of "unusual value." PIE believes that the clock here, which was valued at over $678 per pound (based on the Air Force's amended claim), was such an article of "unusual value."

The Interstate Commerce Commission held in Garrett Freightlines, Inc.--Modification, 106 M.C.C. 390 (1968), that the term "unusual value," for the purpose of determining what articles a carrier can transport, contemplates an intrinsic value, as manifested in gold, platinum, and silver bullion. It distinguished these articles from those having a high value per pound but no intrinsic value, such as scientific equipment and electronic components. The clock shipped here, although of high value per pound, was not of "unusual value" since the clock did not have intrinsic value. Therefore, applying this concept of "unusual value," which was also approved in National Bus Traffic Assn., Inc. v. I.C.C., 613 F.2d 881, 886 (D.C. Cir. 1979), the clock was not excepted from Tender 78's coverage as FAK.

Fourth, PIE contends that the Air Force should have provided a detailed description of the clock, including its value, on the GBL rather than simply describing it as one carton of

FAK. According to PIE, it is not liable because this was a misdescription of the clock.

The purpose of the FAK description is to eliminate the need to clarify or describe items. See Public Utilities Commission of California v. United States, 355 U.S. 534, 544 (1958). We find no support for PIE's contention that the Air Force had a duty to provide any description of the clock other than FAK. PIE cites Mass v. Braswell Motor Freight Lines, Inc., 577 F.2d 665 (9th Cir. 1978), which held that a shipper who intentionally fails to disclose a shipment's high value to get a lower freight rate or misdescribes the shipment is barred from recovering for the shipment's loss. However, this case is inapposite here since PIE concedes that no fraud was involved in describing the carton containing the clock as FAK. Thus, in the absence of any proven shipper misconduct, the government is not barred from recovering the clock's full actual value.

Fifth, PIE contends that even if it is responsible for loss of the clock, the Air Force's claim is excessive and should be limited to the amount normally attributable to an item of non-extraordinary value--about $50 per pound. Under the Carmack Amendment of 1906 to the Interstate Commerce Act, 49 U.S.C. § 11707 (1982), carriers are liable for the full actual loss caused to property they transport. Continental Van Lines, Inc., B-216757, Aug. 14, 1985. A carrier may not limit its liability for loss or damage in the absence of a written declaration on the bill of lading, as required by law. Gordon H. Mooney, Ltd. v. Farrell Lines, Inc., 616 F.2d 619 (2nd Cir.), cert. denied, 449 U.S. 875 (1980). Since there was no written agreement here on the GBL reducing PIE's liability, and since PIE did not limit its liability by filing released value rates in Tender 78 as it could have done, it is responsible for the clock's full value.

We have consistently held that the method of arriving at a lost article's full value where the property has no market value is to consider its cost, the practicability and expense of replacing it, and such other conditions as affect its value to the owner. B-190665, Feb. 17, 1978. Since the Air Force considered these elements based on statements made by government officials who claimed to have knowledge of the facts, and since PIE provided no contradictory evidence, we cannot conclude that the amount of $63,749.83 is excessive. Compare Chandler Trailer Convoy, Inc., B-211194, Apr. 15, 1986.

CONCLUSION

A prima facie case of carrier liability for loss is established by showing: (1) property was received by the carrier; (2) the property was not delivered; and (3) the property's valuation. We conclude that the Air Force has established a prima facie case of PIE's liability for the lost clock. While the matter is not free from doubt, on balance we are unable to say PIE has established a legally sufficient basis to overcome the Air Force's prima facie case. See 57 Comp. Gen. 170 (1977).

Accordingly, our Claims Group's determination of carrier indebtedness and the Air Force's deduction for the full actual loss are sustained.

Milton J. Socolar

for Comptroller General
of the United States