HIPPLE

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Cartwright Van Lines, Inc.

File: B-243746

Date: August 16, 1991

DECISION

Cartwright Van Lines, Inc., requests review of our Claims Group's settlement involving an Air Force set-off against funds due Cartwright in connection with the loss and damage to a service member's shipment of household goods.1/ We affirm the Claims Group's settlement.

Cartwright picked up the household goods on April 29, 1987, in Glen Burnie, Maryland. A descriptive property inventory had been signed and dated on the previous day by the company's agent. The goods were delivered to destination in Fresno, California, on September 1, with the member noting on the standard-form statement of loss or damage that her household goods were "due to further inspection." On October 27, the Air Force dispatched another standard-form statement notifying Cartwright of the loss and damage involved.

The Joint Military/Industry Memorandum of Understanding on Loss and Damage (MOU) provides that written documentation advising the carrier of later-discovered loss or damage, if dispatched not later than 75 days following delivery, shall be accepted by the carrier as overcoming the presumption of the correctness of the delivery receipt. The Air Force therefore set off $152.76 against funds otherwise due Cartwright based on valuation at $0.60 per pound, per article.

Cartwright contests $107 of the set-off. Cartwright denies liability because the missing/damaged items were unpacked at the time of delivery under the member's supervision. The carrier maintains that if something had been missing or damaged it thus should have been evident at delivery; the member, however, failed to note the alleged loss/damage at

1/ Personal Property Government Bill of Lading QP-022,872.

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that time. Citing our decisions in B-205084,2/ Cartwright also states that a carrier cannot be held liable for loss of items found to be missing from sealed containers unless evidence of tampering exists. Cartwright states that the containers it delivered were still properly sealed.

Cartwright further contends that the MOU should be considered null and void because the Department of Defense raised the released valuation to $1.25 times the weight of the shipment after the MOU was negotiated. At the time of negotiation of the MOU, liability was limited to $0.60 per pound, per article.

We find no merit in Cartwright's arguments.

A prima facie case of carrier liability for loss/damage is established by showing that the shipper tendered the goods to the carrier in a certain condition, that the property was not delivered by the carrier or was delivered in a more damaged condition, and the amount of loss/damage. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134, 138 (1965); Paul Arpin Van Lines, Inc., B-213784, May 22, 1984.

Regarding the timing of the member's claim, as stated above the MOU allows 75 days after delivery for providing the carrier with notice of loss or damage. In this respect, we do not agree with Cartwright's contention that the MOU, which became effective in 1985, should be considered null and void. The MOU does not mention valuation; it was intended to establish procedures for the presentation and processing of claims, whatever the valuation of the lost or damaged property. Whether or not a particular shipment is subject to released valuation (and the amount thereof) depends on the rate authority applicable to the shipment. In fact, both the MTMC publication limiting carrier liability to $0.60 per pound, per article, and the revision raising it to $1.25 per pound, included the same 75-day requirement as contained in the MOU.3/

Accordingly, failure to report an item as missing or damaged at delivery is not dispositive of liability. See National Forwarding Co., Inc., B-238982, June 22, 1990; aff'd,

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2/ Paul Arpin Van Lines, Inc., B-205084, June 2, 1982; aff'd, B-205084, June 8, 1983.

3/ Moreover, we understand from the Military Traffic Management Command that the increase in valuation to $1.25 was not effective until shortly after this shipment was picked up.

B-238982.2, June 3, 1991. Thus (and apart from this service member's attempt at reservation of a right to further inspection), the member had 75 days after delivery to report missing or damaged items and thereby to overcome the presumption that the delivery receipt was correct.

Finally, Cartwright's reliance on our decisions in B-205084 is misplaced. In those decisions, we found that a carrier was not responsible for the loss of an item not specifically listed on the inventory. We said that although every household good need not be listed, we would not permit a shipper to establish tender to the carrier only on the strength of an unsupported, self-serving acknowledgement, because that would place an unreasonable burden on the carrier with regard to its ability to rebut the claim. We held that a carrier can be charged with loss in that situation only if other circumstances are sufficient to establish that the goods were shipped and lost. We did not state, as Cartwright maintains, that a carrier cannot be held liable for items simply because the cartons it delivered always were sealed, but only that such factor may well be important with respect to establishing tender of unlisted items. See our explanation in Aalmode Transportation Corp., B-240350, Dec. 18, 1990. In the present case, the signature of the carrier's agent on the inventory is clear, independent evidence of delivery to the carrier. See Paul Arpin Van Lines, Inc., B-213784, supra.

Our Claims Group's settlement is affirmed.

for Seymour Efros

James F. Hinchman
General Counsel