Hipple 147372

Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Fogarty Van Lines

File: B-247449

Date: July 27, 1992

DIGEST

A carrier is not liable for damage to an item if it can provide sufficient evidence that the goods at issue were not in the carrier's custody at the point at which they were damaged.

DECISION

Fogarty Van Lines (Fogarty) requests review of our Claims Group's settlement of December 10, 1990, denying its claim for $80 which the Air Force setoff from revenues otherwise due to Fogarty to compensate for damage to a chandelier. We reverse the Claims Group's settlement with respect to this item.

The chandelier, among other household goods, was picked up by Swanner Transfer and Storage (Swanner) on May 8, 1987 and placed in nontemporary storage in June of 1987. In October 1988, the goods were picked up from the nontemporary (NTS) storage facility by Fogarty pursuant to GBL No. RP-035,197 and were delivered to O'Fallon, Illinois, on October 13, 1988. Fogarty contends that the chandelier was not in its custody when it was damaged, and that it should not be held liable for the $80 setoff granted in the settlement.

To obtain damages under common law, the shipper must make a prima facie case by showing delivery in good condition, arrival damaged, and the amount of damages. Missouri Pacific Railroad Co. v. Elmore and Stahl, 377 U.S. 134 (1964). There is also a presumption at common law that when the goods have passed through successive custodians, the damage which occurred is attributed to the last one. McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415, 418 (1978). The carrier then bears the burden of proving either that the damage did not occur while in its custody or that the damage can be attributed to one of five exceptions. Id. at 418.

We are satisfied that there is sufficient evidence to show that Fogarty was not in custody of the household goods at the time the chandelier was damaged.

The original inventory sheet from the NTS storage facility clearly states that the chandelier globes were broken by the packer, who was an employee of Swanner and not an agent of Fogarty. This inventory was signed by the member and an agent of Swanner. Furthermore, no additional damage is noted on either DD Form 1840 or 1840R, although the original damage to the chandelier golbes is again noted. We conclude that no additional damage occurred after Fogarty took custody of the chandelier.

Accordingly, the Claims Group's allowance in the settlement for the chandelier damage is overturned. Our review of the record indicates that the total amount to be refunded is $80.

Fogarty has also requested interest and penalties the Air Force based on this $80 refund. It is well established that the General Accounting Office does not have jurisdiction to award interest or penalties in the absence of express statutory or contractual authority. See James R. Stockbridge, 70 Comp. Gen. 571 (1991) and Maintenance Service and Sales Corporation, 70 Comp. Gen. 664 (1991). However, it is our judgment that Fogarty is not entitled to interest or penalty based on the Prompt Payment Act, 31 U.S.C. §§ 3901-3907 (1988). Under this Act, which is designed to solve problems of late payment, no interest penalty is due when there is a disagreement between a federal agency and a contractor over disputed issues relating to compliance with the terms of the contract. (See OMB Circular A-125, which implements the Prompt Payment Act.)

James F. Hinchman
General Counsel