

Comptroller General
of the United States

Washington, D.C. 20548

Decision

PR

Matter of: American Vanpac Carriers
File: B-247876
Date: August 24, 1992

DIGEST

A prima facie case of carrier liability for the loss of tools shipped in a member's "tool box" is established, even though the inventory does not indicate that the box contained tools, when the description "tool box" is used. Apart from the member's allegation that the tool box contained tools when shipped, the Joint Military-Industry Tables of Weights indicates that for purposes of adjusting claims an item described as a "tool box" will be considered to contain contents unless there is a specific indication that it is empty.

DECISION

American Vanpac Carriers (Vanpac) requests review of the disallowance by our Claims Group of the carrier's claim for a refund of \$179.10, recovered by the Department of the Air Force from revenues otherwise due to Vanpac, for the in-transit loss of tools belonging to a service member. We affirm the Claims Group's settlement.

The record shows that this shipment of household goods originated in Goldsboro, North Carolina on March 13, 1990, and was delivered to the member's new residence in Destin, Florida on April 3, 1990.¹ On April 20, 1990, the member dispatched a Notice of Loss/Damage (DD Form 1840R) to Vanpac informing it, among other things, of "contents missing" from a tool box.² The descriptive inventory indicates that the tool box was shipped under item 124, and that "tools" were shipped in a carrier-packed 4.5 cubic foot carton under item 123.

¹Shipped under Personal Property Government Bill of Lading. TP-208,161.

²Items described as missing included three socket sets, two hammers, three pair of vice grips, a staple gun, an open-end wrench set, allen wrenches and four screwdrivers.

Vanpac contends that there is no evidence that the tool box had tools in it. The carrier states that if the tool box had contained tools, then the warehouseman would have noted on the inventory whether the tool box was locked or unlocked in accordance with Department of Defense (DOD) 4500.34-R, Personal Property Traffic Management Regulation, May 1986. Vanpac argues that the absence of such a notation here indicated that the box was empty. The carrier also points out that, if it is the Air Force's position that the tools for the tool box were under item 123, the member never alleged that he did not receive item 123 or any of its contents, and in any event, Vanpac was not timely notified about a discrepancy under item 123. Finally, Vanpac contends that a Government Bill of Lading (GBL) carrier like Vanpac cannot be held accountable for the actions of a warehouseman who prepares an inventory under a separate contract with the government.

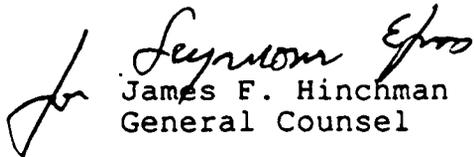
To clarify the matter, we specifically asked the Air Force whether items 123 and 124 each contained tools and whether the tools in item 123 were delivered. The Air Force confirmed that the tools in item 123 were delivered but that those contained in 124 were missing.

To recover from a carrier for loss of property, a shipper must make a prima facie case by showing tender of the goods to the carrier, the carrier's failure to deliver them, and the amount of damages. Thereafter, the burden is on the carrier to show that it was free from negligence and that loss was due to an excepted cause relieving the carrier of liability. Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134, 138 (1964); Stevens Transportation Co., Inc., B-243750, Aug. 28, 1991. The dispute here involves the shipper's initial burden of proving tender of the lost tools to the carrier.

While the inventory does not indicate that the tool box contained tools when it was tendered to Vanpac, we find it reasonable to draw such a conclusion, irrespective of the member's allegations to that effect. The Joint Military-Industry Tables of Weights indicates that for purposes of adjusting claims a tool box will be considered to contain contents and weigh 70 pounds unless there is a specific indication that it is empty. Therefore, when completing the inventory, there was no need for the carrier's representative to specify that a tool box contained tools if it did so. We are not aware of any requirement in DOD 4500.34-R, cited by Vanpac, requiring that the inventory specify whether a tool box is locked or unlocked if it contains tools.

The carrier also argues that the descriptive inventory was prepared by a storage warehouseman operating under a completely separate contract with the government, not the GBL, and that Vanpac cannot be held accountable for the warehouseman's actions. The record does not support this statement because the inventory references the GBL number and the GBL indicates that the shipment was tendered to Vanpac, not a warehouseman.³ Even if the record were otherwise, when goods pass through the custody of several bailees it is a presumption of the common law that the loss or damage occurred in the hands of the last bailee. McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415, 418 (1978). +

The Claims Group's settlement is affirmed.


James F. Hinchman
General Counsel

³Records at Seymour Johnson AFB confirm that May Moving of Goldsboro, the warehouseman, was a domestic agent of Vanpac in March 1990.