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DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

[Claim by Carrier for Air Force Setoff]

FILE: B-199156 DATE: March 5, 1981

MATTER OF: National Trailer Convoy, Inc.

DIGEST:

1. Blow-out of tires, causing damage to Air Force member's house trailer during transportation, is not inherent vice relieving carrier of liability.

2. Clear receipt given to carrier upon delivery of house trailer at destination does not defeat presumption that damages occurred during transportation where consignee's agent signed receipt in mistaken belief that apparent defect was due to position of unit, and actual damages were discovered through series of inspections commencing only 3 days after delivery.

3. Inference is reasonable that damage to platform, box and exterior of house trailer occurred during transportation, rather than after delivery, where unit remained on same lot during inspection period.

4. Inference of carrier's negligence is established from showing of violent handling, and evidence of several tire blow-outs, deflection and twisting of frame, disconnection of trailer box from platform, and exterior damage, warrants finding of violent handling.

The claim for $2,136.28, presented by National Trailer Convoy, Inc. (National), results from setoff of that amount by the Department of the Air Force from monies otherwise due the carrier. The Air Force made the setoff as subrogee to the rights of Sergeant Ronald D. Schucker, Jr., who had a claim against National for damage allegedly sustained by his house trailer during transportation. Subrogation occurred through the Air Force's payment of $2,136.28 to Sergeant Schucker on his

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claim against the Air Force under the Military Personnel and Civilian Employees' Claims Act of 1964, 31 U.S.C. 240-243 (1976).

A repairman's estimate of costs is the basis for the amount of the Government's setoff action, and supports Sergeant Schucker's claim under the Claims Act. That estimate lists repairs relating to three general categories of damage. One category can be viewed as "platform" damage, which includes deflection and twisting of the steel undercarriage and floor support system. Another category embraces "box" damage, which refers to the disconnection of the box-like structure (consisting of walls and roof) from the platform, and the unfastening of various fixtures in the interior of the box. The third category is "exterior" damage, such as skin buckling, crushed corner, and bent hitch.

Whether the setoff of $2,136.28 to recover for these damages is sustainable depends on the Government's case against National, as determined by standards of liability provided in section 20(11) of the Interstate Commerce Act, 49 U.S.C. 20(11) (1976). See 55 Comp. Gen. 1209 (1976). The Air Force and National apparently agree that principles of law enunciated in Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134 (1964) are applicable.

To present a prima facie case against National the Air Force must show that the house trailer was delivered to the carrier in good condition; that it arrived at destination in damaged condition; and the amount of damages. If these elements are shown, the carrier, to relieve itself of liability, must establish that(1) damage was due to one of the excepted causes set forth in 49 U.S.C. 20(11) such as inherent vice of the shipment or act of the shipper, and (2) absence of carrier negligence. See 57 Comp. Gen. 170 (1977).

The Air Force contends that the evidence of record establishes a prima facie case of liability against National; that National has failed to show the existence of an excepted cause or that it was free from negligence; that the record contains affirmative evidence of National's negligence, and that the evidence establishes damages to support its setoff.

National's response is tailored to the various categories of damage. As to the platform damage, National admits that the Air Force can show a prima facie case of liability, but, in defense, it asserts that the damage was

caused by tire failure which constitutes an inherent defect. National denies that the Air Force can show a prima facie case of damage to the box and the exterior. It contends that there is no showing that the damage existed upon delivery by the carrier. National further contends that there is no evidence of its negligence.

Government bill of lading (GBL) M-0637102 shows that the house trailer was received by National on June 30, 1976, in apparent good order and condition. The carrier's Pre-Move Inspection report indicated that two windows were broken (the Government's claim does not include this damage). Otherwise, the report contains no exceptions, and indicates that the condition of the frame, interior and tires was fair. The carrier transported the unit from Cabot, Arkansas, to Newburgh, Indiana, where it was delivered on July 7, 1976, to Lot 4 in Goffman's Trailer Park. No exceptions were noted on the delivery receipt by the consignee.

The parties apparently recognize the rule that a clear receipt is not conclusive as to the condition of a shipment upon delivery. A receipt is subject to explanation. See Rhoades, Inc. v. United Air Lines, Inc., 340 F.2d 481 (3rd Cir. 1965); McNeely & Price Co. v. The Exchequer, 100 F. Supp. 343 (E.D. Pa., 1951); 57 Comp. Gen. 170, supra. National accepted an undated letter from Mrs. Schucker as evidence that the platform was damaged on delivery. This was inferred from a statement that she observed on July 7th (the date of delivery) that the unit slanted (although she mistakenly believed that the condition was due to uneven ground). This statement and National's admission constitute substantial evidence of damage to the platform.

We find no merit in National's contention that tire failure, which, it concedes, caused the damage to the platform, was the result of an inherent defect. In this respect, it has been held that the blow-out of a tire does not establish an inherent vice or defect. Springer Corp. v. Dallas & Mavis Forwarding Co., 559 P.2d 846, 849 (N. Mex. Ct. App., 1976), cert. denied 561 P.2d 1347 (1977).

National's denial of liability for the box and exterior damage is based on the time interval between delivery and subsequent inspections. National contends that these damages occurred after delivery. Where damages are discovered and reported to the carrier after a significant delay, an inference is raised that they occurred after delivery. See Weil's Inc. v. Overnite Transportation Co., 181 S.E.2d 749 (N.C. Ct. App., 1971), cert. denied 183 S.E.2d 243; compare Julius Klugman's Sons v. Oceanic Steam Navigation Co.,

42 F.2d 461 (S.D.N.Y. 1930) (inference applied to successive custodians). Although National argues that the box and exterior damage was caused by the trailer's resting for a substantial time without support, we believe there is sufficient evidence to show that the damage occurred while in National's possession. Further, the evidence suggests that discovery of damage to the box and exterior can be inferred from events that occurred reasonably contemporaneously with delivery.

National's position is that an inspection was not made until September 1, 1976, nearly 2 months after delivery. This refers to a report of inspection made by an engineer which noted the complete array of damages and gave the opinion that they could have been caused by tire blow-outs in combination with speed, impact, sharp turning and striking a fixed object.

The record, however, contains facts, which in combination, establish that the damages were discovered and notice was given without significant delay. It shows that on July 20, 1976 (13 days after delivery), an Air Force inspector, William McKinney, inspected and noted substantially all of the damages observed by the engineer and the repairman. Further, the DD Form 1843 shows that Mr. and Mrs. Schucker observed the box-related damage as early as July 10th, or only 3 days after delivery, and National acknowledged receipt of Mrs. Schucker's undated letter disclosing the slanted condition on the trailer upon delivery. And we note that during the entire period from delivery to the engineer's inspection the unit remained on Lot 4 of Goffman's Trailer Park. Notice of the damages was dispatched only 5 days after delivery. These facts undercut any inference that the damage occurred subsequent to delivery, and preserves the countervailing presumption that it occurred while the unit was in National's possession. In any event, these facts, in combination with others, establish negligence of the carrier.

We draw attention to National's admission that the impact of the blow-outs caused the platform damage. Pictures accompanying the engineer's report show the results of this impact to the platform. Discovery of the box damage only 3 days after delivery along with the engineer's opinion permits the inference that the box damage was within the chain of causation initiated by the blow-outs. Several blow-outs, frame and undercarriage damage, disconnection of the trailer box from the frame, and a crushed exterior surface constitute evidence of violent handling. Negligence of a carrier can be established by inference from a showing

of violent handling. Reider v. Thompson, 197 F.2d 158 (5th Cir. 1952); Penfield Mfg. Co. v. Christoni, 243 A.2d 87 (Conn. Cir. ct. 1967); Ideal Plumbing & Heating Co. v. New York, N.H. & H. R.R. Co., 124 A.2d 908 (Conn. 1956).

We conclude that the record contains substantial evidence of National's liability for the asserted damages; therefore, its claim is disallowed.

Milton J. Socolar

Acting Comptroller General
of the United States