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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Carlyle Van Lines, Inc.

File: B-247442.2

Date: December 14, 1993

DIGEST

A prima facie case of carrier liability is not established where a shipper provides no evidence to support his claim that the carpet he received from the carrier was different than the one he says he had tendered to a nontemporary storage (NTS) contractor for shipment in 1985; the only evidence in the record describing the carpet delivered indicates that it matched the NTS contractor's inventory at origin.

DECISION

Carlyle Van Lines, Inc., requests review of our Claims Group's settlement upholding the Air Force's set-off of $722.50 against Carlyle for the loss of a service member's carpet. We reverse the settlement.

The member tendered a carpet to a nontemporary storage (NTS) contractor in August 1985; the contractor described it, on its inventory as "Rug Red with Flowers" in a soiled condition. Carlyle obtained the shipment from the NTS contractor on January 10, 1990, adding a rider that the carpet was rolled, soiled and badly worn. Carlyle delivered the shipment on January 22, 1990, and the member later notified the Air Force and the carrier that the carpet delivered was not the one he had tendered to the NTS contractor in 1985. The member returned the delivered carpet to Carlyle's destination agent; Carlyle states that the carpet returned was red with flowers.

On the Schedule of Property filed with his claim, the member alleged that his lost carpet was a 9' x 12' handmade Turkish rug purchased in Europe in December 1982 for $850. The member supported the claim with a $3,400 estimate based on replacing a "genuine handknotted Oriental rug, 9 x 12, wool on a cotton foundation of Turkish weave and Ladik quality." The record otherwise contains no evidence from the member about the quality or value of the rug he owned, the circumstances surrounding its tender to the NTS contractor, or how the carpet delivered differed from the one tendered.

satisfy this burden. See [illegible] Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415,

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Carlyle argues that it simply delivered the carpet it received from the NTS contractor. Carlyle maintains that if the carpet differed from the one the member placed into NTS, then the NTS contractor was responsible. Carlyle argues that the carpet should have been received from the NTS contractor with an attached sticker identifying the shipment's lot number and the carpet's inventory number, in the same color as the stickers used in the rest of the shipment; Carlyle asserts that it would have been impossible to remove the sticker from one carpet and place it on another while in Carlyle's custody. Carlyle further contends that the member failed to show that he tendered an "oriental" carpet at origin, and that the carpet turned over to it at destination by the member was not an oriental carpet.

In its administrative report, the Air Force disputes the facts and factual inferences drawn by Carlyle. The Air Force says that it found no evidence that the delivered carpet contained any sticker at all, or that if it did, the sticker matched the origin inventory. The Air Force also states that there was no evidence that the carpet delivered was red with flowers.

When goods pass through the custody of more than one bailee, it is a presumption of the common law that any loss occurred in the hands of the last one. The burden then is on the delivering carrier, as the last bailee, to prove that a prior bailee was responsible for the loss; mere allegations or suggestions do not satisfy this burden. See McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415, 418-419 (1978). Carlyle's suggestion that the carpet had to be identified in the manner described above, without some direct evidence that it was so identified in this case, is insufficient to overcome its evidentiary burden; thus, the record does not confirm Carlyle's contention that it simply delivered the carpet it received from the NTS facility.

Nevertheless, we do not believe that the record supports a prima facie case against Carlyle for the loss of the carpet the member describes. To establish a prima facie case of carrier liability, a shipper must show (1) that the property claimed was tendered to the carrier, (2) that the same property was not delivered, and (3) the amount of the loss. Only then does the burden of proof shift to the carrier. Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134, 138 (1964).

There is little evidence in the record concerning the type of carpet tendered and how it differed from the carpet that was delivered. The member claims he shipped a 9' x 12' handmade Turkish carpet; such an item is not mass-produced and its value depends on the craftsmanship of the producer.

It is reasonable, therefore, to expect the record to contain more detailed evidence of the nature of the item and its value than, for example, an appliance of equal value.

Moreover, the Air Force's contention that the delivered carpet may not have been red with flowers is simply speculation--the record includes no such indication from the member, and the fact is that the agency chose not to investigate or otherwise secure evidence of the type of carpet delivered. Carlyle's assertion that it actually delivered a red carpet with flowers thus is unrebutted by any direct evidence. Beyond the member's claim that he did not receive the item he owned, there is no information or documentation of record to establish how the red carpet with flowers that was tendered differed from the (apparently) red carpet with flowers that was delivered. A member must present at least some substantive evidence to support each element of a prima facie case. See Suddath Van Lines, B-247430, July 1, 1992.

Furthermore, the possibility that another red carpet with flowers would become intermingled with this shipment seems remote. The member suggests that his carpet was switched with a cheap imitation, but the likelihood that the thief would expend the effort to obtain an imitation red carpet with flowers, when the carpet was shipped in a rolled condition anyway, also seems remote.

Finally, there is no indication that the member contested the Air Force's adjudication of replacement cost at $850 rather than the $3,400 claimed against the Air Force. This suggests that the member could not prove, and possibly did not know, the quality of the carpet that he really shipped.

In totality, the record is insufficient for a prima facie case of liability. In the absence of further evidence about the item tendered and the item delivered, we reverse the Claims Group's settlement.

for James F. Hinchman
General Counsel