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

FILE: B-215559 **DATE:** August 23, 1985

MATTER OF: Continental Van Lines, Inc.

DIGEST: A mover cannot usually avoid a prima facie case of its liability for loss or damage to household goods it transports merely because circumstances prevent it from inspecting the damage. However, where the mover claims that part of the total damages asserted by the Air Force to a shipment were due to items the owner never tendered to the mover for delivery, even though claimed by the Air Force to be lost, the shipper (Air Force) of the goods must furnish some substantive evidence of tender to the mover in order to establish a prima facie case of liability. If no substantive evidence of tender is presented by the shipper, a prima facie case is not established, and the shipper cannot recover from the mover for the alleged loss of the items. Continental Van Lines, Inc., B-215559, October 23, 1984, modified in part and affirmed in part.

Continental Van Lines, Inc., requests reconsideration of our decision Continental Van Lines, Inc., B-215559, October 23, 1984, which allowed the Air Force's inspection of household goods transported by Continental to establish the damaged condition of the goods and establish a prima facie case of the mover's liability for the damage even though circumstances prevented the mover from inspecting the damage.

Continental argues that where circumstances prevent the mover from inspecting the damaged goods, it should not be held liable for any of the damages. Continental also argues that several deficiencies in the Air Force's inspection and claims settlement procedure in this case have precluded the establishment of a prima facie case of its liability. We agree with Continental that one deficiency in the Air Force's claims settlement procedure in this case precludes the establishment of a prima facie case of the mover's liability for two of the thirteen lost or

damaged articles included in the shipment of household goods. However, we find no other material deficiencies in the Air Force's inspection or procedure that affect the prima facie case of liability that has been established for the other 11 articles of the shipment. We also conclude that the mover cannot avoid liability for these 11 articles merely because circumstances prevented an inspection. Therefore, our decision of October 23, 1984, as modified for the two articles, is affirmed.

BACKGROUND

Continental delivered the household goods on September 14, 1981. On October 7, as supplemented on October 9, the Air Force sent the mover notice of loss and damage to 14 articles of the goods and invited the mover to inspect the damage. The Air Force inspected the damage on October 26, prepared an inspection report and supporting schedule of the damage, and sent this material to Continental with a claim for payment. In January 1982, Continental admitted liability for damage to only one article, which upon delivery had been noted as damaged. The mover denied liability for the rest of the loss and damage and associated unearned freight because it contended that it had been denied the right of inspection to determine what the damages were, if any. The Air Force, however, withheld the full amount of the Government's claim from funds otherwise due Continental for the loss and damage. Continental seeks refund of the amount collected from it.

THE DENIAL OF INSPECTION ISSUE

There may be situations, as suggested in the case cited by Continental and mentioned in our decision of October 23, in which a mover could properly deny liability for alleged damage to household goods if it were denied the right of inspection to determine that damage, particularly if the denial were intentionally done for the purpose of concealing the amount, if any, of the damage. However, our decision of October 23 concluded that there was no denial of the right in this case but that "* * * the lack of an opportunity to inspect was more the result of a failure of the * * * [property owner] to understand the rights of Continental and of Continental to insist on its right to inspect * * *." Continental has offered nothing further to call this conclusion into question. Continental's observation that the Government has

an obligation to inform property owners of the mover's right to inspect so that there are no recurrences of the breakdown that occurred in this case is in fact embodied in the Government's regulations concerning the movement of household goods and settlement of damage claims relating to that movement. See Department of Defense Regulation 4500.34-R, Chapter 3; Army Regulation 27-20, paragraph 11-29a(2)(d) (Cg. 12, March 1977); Air Force Regulation 112-1, paragraph 6-17 (Cg. 1, March 1984). The mover also has a concurrent obligation to vigorously pursue its right of inspection in those situations in which the property owner does not properly respond to the Government's instructions. Continental did not fulfill its obligation in this case, so there was no denial of its right to inspect.[1]/ Therefore, since the mover has presented nothing else to avoid the loss and damage found in the Air Force's inspection, it is liable for that loss and damage.

DEFICIENCIES IN THE AIR FORCE'S INSPECTION AND CLAIMS SETTLEMENT PROCEDURES

Continental presents minor discrepancies in the manner in which the loss or damage concerning four articles of household goods shown on the mover's inventory were described on the Air Force's inspection report, supporting schedule, and notice of loss or damage as evidence that the Air Force's inspection was so biased that a prima facie case of its liability has not been established. While precision and consistency of description are desirable in the various documents involved in the claims settlement procedure, the minor discrepancies complained about in this case do not appear to be unusual and would have all been easily resolved if Continental had inspected. They do not detract from the substance of what

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1/ Continental's right of inspection is not unqualified. In the Military/Industry Memorandum of Understanding cited in our decision of October 23, Continental agrees that certain kinds of goods, such as refrigerators and televisions, may be repaired immediately even if the mover does not have an opportunity to inspect for damage and that the mover's liability will not be denied solely because of its lack of inspection.

the Air Force's inspection discovered nor preclude the establishment of a prima facie case of liability.

The first discrepancy involved an article listed on the mover's inventory as a power mower. The Air Force's notice and supporting schedule each described that a gas can was missing, although the identifying number of the article listed on the inventory as a power mower was used. The inspection report described that a lawn mower and gas can were missing, referring again to the identifying number of the article listed on the inventory as a power mower. There was no doubt that the Air Force claimed a missing gas can; that there was no gas can listed on the mover's inventory; and that the only article the Air Force could refer to on the inventory was a power mower. Continental neglects to mention that this article was deleted from the Air Force's final claim, reducing the number of articles to 13, presumably because the Air Force could not demonstrate that a gas can was in fact tendered to the mover for delivery.

The second discrepancy involved an article listed on the inventory as a lawn chair. Although the initial notice of loss or damage stated that one lawn chair was missing, the supplemented notice, the inspection report, and the supporting schedule all referred to two lawn or lawn lounge chairs as being missing, while referring to only the identifying number of the article listed on the inventory as a single lawn chair. Continental neglects to mention that the article listed on the inventory immediately succeeding the disputed lawn chair is also described as a single "lawn chair." Therefore, the discrepancy amounts to a simple failure to include both identifying numbers of the articles listed on the inventory as "lawn chair."

The third discrepancy involved an article listed on the inventory as "TV trays on 4." The Air Force's notice described three of four of the set of TV trays missing; the inspection report described TV trays and stand missing; and the supporting schedule described three TV trays and stand missing. We believe that the ordinary meaning of the inventory description of "TV trays on 4" and the notice description of set of TV trays includes a stand without particularly describing it because that is the way

that the article is usually found in commerce. If the inventory item had been a "fireplace set" we, similarly, would have believed the description to have included a stand without particularly stating it. The fact that the inspection report and supporting schedule particularly described for the first time that the stand, besides three of the TV trays, was missing does not indicate bias.

The fourth discrepancy involved an article listed on the inventory as a room divider in six pieces. The Air Force's notice described two mirrors as missing without referring to any article's identifying number on the inventory; the inspection report described the loss as "Bathroom utility shelf mirror missing" and referred to the identifying number on the inventory corresponding with room divider; and the supporting schedule described the article as "bathroom utility shelf," the nature of the damage as "(2) mirror sliding door miss.", and referred to the identifying number on the inventory corresponding with room divider. Although the inspection report does not indicate how many of the room divider's pieces were delivered, we believe the record reasonably indicates that two mirrors belonging to an article listed on the inventory as a room divider were missing.

Continental presents a defect in the claims settlement procedure that we agree precludes the establishment of a prima facie case of the mover's liability for two of the articles that the Air Force claims were lost. The two articles, an air compressor and bean-bag chair, were alleged to be missing from two separate packing cartons listed on the inventory, but the articles were not otherwise specifically identified on the inventory. In order to establish a prima facie case, the shipper must show that the articles were tendered to the mover for shipment. Since the record contains no suggestion that the cartons had been tampered with by the mover after being packed at origin nor any other specific evidence by the property owner that the compressor and bean-bag chair had been tendered to the mover for shipment (other than a signed claim form), we conclude that substantive evidence is lacking to establish that the articles were tendered to the mover for shipment. Continental Van Lines, Inc., B-214554, December 14, 1984; Paul Arpin Van Lines, Inc., B-205084, June 2, 1982, aff'd., B-205084, June 8, 1983.

The defect in the claims settlement procedure was to assert a prima facie case on insubstantial evidence of tender to the mover.

CONCLUSION

Since Continental was not denied the right of inspection, it cannot avoid the prima facie case of liability established by the Air Force's inspection for 11 articles of the shipment. The minor discrepancies involving terminology do not affect that liability. However, because the Air Force did not present substantive evidence of tender to the mover for shipment of two articles claimed to be lost, we are issuing instructions to allow Continental's claim for the amount withheld for those two articles and related unearned freight. Accordingly, our decision of October 23, 1984, as modified for two articles of the shipment, is affirmed.

Milton J. Socolar

Acting Comptroller General
of the United States