PR

B-243477

June 6, 1991

DIGEST

A carrier who picked up an Army member's household goods, stored them in its own warehouse, and subsequently delivered them to the member's new address, is not automatically relieved of liability as a carrier for loss/damage, to be held to a warehouse's more limited liability, simply because it listed exceptions for loss/damage on the warehouse's inventory.

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

Decision

Matter of: A-1 Ace Moving and Storage, Inc. AB409467

File: B-243477

Date: June 6, 1991

DECISION

The Air Force appeals a January 22, 1991, settlement by our Claims Group denying setoff of $722 against A-1 Ace Moving and Storage, Inc., for loss and damage to MSgt. John Scoppetta's household goods. We reverse the Claims Group's settlement.

A-1 picked the goods up from the member, stored them in its warehouse for 2 months, and then delivered them from its warehouse to MSgt. Scoppetta. Delivery was ordered by Government Bill of Lading (GBL), whereas storage was effected under a Basic Ordering Agreement with A-1. A-1 took numerous exceptions for damage to the goods upon taking them out of its warehouse.

The shipment had been released to the carrier based on a valuation of $1.25 per pound. As provided in Paragraph 6-59 of Air Force Regulation (AFR) 112-1(C2), a warehouseman's liability commonly is limited to $50 per article. Although A-1 was the sole carrier and warehouseman, it maintained that the exceptions it noted when picking the goods up for final delivery limited its liability to $50 per article. Our Claims Group agreed.

The Air Force contends that since the property in fact never left A-1's custody, the regulation is inapplicable. The Air Force concedes that the exceptions would have properly limited A-1's liability if the warehouse had belonged to a third party. We agree with the Air Force.

It is well-settled that when goods moved by a carrier are delivered in poorer condition than when they were picked up, to avoid liability the carrier must show that the damage or loss did not occur while in its custody. 57 Comp. Gen. 415, 418 (1978). Further, when the goods have passed through several custodians, the presumption at common law is that the damage or loss occurred in the hands of the last one. Id. To address the warehouse vs. delivering carrier situation, paragraph 6-57 of AFR 112-1(C2) specifies that when removing a shipment from a warehouse for delivery, the carrier may

prepare an exception sheet (known as a "rider") to the warehouse's inventory, to be signed by both parties, which will control liability for the items listed.

The rider, then, normally serves to rebut the general common-law presumption of the last carrier's liability. We do not believe, however, that the one executed here can be used for that purpose. The reason is that a rider is designed to set out agreed-upon liability between entities in an arm's length relationship, that is, to protect a party against liability for loss of or damage to goods that already were lost or damaged when it took custody of them. See Best Forwarders, Inc., B-240991, April 8, 1991. Where the initial carrier, warehouseman, and delivering carrier are the same company, that arm's length relationship does not exist. Thus, for example, there is no incentive for the warehouse to insure that the inventory it prepares upon receiving the shipment for storage accurately reflects any damages to be charged against the carrier, since any damages later could be listed on a rider and thereby limit the firm's liability to that of a warehouseman.

Accordingly, where only one party is involved in the transport/warehousing, a rider executed upon taking custody from the warehouse constitutes only self-serving, uncorroborated, evidence of responsibility for damage. As such, we agree with the Air Force that it not a reliable rebuttal to the common-law presumption that the last carrier is liable. See National Freight Claim Council, B-200549, Nov. 18, 1980.

This does not mean that a carrier who also warehouses the items always will be held liable based on released valuation, as opposed to based on the warehousing. Instead, it means that for the shift of presumed liability for loss or damage from carrier to warehouse to be effected, the carrier cannot rely only on a rider to the warehouse inventory.

Since the only evidence here of place of damage is A-1's rider, the Air Force's set-off action was proper. The Claims Group's decision therefore is reversed.

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General Counsel

PROCUREMENT
Payment/Discharge
Shipment
Carreir liability
Burden of proof