



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Cartwright International Van Lines

File: B-260372

Date: October 31, 1995

DIGEST

Where pieces of bedroom set were delivered from nontemporary storage with wrong drawers and carrier did not complete a rider noting the damage, the carrier is liable for the damage as prima facie case of liability is established and prior settlement of Claims Group is reversed.

DECISION

The Chief of the Personnel and Recovery Division of the U.S. Army Claims Service requests review of Settlement No. Z-2609168-106 which found the collection by the Army of \$1,006 from Cartwright International Van Lines for transit loss in connection with a shipment of household goods of a service member to have been improper. We reverse the settlement.

Cartwright picked up the shipment from nontemporary storage on April 30, 1991, in Phoenix, Arizona, and delivered it on May 7, 1991, to Augusta, Georgia. A six-piece bedroom set was delivered but with many drawers that did not belong to the set and did not match. Two nightstands had four incorrect drawers, a chest had two wrong drawers out of five and all six drawers in a dresser were incorrect.

Our Claims Group found that the Army had not established a prima facie case of carrier liability by failing to show the tender of the goods to the carrier in a certain condition. Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134 (1964). There was nothing in the file to show that the dresser was delivered without drawers. If the drawers were not delivered, tender could be shown in the absence of a rider, because a dresser without drawers should be obvious at the time of pick up. Here, however, each drawer hole had a drawer in it and there is nothing to show that the carrier was tendered anything other than what was delivered. Accordingly, our Claims Group found that the carrier was due a refund of the amount offset for the bedroom set, \$1,006.

The Army, in requesting reconsideration, argues that since Cartwright did not execute a rider showing that it picked up the wrong drawers at the nontemporary storage facility, tender of these items has been established. Also, since Cartwright did not properly examine the items when they were picked up and complete a rider, the government cannot look to the NTS facility for recovery of the shipper's loss. Therefore, as the last carrier, Cartwright should bear the loss. To hold otherwise, according to the Army, grants a benefit to carriers who fail to properly execute a rider.

The law is well settled that a carrier, though not an absolute insurer, is liable for damage to goods transported by it unless it can show that the damage was caused by (a) an act of God; (b) a public enemy; (c) an act of the shipper himself; (d) action by public authority; or (e) the inherent vice or nature of the goods. See Missouri Pacific R.R., supra. Since Cartwright did not complete a rider showing the damage, *i.e.*, the improper drawers, when it picked up the items from storage and none of the above exceptions apply, as the last carrier, it is liable for the loss since the government has established a prima facie case of carrier liability. 57 Comp. Gen. 415, 418 (1978).

Cartwright cites our decision Carlyle Van Lines, Inc., B-247442.2, Dec. 14, 1993, to support its argument that it should not be liable for delivering the item it obtained from the nontemporary storage warehouse. In that decision we found that the carrier was not liable for delivering a rug merely described on the inventory as "Rug Red with Flowers" which the member stated was not the rug the member had tendered but that he had tendered an oriental rug valued at \$3,400. We reached our decision based on the lack of evidence or receipts to establish exactly what was tendered. Here, the member had the original receipt for the bedroom set and following inspection by the Army, it was concluded that the wrong drawers had been delivered.

Accordingly, we reverse the settlement of the Claims Group.

/s/Seymour Efros
for Robert P. Murphy
General Counsel