

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

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FILE: B-215559**DATE:** October 23, 1984**MATTER OF:** Continental Van Lines, Inc.**DIGEST:**

Once a prima facie case of liability has been established by showing a failure to deliver the same quantity or quality of goods at destination as received at origin, a common carrier is relieved of liability only by showing that the loss or damage did not occur while in the custody of the carrier or that the damage was the result solely of one of five specified causes. A carrier is not relieved of liability where it does not inspect the damages.

Continental Van Lines, Inc. (Continental), claims refund of \$259.41 recovered by the Department of the Air Force (Air Force) for loss and damage in transit to the household goods of SSgt. Alfred F. Villar. The household goods were being transported from George Air Force Base, California, to Bergstrom Air Force Base, Texas, under government bill of lading (GBL) No. AP331,872.

We deny the claim.

The household goods were delivered at destination on September 14, 1981. On delivery, loss of a bookcase frame and damage to a glass mirror were noted on a Defense Department Statement of Accessorial Services, which also has spaces for the consignee's statement of delivery and loss or damage. This form appears to have been made out and surrendered to the carrier at the time of delivery. On October 7, 1981, 23 days after delivery, the Air Force sent Continental notice of additional damage and missing goods.

The Air Force inspected the shipment and allowed SSgt. Villar \$246.14 for the loss and damage in transit, and the amount allowed was claimed by the Air Force from Continental. Continental offered \$25.80 for the missing bookcase frame in full settlement of the claim and denied the balance on the grounds that no exceptions were taken at the time of delivery and because Continental was denied the right of inspection.

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Letters in the file indicate that the firm retained by Continental to inspect the damages made two attempts to contact SSgt. Villar by phone, followed by a letter requesting an appointment to inspect. On the failure of SSgt. Villar to respond, a letter was sent to the Air Force Base. Finally, SSgt. Villar did contact the repair firm to advise that the government had paid the claim and no inspection was necessary.

The Air Force adjusted the liability of Continental to \$221.95 for the damage plus \$63.26 for unearned freight charges, which was recovered by setoff on the failure of Continental to make satisfactory voluntary settlement. The amount claimed by Continental represents the amount recovered by setoff, \$285.21, less the amount of \$25.80 deemed by Continental to be the extent of its liability.

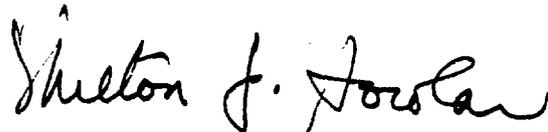
Continental contends that it is not liable for the loss or damage in transit because Continental contends that it was denied its right of inspection. In support of its contention, Continental cites the decision of the Cincinnati Municipal Court in Phoenix Insurance Company v. Cushman Motor Delivery Company, 4 F.C.C. ¶ 80,214 (1945). In that decision, the municipal court held that the carrier was justified in refusing to pay the claim for damages in transit when the shipper deprived the carrier of an opportunity to inspect by destroying the damaged goods even though the carrier had promptly requested an opportunity to inspect.

Initially, the Air Force rejected the contention of Continental, asserting that Continental had waived its right to inspect by failing to inspect within the time specified in the Military/Industry Memorandum of Understanding. On review of the file, the Air Force concedes that Continental timely requested inspection. The Air Force contends, however, that Continental's failure to inspect was more the result of an inability to contact the claimant than a refusal to allow inspection. The Air Force also contends that a lack of opportunity to inspect is not sufficient to rebut a prima facie case of liability.

The record shows that Continental did contact the claimant, but that the lack of an opportunity to inspect was more the result of a failure of the claimant to understand the rights of Continental and of Continental to insist on its right to inspect rather than a denial by the claimant of Continental's right.

Moreover, a prima facie case of liability for loss or damage in transit is established by showing a failure to deliver at destination the same quantity or quality of goods as received at origin. Once the shipper has established a prima facie case of liability, the burden is on the carrier to show either that the damage or loss did not occur while in its custody or that the loss or damage occurred solely as a result of one of five specified causes. Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134 (1964); McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415 (1978); Starck Van Lines of Columbus, Inc., B-213837, Mar. 20, 1984, 84-1 C.P.D. ¶ 337. A prima facie case has been established by the record in this case, and Continental has neither alleged nor shown either that the loss or damage did not occur in its custody or that the loss or damage was solely the result of an excepted cause.

Apart from the single decision cited by Continental, we find no statutory or judicial authority to support the contention of Continental. In fact, the Carmach Amendment to the Interstate Commerce Act, 49 U.S.C. § 11707 (1982), provides that the initial or delivery carrier is liable for loss or damage to property, and any limitation, except as provided in that section of the statute, is void. Further, we have sustained the administrative recovery for loss or damage in transit where the carrier is notified of the damages but does not inspect. IML Freight, Inc., B-193101, Mar. 12, 1979; Trans Country Van Lines, Inc., 57 Comp. Gen. 170 (1977). This was true in the IML case even though the government's agent may have misled the carrier, since it also appeared that, as here, the carrier contributed to its failure to inspect.



Acting Comptroller General
of the United States