

DECISION

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

FILE:

DATE: 61577

MATTER OF: B-195131

SEP 30 1976

Consolidated Freightways

DIGEST:

97946

Carrier's delivery of a shipment on free astray basis does not explain loss in transit of similar shipment admittedly received later by carrier at origin, where evidence shows existence at origin of two separate different sized similar shipments released for transportation two days apart.

Consolidated Freightways (Consolidated) requests review of our Claims Division's Settlement Certificate dated January 30, 1976, in which the Division disallowed Consolidated's claim for \$563.68. The amount claimed had been collected by administrative setoff from Consolidated to liquidate the Government's claim for damages and unearned freight charges on a shipment of an aircraft panel assembly which was lost in transit while in the possession of Consolidated for transportation from St. Joseph, Missouri, to Tinker Air Force Base, Oklahoma, on Government bill of lading (GBL) No. Z-8687303, dated November 7, 1973.

Consolidated does not dispute the fact that a prima facie case of carrier liability has been made out here by proof that a stated quantity of goods was delivered to the carrier in good condition at origin, that a lesser quantity was delivered at destination, and that the damages were \$563.68. Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134 (1964). Instead, Consolidated contends that the loss is explained by the alleged facts that a similar aircraft panel assembly was picked up at the same origin and at the same time and delivered by it to the same destination at a later date on a free astray basis. However, evidence contained in the record rebuts Consolidated's factual allegations.

One of the documents required to be prepared by Department of Defense (DOD) components in connection with the transportation of material within the Defense Transportation System is a DOD Single Line Item Release/Receipt Document, DD Form 1348-1. The form pertaining to the aircraft panel assembly picked up by Consolidated and

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delivered on a free astray basis contains in item 12, titled "Date Shipped," the code "3309-G." The first digit refers to the year, 1973, and the "309" is the Julian date for November 5. See Statistical Processing of U.S. Government Bill of Lading, AR 55-39, Appendix A, Part 15. The "G" is the mode of shipment code for surface, parcel post. See Military Standard Transportation and Movement Procedures, DOD 4500.32-R, Appendix B6. The type of container is shown as "CT," a carton, and the weight is 20 pounds. No Government bill of lading was issued when the material was released for transportation.

On the other hand, the Form 1348-1 pertaining to the missing panel assembly shows that it was shipped in 1973 on Julian date 311 (November 7), which is the date shown on GBL No. Z-8687303 as the date Consolidated's driver signed for the shipment lost in transit. The shipment was coded "E", for motor, less truckload, and the type of container is shown as "CR," a crate. The shipment weighed 160 pounds and was 70 cubic feet in size. The cubic feet converted to lineal feet shows that the crate was approximately 7' x 5' x 2', a size larger and distinctively different from the size of a 20-pound carton. Further, the 160-pound crate could not have moved by parcel post, as alleged by Consolidated, because the weight and size limits for parcel post are 70 pounds and 100 inches. See Postal Service Manual, para. 135.3. And the larger crate was tendered to Consolidated for transportation two days after the 20-pound carton was released for transportation.

Thus, the evidence represented by each Form 1348-1 definitely establishes that two separate shipments were involved. Copies of the Form 1348-1 will be sent to Consolidated.

Consolidated also contends that the shipping location did not investigate the shortage when it first occurred. However, the record indicates otherwise.

Standard Form 363, Discrepancy In Shipment Confirmation, was prepared by the consignee on December 4, 1973, three weeks after the date of shipment, and mailed to Consolidated. Item 15, "Remarks," contains a note to the shipper requesting that a check of shipping records and shipping area be made

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to determine if the freight was shipped as billed. The record indicates that the results of the investigation were negative.

Our Claims Division's Settlement Certificate dated January 30, 1976, is not otherwise shown to be erroneous and it is sustained.

R.F.KELLER

Deputy Comptroller General
of the United States