



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Carlyle Brothers Forwarding Co.

File: B-247442

Date: March 16, 1992

DIGESTS

1. Proof of tender of shotgun is not established merely by GBL statement that "shipment contains firearms" where shipper, who was counseled that firearm shipments require special attention, signs inventory that does not mention the firearm and asserts that it was contained in an inventoried carton labeled "Wardrobe stuffed animals."

2. Prima facie case of carrier liability is established where items allegedly lost bear a reasonable relationship to items shown on the inventory as a carton's contents. The carrier packed the shipment and was responsible for preparing the inventory, and it is not reasonable to conclude simply from the carrier's own labeling and inventorying decisions that items not specified on the inventory and claimed lost were not tendered.

DECISION

Carlyle Brothers Forwarding Co. asks that we review our Claims Group's disallowance of reimbursement of \$367.61 set off from revenues otherwise due to the firm to recover for the loss of and damage to a member's household goods incident to transit under Government Bill of Lading (GBL) EP-137,251. This amount relates to inventory items #338 (halloween decorations - \$113.40), #339 (shotgun - \$242.99), and #377 (drapes - \$11.22).

We reverse the Claims Group's decision as to the shotgun, but we affirm it as to the drapes and the halloween decorations.

In order for the government to establish a prima facie case of liability for loss against a carrier, tender of the goods to the carrier must be shown. See Paul Arpin Van Lines, Inc., B-213784, May 22, 1992. The sole issue here is whether the items were tendered; no tampering of sealed cartons is alleged.

The GBL was annotated with the statement that "This shipment contains firearms." Notwithstanding this declaration, the shotgun does not appear on the inventory as a discrete item, and item #339, which supposedly contained the firearm, is listed on the inventory as "Wardrobe stuffed animals." Carlyle, from the GBL, recognizes an intent to ship firearms, but asserts that such intent never was carried out. Carlyle also references Department of Defense Regulation 4500.34R, which requires a member to ensure that all applicable regulations regarding the shipment of personally owned firearms are complied with and also requires that the inventory list the make, model, caliber and serial number of shipped firearms. We note here that the quoted GBL statement is one specifically required by the referenced regulation when firearms are shipped.

In reviewing the issue of tender where items are claimed missing from cartons delivered with seals intact, we have considered the connection, if any, between the items and the inventory description, as well as statements by the shipper that reflect personal knowledge of the circumstances surrounding tender to the carrier. Cartwright Van Lines, B-241850.2, Oct. 21, 1991.

The record does not include any statement by the shipper regarding tender of the shotgun to the carrier, and the label on the carton from which it is alleged to have been missing ("Wardrobe stuffed animals") is unrelated to firearms. Moreover, the record includes DD Form 1797, Personal Property Counseling Checklist, signed by the shipper shortly before the GBL was issued; the shipper acknowledged on the form that he had been advised of various factors relating to the shipment, including the disposition of weapons and ammunition. According to the form, then, just before the shipment the member had been specifically counseled that the shipment of firearms was a matter requiring special attention. In these circumstances, we think that a shipper tendering a weapon to a carrier at least would ensure that the item itself, if not the information required by the regulation Carlyle cites as well, was specified on the inventory before signing it. In sum, we agree with Carlyle that this record does not establish proof of tender to the carrier.

The drapes are alleged to be missing from inventory item #377, a "4.5 ctn CP clothes." Carlyle asserts that the Claims Group's determination that the drapes were contained in this carton is speculative, and argues that drapes are more likely packed with linens than with clothes. However, we agree with the Claims Group that it would not be unusual for drapes to be packed with clothes and tendered along with them. Moreover, the carton was packed by the carrier, who also prepared the inventory list. In Cartwright Van Lines,

B-241850.2, supra, we stated that it would not be reasonable to conclude from the carrier's own inventorying and labeling decisions that items claimed lost were not tendered. We affirm the Claims Group's decision on this item.

Carlyle makes much the same argument concerning the halloween decorations, alleged to be missing from a box listed on the inventory as "Christmas tree CP," that it does with the drapes. Because the three halloween decorations - a scarecrow, pumpkin and Indian corn - are decorations like the tree, it seems to us reasonable to conclude that they were placed in the same box. Further, as was the case with the "clothes" carton, Carlyle packed and inventoried this carton. In these circumstances, we think there is adequate proof of tender for purposes of a prima facie case against the carrier.

The Claims Group's decision is reversed in part and affirmed in part.


James F. Hinchman
General Counsel