DATE: March 21, 1997

In Re:

Ready Transportation, Inc.

Claimant

Claims Case No. 96070213

CLAIMS APPEALS BOARD DECISION

DIGEST

Under the Interstate Commerce Act, to establish a prima facie case of liability, the shipper must prove delivery of the goods to the initial carrier in good condition, damage to the goods before delivery to their final destination and the amount of damages. The burden of proof then shifts to the carrier to rebut the prima facie liability. A carrier may escape liability by affirmatively showing that the damage was caused by the shipper, acts of God, the public enemy, a public authority, or inherent vice or nature of the commodity, and that the carrier was not negligent.

DECISION

Ready Transportation, Inc. (Ready), through its attorney, requests reconsideration of the General Accounting Office's (GAO) settlement certificate Z-2869589-0, dated March 28, 1995, in which GAO disallowed Ready's claim for a refund of $9,776 set off by the Defense Finance and Accounting Service for repair of damage done to seven 36" diverting valves delivered by Ready. Pursuant to Public Law No. 104-316, October 19, 1996, title 31 of the United States Code, Section 3702 was amended to provide that the Secretary of Defense shall settle claims by transportation carriers involving amounts collected from them for loss or damage incurred to property incident to shipment at government expense. The Secretary of Defense delegated this authority to this Office.

Background

Ready made two deliveries of four valves (total, 8 valves) from Old Saybrook, Connecticut, to Bremerton, Washington, under government bills of lading (GBL) C-9,166,080 and GBL C-9,166,081. The government noted exceptions to each delivery. These exceptions include statements such as "Gear on top of valves have damage," "All crates have forklift holes," "All valves have water inside crates as if they have set outside in weather" [sic] and "will have internal damage." Although the GBL was issued for standard flatbed equipment, at least one shipment arrived on a rail car.

On March 18, 1993, an estimated repair cost of $10,000, was provided to Ready, based on similar, previous, work. The estimate stated that the repair work applied to damages for both GBL's. By letter dated November 10, 1993, the Defense Finance and Accounting Service (DFAS) sent a claim for damages for the valves shipped under GBL C-9,166,081 for $7,332. The claim was for actual repair costs for repair of three valves, at a cost of $2,444 each. Ready paid the claim, apparently misunderstanding that the repair costs on that claim were for only the valves shipped under C-9,166,081.

By letter dated February 2, 1994, DFAS forwarded a claim for the valves shipped under GBL C-9,166,080, totaling $9,776 (the actual cost of repair of four valves at $2,444 each).

Ready protested the second claim, denying liability for the damages. Ready argued that the damage was caused by the government and that the amount of the second claim was excessive and unsubstantiated. DFAS responded, but when the claim was not paid, it set off $9,776 against amounts due Ready. On March 14, 1995, the matter was forwarded to GAO. GAO denied a refund to Ready. Ready then appealed.

Discussion

Ready presents a number of arguments regarding its liability for the damage to the valves. First, Ready argues that the government did not establish a prima facie case of liability. Ready claims that the government failed to establish actual repair costs, because the documents show that repair costs for each valve were exactly the same amount, including number of man hours, regardless of the actual damage to each valve. Ready also claims that the amounts claimed by the government were excessive in order to punish Ready for matters unrelated to actual valve damage. Ready also claims that the government claim contains repair costs for one valve which Ready states had "no apparent damage," and that the estimate substantially exceeded the final repair cost.

Ready further argues that even if the government had established a prima facie case, it was not negligent, since the government had failed to request or provide weather protection. Ready asserts that the government should have provided or requested tarps or requested an enclosed trailer for shipment, so that the valves would not get wet.

Ready also claims that the government did not request exclusive use of the vehicle, and that the fact that other cargo may have been added to the shipment, does not extend liability to Ready. Ready further argues that freight damage was caused by the inherent nature of the valves and that the shipper failed to properly package and load the valves. Ready claims that the government has acknowledged that packaging and bracing were inadequate and adds that the valves were shipped with inadequate fasteners to assemble the packaging.

Discussion

Under the Interstate Commerce Act, to establish a prima facie case of liability, the shipper must prove delivery of the goods to the initial carrier in good condition, damage to the goods before delivery to their final destination and the amount of damages. The burden of proof then shifts to the carrier to rebut the prima facie liability. A carrier may escape liability by showing that it was not negligent and affirmatively showing the damage was caused by the shipper, acts of God, the public enemy, a public authority, or inherent vice or nature of the commodity. Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134 (1964).

We disagree with the carrier's argument that a prima facie case has not been established. The valves were delivered to Ready in good condition. At the time of the delivery, the government notified the carrier that the goods had been damaged in transit, and the carrier was provided with the amount of the actual repair costs. GBL C-9,166,081 states that there was possible damage to valves. As noted above, GBL C-9,166,080 contains statements such as: "Gear on top of valves have damages," " Have to be tested for exact damage," "All Crates have forklift holes. All valves have water inside crates as if they have set outside in weather," and "Will be internal damage. " The government then obtained an estimate which covered both GBL's which states that "These are rough estimate numbers. More accurate numbers cannot be determined until full inspections are complete."

The amount of the damages has also been established. The government presented Ready with a claim for damages for each bill of lading. The claim lists the amount actually charged to the government for repairs. Ready argues that the claim could not be for the actual cost since the exact amount is the same for each valve. The Government has explained that the repair cost was based on the government contract whereby a fixed rate per valve was charged rather than an hourly rate or other type of charge. Altogether, 7 valves were repaired under this contract.[(1)]

While there is some discussion about the further use of Ready as carrier for the government, we find no evidence that the amount of damages reflects any attempt to punish Ready. Ready also argues that the first claim was paid without question because it believed that the claim for $7,332 was for repair of all 8 valves. We note that the claim letter of November 10, 1993, refers only to valves on GBL C-9,166,081. The fact that Ready made an incorrect assumption does not affect the claim. In addition, we note that while the entire amount of the repairs was in excess of the estimate, the estimate does make it clear that it is only a rough estimate rather than a claim. Information in the file regarding past shipments of valves by Ready show repair costs of $14,000 for an identical shipment of 8 valves and damages of $5,871 for repair of four valves. While Ready alleges that the actual repair costs are unsubstantiated, it offered no evidence that would impeach the accuracy of these costs. We accept the statement of facts as presented by the administrative office in the absence of clear and convincing contrary evidence by the claimant. See McNamara - Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415, 419 (1978).

Thus, we conclude that the government has proven the amount of damages; and a primafacie case of liability was established by the shipper. Once a prima facie case of liability has been established, the carrier has the burden of proof to show that he is not liable. Exceptions to liability of the carrier include an act of God, an act of the shipper, an act of public authority, an act of the public enemy, or the inherent nature of the goods, coupled with the absence of negligence on the part of the carrier.

Ready alleges that the damages resulted from the inherent nature of the valves and by acts of the shipper. It cites documents which discuss protection of the boxes and internal bracing and packaging. Although the government failed to provide or request tarps for the shipment, Ready has not shown it was not negligent. As noted by the government, the carrier has a common law duty to exercise such reasonable care as is required under the circumstances to protect a shipment from injury during transportation. United States v. Marshal, 230 F.2d 183 (9th Cir. 1956).

The government asserts that, having transported this type of valve before, Ready knew that the valves needed to be covered with tarps. Moreover, the record shows that the valves were shipped in boxes marked "For inside storage only." The carrier cannot ignore this marking without verification from the shipper. In addition, the government argues that the crates arrived with forklift holes in them. The particular damage to the valves, which was caused by the sand and water that had gotten into them, appears to be a result of the crates having been left outside in the rain and mud with forklift holes in the crates.

In addition, the documents in the record state that damages appear to have been as a result of "extreme rough handling" as well as from damage done when the valves were unloaded and reloaded by Ready. Regardless of whether the government requested tarps, the damage does not appear to have been solely caused by the lack of tarping. Generally, to excuse the carrier, negligence on the shipper's part must be the sole cause of the injury. 52 Comp. Gen. 930 (1973) and B-176881, Nov. 21, 1973, and McCarthy v. Louisville & N.R. Co., 14 So. 370 (1893). Ready has not shown that any part of the damage was caused by the lack of tarping.

Ready also alleges that the damages were caused by negligent packaging by the shipper. Other than its allegation, Ready provides no evidence of such negligence. In addition, both GBL's specify "SHIPPER TO LOAD AND CONSIGNEE TO UNLOAD." The government argues that by unloading the valves and reloading them on a rail car, Ready accepted liability for the damages done to the valves when they were unloaded, stored outdoors and reloaded.[(2)] We agree. It is reasonable to assume that damage to the packaging could have been done by improper unloading and reloading by Ready. Under the circumstances, we cannot conclude that faulty packaging or the inherent nature of the valves solely caused the damage.

Ready also raises other arguments. We find no merit in these unsupported allegations. Thus, we conclude that the shipper has established a prima facie case, and Ready has not met the burden of proof to establish its lack of liability.

Conclusion

We affirm the Claims Settlement and deny a refund to the carrier.

___/s/_____

Christine M. Kopocis

Acting Chairman, Claims Appeals Board

____/s/_____

Joyce N. Maguire

Member, Claims Appeals Board

_____/s/_____

Jean E. Smallin

Member, Claims Appeals Board

1. There is no evidence that the government paid for repairs to any valve that was not damaged. The claims were for repair of 7 of the 8 valves transported.

2. Clearly, if the valves had broken from their bindings and shifted within their crates, the carrier should have noticed. The carrier had a duty to notify the shipper or consignee, and if necessary, open, inspect and properly repack for transportation.