



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

B-178233

31031

June 7, 1973

Paul Arpin Van Janos, Inc.
150 Hantow Avenue
Providence, Rhode Island 02909

Attention: P. R. Kelly
Assistant to the President

Gentlemen:

Reference is made to your letter of March 13, 1973, with enclosures, in effect requesting reconsideration of the action taken by our Transportation and Claims Division by its letters of December 13, 1972, and February 14, 1973, file 20-52-614012-721P, which sustained the disallowance of your claim for refund of \$84.79 administratively deducted from amounts otherwise payable to your corporation because of your liability for damages to a shipment of household goods, the property of SPO David J. Puckett, while being transported under Government bill of lading B-3479556, dated January 6, 1971.

You indicate that setoff action in the amount of \$21 was taken on three table leaves, items 58, 59, and 60 of the household goods inventory, which in your opinion covered pre-existing damages and should be given further consideration. The record indicates the Army Claims Service, Fort George G. Meade, Maryland, originally determined the amount to be set off as follows:

Item 55, Couch	\$ 72.00
Items 58, 59, 60, Table Leaves	21.00
Item 50, Cream Pitcher	2.00
Item 49, Pyrex Bowl	1.44
Item 45, Ash Tray	1.35
Item 7, Rifle	10.00
Total	\$107.79

However, the amount administratively deducted from your account was \$84.79. Such amount apparently was computed as follows:

Item 55, Couch	\$ 72.00
Item 45, Pyrex Bowl	1.44
Item 45, Ash Tray	2.35
Item 7, Rifle	10.00
Total	\$ 84.79

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Since it appears no portion of the collection of \$34.79 was attributable to the damages to items 58, 59, and 60, no refund of any part of the amount of \$34.79 collected by setoff is due on account of such items.

It is also your contention that the weight of item 7, the .22 caliber rifle, is excessive in that such a rifle would have an approximate weight of 7 pounds and based on a released valuation rate of \$0.60 per pound per article, setoff should be limited to \$4.20 instead of the amount of \$10 assessed by the administrative office. Both the owner and the inspecting officer reported that the rifle weighed 30 pounds. Also the schedule of property damaged, prepared by the owner E.W. Pickett, indicates that the rifle was handmade in France. Hence it appears the rifle was considerably heavier than one mass produced and manufactured in America on which you base your assumption as to its weight. Computed on the actual weight of the rifle, the amount of \$10 assessed and offset as damages is within the released valuation of the article, the maximum amount of your liability, 17 times \$0.60 or \$10.20.

Regarding action on the cream pitcher, as indicated above, no part of the amount collected was attributable to this item and hence no refund is for refund on its account.

You state that setoff action on the Pyrex bowl and ash tray should not have been made in that packing was not performed by Paul Austin Van Lams and that the DD Form 619, executed at the time of delivery, indicates unpacking was performed by carrier's personnel without any evidence of neglect on the part of the carrier which would result in damage to those items. Even though no exception was noted on the DD Form 619, it is not conclusive and in subject to rebuttal the same as any other evidence. See Fluores, Inc. v. United Air Lines, Inc., 340 F. 2d 431 (1965); Hollyday & Price Co. v. The Merchants, 100 F. Supp. 343 (1951); Heppes v. New York, N.H. & H.M. Co., 52 N. 610 (1902).

The owner of the goods reported that the carrier had not finished unloading as of 6 p.m. on the day of delivery and that in fact he and his wife continued and finished the unpacking of the cartons the next day. The record also indicates that an inspection was made by the Government on February 1, 1971, and the carrier duly notified on February 4, 1971. No inspection was made by the carrier's representative. Accordingly, a prima facie case of carrier liability has been established. Missouri Pacific Railroad Co. v. Fluore & Stahl, 377 U.S. 134, 133 (1964).

In reference to item 5, the couch, you state that damage of this nature could have been overlooked at the time of delivery, but in your opinion the \$72 setoff is excessive. The record indicates that on May 10, 1972, Paul Groh Van Linn requested and was furnished on June 14, 1972, a copy of the repair estimate in the amount of \$180 for reupholstering the couch. The record further indicates that the owner, the Government Inspector, and the repairman verified that the couch was damaged to the extent that reupholstering was necessary, and as previously stated, no inspection was performed by the carrier's representative. The total weight of the couch was shown on the inspection report to be 300 pounds; therefore, at a released valuation rate of 60 cents per pound the maximum amount of your liability would be \$180. The administrative office in computing the amount of damages depreciated the couch at 30 percent and allowed the owner \$124 on this item. In view of the carrier's exception at pickup, the amount allowed by the Government was reduced 50 percent to arrive at the \$72 amount set off. In our opinion and based on the circumstances of this case, assessment of 50 percent of the amount paid by the Government is not excessive.

Accordingly, the disallowance of your claim for refund of \$84.79 collected by offset appears proper and is sustained.

Sincerely yours,

Paul G. Nordlund

For the Comptroller General
of the United States