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Kenneth Siegel Transp/

UNITED STATES GOVERNMENT

GENERAL ACCOUNTING OFFICE

Memorandum

November 16, 1976

TO : Director, CD

FROM :  General Counsel - Paul G. Dembling

SUBJECT: B-185135-O.M.
Aero Mayflower Transit Company, Inc.
Loss and Damage claim

We refer to the attached claim file and related papers pertaining to Aero Mayflower Transit Company, Inc. (Mayflower); by letter of June 19, 1974, it in effect claims \$494.96 which was deducted by the Government as a subrogee from monies otherwise due to compensate it for loss and damage to household goods owned by a member of the military.

On September 15, 1967, MSgt. Edward J. Alm, U.S. Air Force, having been assigned to overseas duty, had his household goods shipped from his home in Bangor, Maine, by Barrows Transfer & Storage (Barrows) to its warehouse in Waterville, Maine, for contemporary storage. Barrows is an agent of Mayflower. MSgt. Alm purchased additional insurance coverage, not to exceed \$4,000, through Barrows from The Home Insurance Company of New York.

On October 14, 1970, under Government bill of lading No. E-8694048, Barrows transported MSgt. Alm's goods from its warehouse to Monarch Moving & Storage Co. (Monarch), Kansas City, Missouri, for storage-in-transit. Monarch also is an agent of Mayflower. The goods were delivered by Monarch to the Alm's residence on December 11, 1970, and loss of and damage to various items was observed and noted by MSgt. Alm, the carrier's driver and the helper. MSgt. Alm noted the loss and damage on AF Form 529 and on the carrier's inventory.

The three elements required to establish a prima facis case of carrier liability Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134, 138 (1964), exist in relation to Mayflower. The shipment was picked up by the carrier at origin in good or at least in better condition than it was received at destination. This element is evidenced by the Government bill of lading and the clear household goods inventory executed at the time of pickup by Mayflower.

The second element, the arrival of the shipment in a damaged condition, is evidenced by the observations of MSgt. Alm, witnessed

by the carrier's driver and helper, on AF Form 529, when the shipment was delivered to the residence, and the household goods inventory with exceptions noted by Mayflower when the goods were placed in storage-in-transit at Kansas City.

The amount of damages, the third element in establishing a prima facie case of carrier liability, is supported by the record.

The thrust of Mayflower's letter of June 19, 1974, is that its defense of the claim was compromised by administrative delay; it alleges that the prolonged delay in the prosecution of the claim by the Air Force substantially curtailed its ability to properly allocate the liability and to receive compensation from the proper parties, since it appears that the origin agent, the destination agent, and the driver who handled the shipment have all terminated their affiliation with Mayflower.

The length of the alleged period, November 1971 to May 1973, during which Mayflower contends it received no correspondence from the Government is contested by the Air Force. The administrative record indicates that a copy of the contracting officer's report and claim analysis was presented to Mayflower in January 1973. This shortens to 14 months the elapsed time during which Mayflower received no correspondence pertaining to the claim.

The delay in prosecution of this claim was caused by the Government's attempts to assure a correct administrative determination as to who should bear the liability and to abortive attempts to collect from the serviceman's insurer (but the insurance coverage was for the period of nontemporary storage). The Government's actions were correct and proper and for the carrier's protection. Through its agents the carrier had knowledge of the existence of the claim. All pertinent facts pertaining to the claim were in its possession: the fact that no exceptions had been taken by carrier's agent at the time the goods were picked up, the fact that exceptions were taken at a later date while the goods were in Mayflower's possession, the amount of liability the carrier was possibly subject to, and the fact that the claim had not been withdrawn by the Air Force. Mayflower had sufficient knowledge and time to take whatever actions were required to assure that the parties it thought responsible would bear the liability. The amount of time required by the Air Force to investigate, prepare, and prosecute this claim was not inordinate. The Government cannot bear the consequences of the carrier's internal business relationships.

When the shipper has established a prima facie case against a carrier, as has been done here, the carrier then has the burden of

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proving its freedom from negligence and that the damage was due to an excepted cause (act of God, the shipper, the public authority, the public enemy, or the inherent vice of the goods). Missouri Pacific case, supra. The carrier's unsupported assertion that the damage occurred prior to its possession of the goods is insufficient to rebut the prima facie case established against it. Mayflower has failed to present facts proving its freedom from negligence or that the damage was due to one of the excepted causes. In the absence of a valid defense by Mayflower rebutting the prima facie case established against it, Mayflower must continue to bear the burden of the liability for the loss and damage.

Mayflower's claim for \$494.96 should be disallowed if the carrier shows further interest in recovery. Meanwhile, we may assume that the carrier has abandoned its claim because as far as we know it has not made any demand other than its original letter to our former Transportation and Claims Division nearly 2½ years ago. See B-159049-O.M., December 13, 1966.

Attachments