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General Counsel

In Reply
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JUL 18 1979

M. M. Costantini
Director, Freight Department
Navy Regional Finance Center
Washington, D.C. 20390

Dear Mr. Costantini:

Subject: FF20 (WEH:dh)
7240 (S)
Seaboard Coast Line RR
GBL K2652451
Your letter of June 18, 1979

Your letter concerns a dispute within the Department of the Navy over remedies available to the Department against the Seaboard Coast Line Railroad (Seaboard) arising from the destruction of two missile units in a derailment accident in Seaboard's railyard at Hamlet, North Carolina, on May 7, 1978.

The Navy Regional Finance Center has successfully negotiated a settlement of the damages with Seaboard in accordance with the released valuation provisions of the governing Government bill of lading (GBL) contract. Other parties, not identified in your letter, wish to ignore the settlement and to prosecute Seaboard for the full value of the destroyed missiles on the ground of negligent violations of pertinent safety regulations published by the Federal Railroad Administration (FRA).

We believe that you have asked the wrong forum to settle the dispute; it should be presented to the appropriate legal authorities within the Department of the Navy. However, we offer these comments which are unofficial and not binding on the General Accounting Office.

In our opinion the alleged violations of the railroad safety regulations promulgated by the FRA in 49 C.F.R. 213 (1978) would not provide a legal basis for overturning the settlement. The regulations provide for civil penalties in the event any railroad track owner is found in violation of the safety rules by the Federal Railroad Administrator. 49 C.F.R. § 213.15. See 45 U.S.C. § 431 et seq. (1978). Should the Navy prevail before the FRA, the judgment would be that Seaboard was in violation of the railroad safety

standards, subjecting it to civil penalties. While this would probably further the case that Seaboard's negligent maintenance of its railyard resulted in the derailment, we do not believe that it would abrogate the released value provision.

As a general rule reasonable contracts providing that the carrier's liability for loss or injury to shipments shall not exceed an agreed valuation are upheld whether or not the carrier's negligence contributed to the damage sustained. See 13 C.J.S. Carriers § 102; see, i.e., Southeastern Express Co. v. Pastime Amusement Co., 299 U.S. 28 (1936). Thus, the contention that Seaboard's negligent maintenance of its facilities caused the accident would not preclude the application of the released value provision.

Under the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. § 20(11), the carrier and shipper are expressly permitted to agree in writing to "limit liability and recovery to an amount not exceeding the value so declared or released." See, generally, 38 Comp. Gen. 768 (1959). Such agreements are memorialized in the tariff or tender filed with the Interstate Commerce Commission and specifically noticed in the contract of carriage for the particular shipment, the GBL. 55 Comp. Gen. 747, 748 (1974). See, in this connection, 41 C.F.R. § 101-41.302-3(e) which provides for such agreements. It states that if the shipment is made at a restricted or limited valuation specified in the tariff or classification or established pursuant to § 22 of the Interstate Commerce Act, or by other contractual arrangement, a statement to that effect must be included on the face of the GBL. The GBL in this case has such a statement.

Regarding the legal effect of the limitation agreements, the courts have stated that the language of 49 U.S.C. § 20(11):

> "[is] comprehensive enough to embrace all damages resulting from any failure to discharge a carrier's duty with respect to any part of the transportation to the agreed destination." (Emphasis added) Southeastern Express Co. v. Pastime Amusement Co., 299 U.S. 28, 29 (1936), see, also, Sorensen-Christian Industries, Inc. v. Railway Express Agency, Inc., 434 F.2d 867, 869 (1970).

Therefore, the degree or character of the negligence will not exempt the Navy from the need, by the GBL terms, to apply the released value formula to the facts of this case.

The courts have held that a limitation of liability provision in an interstate contract of shipment applies even where there is evidence of gross, wanton, and willful negligence. Donlon v. Southern Pac. Co., 91 P. 603 (Cal. Sup. Ct. 1907). See 13 C.J.S. § 102 (1939). The logic underlying

these principles is that the stipulation in the GBL is for the purpose of limiting liability to an agreed valuation which has been made the basis of a reduced freight rate to the Government. The shipper receives consideration in the form of a lower rate for the correspondingly greater risk of loss that he must bear. The carrier responds for its negligence up to that value. The Government is then estopped because of the valid arrangement from asserting loss or damage in an amount in excess of the declared valuation upon which the rate was fixed. See Boston and Maine R.R. v. Piper, 246 U.S. 434 (1918), New York, N.H. & H.R.R. v. Nothnagle, 346 U.S. 128, 135 (1953).

There are a few exceptions to this rule, but none apply to your facts. Although the courts make no distinction between willful breaches of carriage contracts and those which are merely negligent, a carrier that purposefully converts the entrusted property for its own use or gain would not be covered by the above stated principles concerning the binding affect of agreed valuation clauses. It has also been held that fraud must be shown in addition to willful misconduct to vitiate the agreement. Rocky Ford Moving Vans, Inc. v. United States, 501 F.2d 1369, 1372 (8th Cir. 1974).

Another theory has been adopted by at least one court that a released valuation provision limiting carrier liability is predicated upon the carrier's performance of the contracted services and should there be a failure to perform, the limitation is not binding. This case, though, dealt with a special packaging service for which an additional charge had been exacted. The tariff with the damages recoverable limitation specifically stated that the provision related to all services undertaken including additional accessorial protective services. That service was unperformed, the contract was breached and the carrier could not raise the limitation provision as a defense to paying full damages. Johnson v. Bekins Moving and Storage Co., 389 P.2d 109, cert. denied, 379 U.S. 913 (1964). See also Sorensen, supra, p. 870, 871.

Where a contract of carriage fixes the valuation of a shipment as a stated sum per unit, the limit of recovery for loss or damage shall control in an action against the carrier for such loss or damage. In this case, you calculated the amount of damages based on the poundage of the destroyed rockets times the released value rate per pound. This was the proper application of the released valuation provision in the quotation and the GBL. See B-173156, July 8, 1971.

B-195214

We are returning your file.

Sincerely yours,

L. Mitchell Dick

L. Mitchell Dick
Assistant General Counsel

Enclosure