



IN THE COURT OF APPEALS OF IOWA

WORLD WIDE MEATS, INC.,	)	
Appellant,	)	Filed June 24, 1977
vs.	)	
FRETTE-NICHOLSON TRUCK	)	104
LINES, INC.,	)	2-58044
Appellee.	)	

Appeal from Polk District Court - Wade Clarke, Judge.

Appeal by shipper from judgment by court that carrier was not liable for loss when navy rejected shipment as not meeting temperature specifications of contract. - Judgment affirmed.

Michael R. Mundt, of Raun, Franck, Mundt & Nepper, of Denison, for appellant.

David A. Scott, of Davis, Scott & Grace, of Des Moines, for Appellee.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Plaintiff, World Wide Meats, a meat processing company located in Denison, Iowa, appeals judgment for defendant, Frette-Nicholson Truck Lines, in an action for damages incurred when 40,000 pounds of boneless beef processed by plaintiff and transported by defendant-carrier, was rejected by the Navy. The rejection was because the internal temperature of the meat shipped was in excess of zero degrees when it arrived at the naval base thus violating the contract terms. Plaintiff alleged that the meat was in good condition when it was loaded on defendant's truck and sought recovery on the theory that a common carrier is liable for damages to goods in transit as an insurer. The case was tried to the court and from adverse findings of fact and conclusions of law plaintiff appeals.

Our review is governed by rule 344(f)(1), Rules of Civil Procedure. Findings of fact in a law action tried to the court have the effect of a special verdict and are binding upon the appellate court if supported by substantial evidence.

Plaintiff's initial contention is that the trial court erred in concluding plaintiff could not recover damages because negligence was not established. It argues that at common law and under federal statutes the liability of defendant as a common carrier for damage to goods in transit is that of an insurer with certain well defined exceptions.

Under Title 49 U.S.C. §20(11), commonly referred to as the "Carmack Amendment" a common carrier receiving property for transportation under a bill of lading is "liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or any common carrier . . . to which such property may be delivered or over whose line or lines such property may pass." Further, no contract or limitation whatsoever shall exempt the carrier from liability. *Missouri P.R.R. Co. v. Elmore & Stahl*, 377 U.S. 134, 84 S. Ct. 1142, 12 L.Ed.2d 194, 196 (1964).

The principle function of the amendment is to permit a shipper in interstate commerce to bring an action against the initial carrier to recover for damages to the shipment whether such damages occurred while in the hands of such carrier. *L.E. Whitlock Truck Ser., Inc. v. Regal Drilling Co.*, 333 F.2d 488, 490 (10th Cir. 1964). Section 20(11) thus relieves shippers of the burden of searching out a particular

negligent carrier from among the often numerous carriers handling an interstate shipment. *United States v. Mississippi Valley Barge Line Co.*, 285 F.2d 381, 389 (8th Cir. 1960).

Since the shipment here was interstate the Carmack Amendment determines the standard for assessing fault. *Cedar Rapids Co. v. Railway Express Agency*, 242 Iowa 412, 46 N.W.2d 545 (1951); See also *Conditioned Air Corp. v. Rock Island Etc. Co.*, 253 Iowa 961, 114 N.W.2d 304 (1962). Although not an absolute insurer, the carrier is liable if the shipper makes a prima facie case and the carrier does not meet its burden of showing both freedom from negligence and that the damage was due to one of the excepted causes relieving the carrier of liability. *Missouri P.R.R. Co.*, 12 L.Ed.2d at 198; *Whitlock*, supra at 491. Under federal law, the shipper establishes his prima facie case when he shows delivery in good condition, arrival in damaged condition and the amount of damages. Then, the burden is on the carrier to prove the shipment was not delivered in good order, that it was delivered by it in good condition, or that the excepted causes were applicable, and it was free from negligence. A prima facie showing of delivery in good condition is made through a bill of lading executed by the carrier containing a recital to that effect. *United States v. Mississippi Valley Barge Line Co.*, 285 F.2d 381, 388-89 (8th Cir. 1960).

In the instant case plaintiff argues that when defendant signed the bill of lading, its driver was acknowledging that the meat was received in apparent good order. However, the recitation on the bill of lading states: ". . . in apparent good order, except as noted (contents and condition of contents unknown)" Because of the exception as to condition of contents, the bill of lading does not constitute a prima facie showing of delivery in good order. *Mississippi Valley*, supra. It was still incumbent on plaintiff to establish delivery in good order to shift the burden to defendant. This it failed to do.

Plaintiff's Exhibit 6 was introduced to show the internal temperature of the meat, at the time it was checked, was four degrees below zero. Exhibit 6 is a cover sheet which was signed by plaintiff's head of quality control and is not an independent test, but a recitation of the temperatures found on the freezer sheet, plaintiff's Exhibit 5. Exhibit 5 was actually dated September 5, 1971, two days before the actual date of the shipment at issue. This is the last record of any temperature test on the

meat. It also fails to establish a prima facie case of delivery in good order.

Had a prima facie case been established, a carrier may avoid liability by proving freedom from negligence and that the damage to the cargo was due to one of the excepted causes relieving the carrier from liability. Those causes are (a) act of God, (b) the public enemy, (c) act of the shipper, (d) public authority, (e) inherent vice or nature of the goods. *Missouri P.R.R. Co. v. Elmore & Stahl*, 377 U.S. 134, 12 L.Ed.2d 194, 198 (1964).

The trial court, in the instant case, found plaintiff-shipper negligent in loading and that there was inherent vice of the product. The freight bill was stated to be "shipper's load weight count" which generally means shipper is responsible for loading. The record discloses the loading was entirely controlled by plaintiff-shipper. It took four hours to load the trailer during which the doors were open to temperatures outside of 85-90 degrees with the wind blowing into the trailer. Defendant's driver was not permitted to participate in the loading or remain on the dock. Plaintiff's own evidence was that ordinarily it took 45 minutes to an hour to load a trailer. We find substantial evidence that the loss was occasioned by the shipper's improper loading.

The plaintiff next claims that even if the loading was improper the carrier is still liable where the defects are patent and apparent by ordinary observation. See *Minneapolis B. & S.S.M.R. Co. v. Metal Matic Inc.*, 323 F.2d 903 (8th Cir. 1963). The defect was in the temperature of the meat being above zero degrees. This was not such a patent defect as to create a duty on defendant's driver to inspect, particularly when he had been ordered to leave the loading dock.

We also find no substantial evidence of negligence of defendant in handling the shipment. The refrigeration unit of the truck was operating throughout the trip. There is no evidence that defendant delivered the product in worse condition than when received. Freedom from negligence was established by defendant under the Carmack Amendment rule.

Judgment affirmed.