

Case: GREAT WESTERN BANK

The problem in this case is the dispute between Great Western Bank and Data-Max Corporation regarding the shipment terms of a truck-load of general-purpose accounting machines. The original terms of shipment were FOB point and the freight was lost in transit due to an over-the-road trucking accident. The dispute originates from the lading and invoicing process, as the shipper made a decision to change from an agreed-upon carrier to a less-expensive service, which in the buyer's defense constitutes a breach in shipping terms.

The shipper disputes this claim with the caveat that the buyer agreed to the use of a less-expensive carrier, and terms were FOB point at any rate, so the buyer assumes responsibility in the case of damage en route.

The possible outcomes of this dispute are:

The carrier assumes the responsibility of the damaged material under the insurance of the carrier, at the cost of the carrier. This would make sense because the carrier ensures the delivery of goods to destination point. The claim with the carrier is processed through the shipper and any ancillary costs are incurred through the shipper. This would acknowledge that the shipper did not fully make the buyer aware of any changes to the original terms of freight.

The carrier assumes the responsibility of the damaged material under the insurance of the carrier, at the cost of the carrier. However, the claim is processed and managed through the buyer and any ancillary cost would be paid through the buyer. This would be an admission of acknowledgement that a different carrier was agreed to, or that the change in carrier and original terms of freight was acceptable.

The third solution is that the shipper and the buyer both agree to split any costs associated with the damaged delivery, as the claim will be processed through the carrier's insurance.

The question here is "did the buyer acknowledge the change in shipping terms by paying the invoice?"

Invoices are assigned a PO number and are usually paid through accounting and not in purchasing, and therefore it is very possible that such a detail as shipping terms can go overlooked. It is the buyer's responsibility to audit invoices for accuracy. IN this case however, the audit would acknowledge inappropriate shipping terms.

While it is not a bad thing to make changes to terms that will provide savings for the buyer, the shipper has a responsibility to make these changes transparent and ensure they are reflected on the Bill of Lading. If the buyer carried the Bill of Lading, then the buyer is responsible for the costs. If the Shipper held the Bill of Lading, which would be rare in the case of FOB point delivery, then the shipper is responsible for the costs.