

DATE: September 11, 2000

In Re:

Suddath Domestic Military

Claimant

Claims Case No. 00070331

CLAIMS APPEALS BOARD DECISION

DIGEST

Under the *Military-Industry Memorandum of Understanding on Loss and Damage Rules*, the carrier shall accept written documentation on the *Notice of Loss or Damage* (DD Form 1840R) dispatched to the carrier within 75 calendar days of delivery, as sufficient to overcome the presumption of correctness of the delivery receipt. No loss or damage was reported at delivery on December 4, 1995, on the *Joint Statement of Loss or Damage at Delivery* (DD Form 1840). On February 2, 1996, the Navy and member advised the carrier of additional loss/damage to seven items on the DD Form 1840R. When the Navy dispatched its subrogated claim against the carrier about two years later, it also included notice of loss/damage to several other items on a DD Form 1840 (the front side of the DD Form 1840/1840R set). The Navy contends that the damages listed on the DD Form 1840 are a continuation of the damages noted on the DD Form 1840R. While not recommended, the DD Form 1840 may be used as a continuation to the listing of loss and damage on the DD Form 1840R, but it must meet the same dispatch requirements as the DD Form 1840R. The DD Form 1840 is not sufficient where the carrier's copy of the DD Form 1840R does include the DD Form 1840 as an integral part (*e.g.*, the DD Form 1840 part on one side and the 1840 R on the other side of the same page) or where there is not sufficient independent evidence of dispatch (*e.g.*, a reference to the DD Form 1840 on the DD Form 1840R). The claims examiner's failure to follow her own procedures, which would have included an incorporation of the DD Form 1840 by reference on the DD Form 1840R, also vitiates an inference of simultaneous dispatch.

DECISION

Suddath Domestic Military (Suddath) appeals the November 22, 1999, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 99101505, which disallowed Suddath's claim for a refund of \$145.80 of the \$203.53 set off by the Navy for transit loss and damage to a service member's household goods. [\(1\)](#)

Background

Suddath's agent picked up the service member's household goods in Rhode Island, on October 25, 1995, and delivered them to the service member in Wisconsin on December 4, 1995. The parties now agree that the member and the delivering agent did not list any loss or damage on the *Joint Statement of Loss or Damage at Delivery* (DD Form 1840). However, the member and the Navy dispatched a *Notice of Loss or Damage* (DD Form 1840R) on February 2, 1996, listing seven entries (some involve multiple articles) on about half of the space available for listing lost or damaged property. Suddath does not dispute that it received the DD Form 1840R with these seven entries. On February 17, 1998, the Navy dispatched a *Demand on Carrier/Contractor* (DD Form 1843) along with other material to support the service member's claim. In relevant part that package included a copy of the above DD Form 1840R and a copy of a DD Form 1840 with seven entries in Item 13, which is the full amount of space available for listing loss and damage. The *List of Property and Claims Analysis Chart* (DD Form 1844) included six of the seven items described in Item 13 of the DD Form 1840. (2) On April 28, 1998, Suddath advised the Navy that it denied liability for the seven items listed on the DD Form 1840 because they were not noted at delivery, nor were they listed on a DD Form 1840R dispatched to the carrier within 75 days of delivery. After further exchange of correspondence, on September 24, 1998, Suddath provided the Navy its copy of the original DD Form 1840, which indicated no entries in Item 13. The Navy agrees that the original DD Form 1840 had no entries for loss or damage identified at delivery, but it contends that the entries on the DD Form 1840 side of the form were a continuation of damages noted on the DD Form 1840R, and therefore, are a continuation sheet for the DD Form 1840R.

In this appeal, Suddath presented us with a copy of a DD Form 1840R which appears to have original handwritten entries for the property loss, original type for the Navy's entries, and an original signature of the dispatching claims examiner in blue ink. Suddath contends that it never received the pink copy from the DD Form 1840/1840R set, only a photocopy of the DD Form 1840R side of the set with seven entries. Our comparison of the DD Form 1840R in the record forwarded by the Navy with the one that Suddath provided to us indicates that there are differences between the two documents. First, we found that the signature of the claims examiner on the copy in the record is not a photocopy of the signature on the DD Form 1840R that Suddath provided. We noted, for example, that the first letter (K) in the first name of the signature in Suddath's document extends only to the end of the block, while this letter in the record copy extends well into the date signed block. Also, we compared the differences in the way that the "B" was formed in the first letter of the last name. If the claims examiner signed both documents, she signed them separately. Thus, on July 19, 2000, this Office requested the Naval Legal Services Office (NLSO) at Great Lakes to authenticate the signature(s) of the person(s) who signed the DD Forms 1840R(s) and to explain the process that resulted in the dispatch. A copy of the DD Form 1840/1840R set from our record, as well as a copy of the Suddath DD Form 1840R was enclosed with our correspondence.

On August 28, 2000, we received a supplemental administrative report from the Naval Legal Service Office (NLSO) containing two statements from the claims examiner involved. The claims examiner states that all of the signatures on the forms were her signature. Thus, she authenticated the signatures on our record copy of the DD Form 1840R, as well as on Suddath's version with the original signature. She stated that it was her practice to keep the pink copy of the DD Form 1840/1840R set when the member presents only one pink copy, and in such instances, she makes two additional photocopies, signing each of the two photocopies with her original signature, usually in blue ink. One of the two originally signed photocopies is dispatched to the carrier, and the other goes to the service member. The claims examiner stated that it was her practice that when she sends the carrier an originally signed photocopy, she routinely sends the carrier a copy of both the DD Form 1840 and the DD Form 1840R sides of the form, plus any other attachments. She indicated that if the member had added anything to "his copies of [the] DD Form 1840/1840 and included then [sic] in package, I would also include them in claim package and label them accordingly. (usually they would be labeled Exb E, Exb E1 etc.)." Our review of these documents indicates that the record copy of the DD Form 1840 with the additional items is labeled at the bottom right corner as "EX E", while the DD Form 1840R is labeled "EX

E1." The DD Form 1840R presented by Suddath does not have the label "EX E1" in the bottom right corner or any similar label elsewhere on the document.

Discussion

Under the *Military-Industry Memorandum of Understanding on Loss and Damage Rules*, the carrier shall accept written documentation on the *Notice of Loss or Damage* (DD Form 1840R) dispatched to the carrier within 75 calendar days of delivery, as sufficient to overcome the presumption of correctness of the delivery receipt. While not recommended, the DD Form 1840 may be used as a continuation to the listing of loss and damage on the DD Form 1840R, but it must meet the same dispatch requirements as the DD Form 1840R.

The only issue in dispute here is whether the Navy dispatched notice of the additional damages written on the DD Form 1840 side of the DD Form 1840/1840R set when it dispatched notice of the damages to the seven items on the DD Form 1840R side. This is an evidentiary issue. For the Navy to prevail, it merely has to introduce substantial evidence that it dispatched notice to Suddath of the damages listed on the DD Form 1840 side of the form.

The claims examiner authenticated her signature on Suddath's copy of the DD Form 1840R, but this document did not contain any exhibit markings. We should have expected the claims examiner to include such labeling in the carrier's copy of the DD Form 1840/1840R set if she had followed her usual practice when receiving one pink copy of the set. By following her usual practice in such instances, the Navy could have offered substantial evidence of incorporation by reference of the damages listed on the DD Form 1840 side of the form along with the dispatch of the notice of the damages listed on the DD Form 1840R side: the examiner's practice would have been fully explained; it would have included a procedure for incorporation by reference when multiple pages were involved; and it would have been applied consistently. Unfortunately for the Navy, there is no other facial indication on Suddath's copy of the DD Form 1840R that there was another part to it. The claims examiner did mark the record copies of the DD Form 1840 and DD Form 1840R with exhibit labels, but it is not clear when such labels were applied to the record copies. Overall, based on the facts in this record, we are not satisfied that the Navy dispatched notice to Suddath of the additional damages listed on the DD Form 1840 side of the set.

Conclusion

We reverse the settlement certificate and allow Suddath a \$145.80 refund.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Christine M. Kopocis

Christine M. Kopocis

Member, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

1. This matter involves Personal Property Government Bill of Lading (PPGBL) YP-161,426; Navy Claim DB-98-100; and Suddath's Claim 980050.

2. The seventh item was described on the DD Form 1844 as an "Emerson Cube" with a missing turntable and referred to Item 77 of the Descriptive Inventory. Item 77 of the Descriptive Inventory was a 3.1 cubic foot carton containing a microwave oven. It appears that the "Emerson Cube" on the DD form 1844 was merely a reference to the microwave oven listed as the first item on the DD Form 1840. Thus, our adjudicators questioned the Navy's recommendation to refund \$48.95 due to no proof of tender.