

DATE: July 21, 2000

In Re:

Air Land Forwarders, Inc.

Claimant

Claims Case No. 00070329

CLAIMS APPEALS BOARD DECISION

DIGEST

Under the 1992 version of the *Military-Industry emorandum of Understanding on Loss and Damage Rules* (MOU) the service or service member must dispatch the *Notice of Loss or Damage* (DD Form 1840R) noting additional loss or damage to the carrier at the address appearing in block 9 of the *Joint Statement of Loss or Damage at Delivery* (DD Form 1840), the reverse side of the DD Form 1840R. When the carrier clearly designates an address in block 9 and the service dispatches the DD Form 1840R to a different address, the service fails to comply with the requirements of the MOU. However, where there is an inference that the proper carrier officials received notice of the additional loss or damage despite the service's failure to properly dispatch the DD Form 1840R, the service's breach of the OU's requirements is harmless error.

DECISION

Air Land Forwarders, Inc. (ALFY) appeals the August 20, 1999, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 99080318, which disallowed ALFY's claim for a refund in the amount of \$2,402.66 of the \$2,871.86, setoff by the Navy for loss/damage to the household goods of a service member.⁽¹⁾

Background

The record indicates that ALFY's agent (Coleman American oving) picked up the shipment in Hampton, Virginia, on January 31, 1997, and another agent (Continental World Movers) delivered it to the member in Puerto Rico on April 2, 1997. At the time of delivery, the member and the carrier's representative noted that certain items were missing from the shipment or were damaged.⁽²⁾ The member listed additional damage on the *Notice of Loss or Damage* (DD Form 1840R, the reverse side of the DD Form 1840) dispatched to ALFY on May 22, 1997.

ALFY objects to any liability for items listed on the DD Form 1840R because the DD Form 1840R was not dispatched to the address listed in block 9 of the DD Form 1840. The DD Form 1840R shows that it was dispatched to: "AIR LAND FORWARDERS IN (ALFY), P.O. BOX 37977, JACKSONVILLE, FL 32247-0000." The Navy noted that it was difficult to read block 9 on the member's copy of the DD Form 1840 because the writing from the reverse side (the DD Form 1840R side) covered the light print in the block. However, it is otherwise uncontested that a different address was listed on block 9 of the DD Form 1840: P.O. Box 10156, Jacksonville, FL 32247. ALFY insists that even if block 9 was difficult to read, the Department of Defense was aware of its official business address. ALFY provided a copy of its *Tender of Service Signature Sheet* (Military Traffic Management Command's MTPP Form 9) showing that P.O. Box 10156 was its official address effective October 29, 1996.⁽³⁾

Our research indicates that the P.O. Box 10156 address was an address listed in the Military Traffic Management Command's *Carrier Approval Pamphlet* as ALFY's proper address, along with the street address 815 South Main Street, Jacksonville, FL 32207.⁽⁴⁾ The Postal Service offers to forward first class mail from an old address to a new address for one year.

In its administrative report, the Navy argued that sending correspondence to ALFY at P.O. Box 37977 would still have resulted in ALFY receiving such correspondence because the *Demand on Carrier/Contractor* (DD Form 1843) was sent to P.O. Box 37977 on July 31, 1998, and ALFY admits that it did receive that correspondence on August 7, 1998. ALFY disagrees with this statement to the extent that the Navy argues that it was sent to P.O. Box 37977. ALFY provided our Office with a photocopy of an envelope that it represents to be the envelope in which the Navy dispatched the DD Form 1843 and associated materials, and the address on it is P.O. Box 10156. Our review of the DD Form 1843 indicates that the street address 815 S. Main Street was also typed above the P.O. Box 37977 portion of the address.

Discussion

Under paragraph I of the *Military-Industry Memorandum of Understanding on Loss and Damage Rules* (MOU), effective January 1, 1992, when the loss or damage is not reported at delivery, a notice of later discovered loss or damage (usually the DD Form 1840R) dispatched to the carrier not later than 75 days following delivery will be accepted by the carrier as overcoming the presumption of the correctness of the delivery receipt. *See* DOHA Claims Case No. 96070217 (November 19, 1996). Additionally, the 1992 version of the MOU specifically qualified carrier acceptance of written documentation on the DD Form 1840R to overcome the presumption of correctness of the delivery receipt to that "dispatched within 75 calendar days of delivery to the address listed in block 9 on the DD Form 1840." *See* DOHA Claims Case No. 99010414 (February 23, 1999). Both this Office and the Comptroller General, our predecessor in settling claims of this nature, have allowed the claimant and the agency reasonable flexibility in meeting the MOU requirements. *See* DOHA Claims Case No. 99071408 (July 29, 1999).⁽⁵⁾

We have recognized that dispatch of the DD Form 1840R to the wrong address may adversely impact a carrier's ability to inspect the damaged property. In another claim we concluded that the carrier's inspection rights may have been impacted when the Air Force dispatched the DD Form 1840R about 60 days after delivery to a company other than the carrier or freight forwarder specified in block 9, even though the company had been the carrier's/forwarder's agent. *See* DOHA Claims Case No. 99010414, *supra*. Moreover, the facts in the current claim are less favorable to the government than in DOHA 99071408, *supra*, because the *Carrier Approval Pamphlet* listed the address that ALFY contends was the proper address. Additionally, while the address was not completely legible, it was apparent that P.O. Box 37977 was not the address that ALFY had designated in block 9. Finally, we accept for purposes of this claim that ALFY has

demonstrated that the DD Form 1843 package was actually sent to the P.O. Box 10156 address, rather than the address on the DD Form 1843.

On the other hand, the purpose of the 1992 modification to the MOU, which allowed the carrier to specify the address to which the DD Form 1840R will be dispatched, is to help assure that the carrier actually receives timely notice of loss or damage so that it can conduct an appropriate inspection. The Navy's breach of the MOU in this case is not as significant as the Air Force's breach in DOHA Claims Case No. 99010414 because the DD Form 1840R was dispatched to the carrier indicated, and at the zip code/postal zone indicated, in block 9. While the Navy dispatched the DD Form 1840R to an incorrect post office box in that zip code/postal zone, it was to the prior official company box number. There is no indication that the DD Form 1840R was returned as undeliverable by the Postal Service. ALFY does not indicate any reason that would have prevented correspondence dispatched to P.O. Box 37977 within seven months of its updated MTPP Form 9 from being forwarded by the Postal Service to the proper box number within the same postal zone. Thus, we believe that there is a reasonable inference that the DD Form 1840R was forwarded to ALFY at the new post office box.

Conclusion

We affirm the Settlement Certificate for the reasons noted herein.

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-538,666; Navy Claim No. JD-195-98; and ALFY Claim No. ALI 980595. ALFY requests a refund of \$1,945.06 in this appeal.
2. See the *Joint Statement of Loss or Damage at Delivery* (DD Form 1840).
3. Our research also indicates that P.O. Box 37977 was its recognized address from June 6, 1992, to October 29, 1996, as indicated in ALFY's MTPP Form 9 dated June 6, 1992.
4. The current Carrier Approval Pamphlet is available on-line through MTMC's World Wide Web site:
dcsop.mtmc.army.mil/property/carrier.
5. ALFY's representative stated in this appeal that DOHA did not provide her a copy of DOHA Claims Case No. 99071408 when DOHA issued the Settlement Certificate that cited that decision. Our records indicate that DOHA Claims Case No. 99071408 also involved ALFY and an associated firm, and the original of the decision was sent to the representative at same return address as she is using in this appeal. Copies of this and other transportation decisions are available on-line at ogc.osd.mil/doha/claims/transportation.