DATE: August 29, 2000

In Re:

National Claims Services, Inc.

on behalf of

Arnold International Forwarders, Inc.

Claimant

Claims Case No. 00080117

CLAIMS APPEALS BOARD DECISION

DIGEST

Where the record shows the existence of pre-existing damage and lacks evidence of greater or different damage incurred in transit, the carrier is not liable for the damages.

DECISION

National Claims Services, Inc. (NCS), on behalf of Arnold International Forwarders, Inc. (Arnold), appeals the December 8, 1999, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 99100709, which disallowed Arnold's claim for a refund of $1,250 that the Army offset to repair transit damage to a service member's household goods damaged in transit by Arnold.[(1)]

Background

The record shows that Arnold's agent picked-up the shipment from the member in Augusta, Georgia, on September 14, 1995, and delivered it to the member in Sierra Vista, Arizona, on September 21, 1995. The issue in this appeal involves damage to an entertainment center, which was shipped as four items: Descriptive Inventory Items 20 through 22 and 102. The record indicates that the member ordered this oak wall unit entertainment center in January 1995, for $4,595.65 (tax included).

Item 20 was described as an "Entertainment Side" with the following pre-existing damage (PED): front scratched; left and right sides scratched; door scratched; and bottom scratched.

Item 21 was described as an "Entertainment Center" with the following PED: top right broken; front scratched; inside scratched; bottom scratched; and molding off top.

Item 22 was described as an "Entertainment Side" with the following PED: top edge scratched; inside scratched; left and right scratched; and bottom scratched.

Item 102 was described as an "Entertainment Center Bottom" with the following PED: top scratched; left side rubbed and scratched; door scratched and rubbed; bottom scratched; edge chipped; and legs scratched and rubbed.

No damage was reported at delivery. On October 24, 1995, the member dispatched a *Notice of Loss or Damage* (DD Form 1840R) to Arnold that listed Items 20, 21, 22 and 102 and stated: "molding-Entertainment Center broken and missing." It also listed Item 21 separately and stated that the entertainment center was scraped and scratched.

On November 7, 1996, the member obtained a repair estimate from the Watertown, New York manufacturer of the entertainment center. The owner of the manufacturing company confirmed that his company custom built this oak wall unit system while the member was living at Fort Drum, New York. The owner based his repair estimates on photographs provided by the member. The member states that he traveled to Watertown in August 1996 and met with the owner of the manufacturer, personally explaining the damage shown on the photographs during a 40-minute meeting.(2) The owner estimated $285 to replace the crown molding that he described as "badly gouged and scratched;" $395 to replace the center molding that was "badly gouged;" $275 to replace the flute molding that was "badly gouged" with "deep scratches:" $895 to refinish exterior cabinet surfaces that had been "badly gouged" with "deep scratches;" and $125 to replace the missing back to the center section. The manufacturer also quoted $95 for the repair estimate. The total cost of repair was quoted at $2,070, plus additional amounts for state tax and the cost of transportation to New York. The *List of Property and Claims Analysis Chart* (DD Form 1844) indicates that the Army estimated the repair cost at $1,785 without tax (a 13.768 percent discount).

The NCS position is fairly simple. The government did not establish a *prima facie* case of liability against Arnold because it never showed that any of the claimed damage is something other than PED. Secondarily, NCS disagrees with prior DOHA decisions (none cited) in which we held that the damages referenced on the DD Form 1840R do not have to be related to the damages claimed. NCS suggests that whenever a member claims additional damage that is similar to the reported PED, the member must specify it to the carrier on the DD Form 1840/1840R with enough particularity that the carrier will know that the member is likely to file a claim for something new or additional. NCS believes that a carrier should be able to rely on its comparison of the damages reported on the DD Form 1840/1840R with the PED, and whenever it is not clear that there were additional damages that arose in transit, not have to worry about conducting an inspection of the damaged item(s). In this claim, NCS also views the damage estimate as untimely citing the Comptroller General's decision in B-247767, Sept. 4, 1982.(3)

The Army believes that while some of the damage was pre-existing, Arnold caused additional damage during the time it transported the components of the entertainment center. Correspondence in the record suggests that Army claims personnel believed that the PED that Arnold noted on the descriptive inventory was somewhat exaggerated, but they

offered no basis for this opinion.[(4)] However, the Army attempted to assign comparative liability for the total damage between the member and Arnold by discounting Arnold's liability by an additional 30 percent for PED. When we reviewed the record we found an entry in the Army's chronology sheet for July 5, 1997, which indicates a concern about the failure of installation-level claims personnel to question the member about the amount of PED listed in the inventory because the entertainment center was only seven months old at the time that the shipment moved to Arizona. The official who made the July 5th entry questioned whether the PED may have happened during another move and that it was not reported until the current claim.

Discussion

Generally, under federal law, in an action to recover from a carrier for damage to a shipment, the shipper establishes his *prima facie* case when he shows delivery in good condition, failure to deliver or arrival in damaged condition, and the amount of damages. Thereupon, the burden of proof is upon the carrier to show both that it was free from negligence and that the damage to the cargo was due to one of the excepted causes relieving the carrier of liability. *See Missouri Pacific Railroad Company v. Elmore & Stahl*, 377 U.S. 134, 138 (1964).

Preliminarily, it is appropriate to clarify the NCS characterization that our decisions hold that the damages claimed do not have to be related to the damages reported on the DD Form 1840R. Where the member limits his description of loss or damage on the DD Form 1840/1840R to an item or several related items, whether or not the member refers to the exact inventory number involved, we have limited the member's claim to those items. *See* DOHA Claims Case No. 97112401 (December 11, 1997). Similarly, where the member makes it clear in his DD Form 1840/1840R that he intends to pursue a claim involving only one of several similar items, we have limited the member's claim to one item. *See* DOHA Claims Case No. 96091701 (February 24, 1997). However, as we pointed out to NCS in DOHA Claims Case No. 97112401, *supra*, the governing *Military-Industry Memorandum of Understanding on Loss and Damage Rules*, effective January 1, 1992, states that a claim for damages is "not to be limited to the general description of the loss or damage to those item(s) . . . " In light of the broad nature of this language, we concluded that any loss or damage involving the subject item(s) may be claimed. This is consistent with the established precedent that the notice of loss or damage is adequate in content when it alerts the carrier that there may be a claim on an item and that it should investigate the facts surrounding the loss or damage. *Id*. *See also Continental Van Lines, Inc.*, B-215507, Oct. 11, 1984, and the decisions cited therein. Accordingly, in this case, the member's notice was adequate to cover the missing back of the entertainment center, which, of course, is not broken or missing molding or scrapes and scratches. NCS urges us to adopt its position that the member ought to be limited to the type of damages he describes in the DD Form 1840/1840R, but there is no foundation for this position.

We also disagree with NCS that that the estimate here is too old to be relevant. In B-247767, *supra*, almost two years elapsed between delivery and the preparation of the estimate. Moreover, as properly pointed out by NCS, in B-247767, there was a conflict between the estimate and the claimed damage. In the current claim, the delay between delivery and estimate was about 14 months, and the person(s) who built the entertainment center provided the estimate. On balance, the estimate is minimally sufficient to be relevant. The fact that more than a year passed between delivery and estimate preparation, does not, by itself, void the estimate when other facts suggest that it has some reliability. *Compare* B-256684, Sept. 26, 1994.

In prior decisions, we affirmed a military service's adjudication of damages against a carrier even though PED damages were similar to the claimed damages, if there was some documentary evidence that additional damage occurred during transit. *See* DOHA Claims Case No. 96080215 (March 6, 1997); DOHA Claims Case No. 96070212 (November 27, 1996); and DOHA Claims Case No. 96070204 (September 5, 1996). In such instances, we accepted the service's

allocation of comparative liabilities between the carrier and the member absent clear and convincing contrary evidence from the carrier showing that the allocation was unreasonable. *Id.*[(5)] But, where the record shows PED and lacks evidence of greater or different damage incurred in transit, the carrier is not liable. *See AAA Transfer & Storage, Inc.*, B-248535, Oct. 23, 1992. Except for the missing back of the center component, the damages noted in the estimate are indistinguishable on paper with those in the PED. If Arnold was liable for additional damage, there were various ways that the member and the Army could have documented it in the record. In DOHA Claims Case Nos. 96080215, 96070212 and 96070204, the military service sent its own inspectors to interview the member, observe the delivered item, and write a report documenting the additional damage. While the member need not be specific, he could have used the DD Form 1840/1840R to describe the additional damage. The installation claims office could have obtained a detailed statement from the member in which he compares the condition of the item before pick up and after delivery. And, of course, the member should object to a carrier's description of the PED on the descriptive inventory whenever he believes that a carrier's agent is exaggerating.

While the notice was adequate to cover the missing back, we are uncertain about when the damage to the back occurred. In this claim, the member indicated that he subsequently moved the entertainment center from Arizona to Germany and incurred additional damage before the manufacturer prepared the estimate. Without some evidence on the record about the nature of the Arizona to Germany damage, we cannot find that the back became missing between Fort Gordon and Fort Huachuca. Our decision in this regard is not intended to overrule prior decisions in which we rejected speculation by carriers that the member may have damaged an item in a post-delivery movement. *Compare, for example*, DOHA Claims Case No. 00050802 (May 17, 2000).

Conclusion

We reverse the Settlement Certificate and allow Arnold $1,250.

Signed: Michael D. Hipple

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Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Christine M. Kopocis

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Christine M. Kopocis

Member, Claims Appeals Board

Signed: William S. Fields

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William S. Fields

Member, Claims Appeals Board

1. This matter involves Personal Property Government Bill of Lading (PPGBL) YP-193,518; Army Claim No. 97-E50-0147; and NCS Claim No. N-2365.

2. As related in his November 26, 1996, statement for the record, the member asked the owner if several of the scraped areas could be sanded and revarnished, and the member related that the owner replied that the grooving on the pull drawers would have to be professionally sanded down to remove the scrapes/gouges. The member stated that the owner related to him that the back center section was missing, and he provided the member with a replacement cost. The member noted that all molding on the entertainment center contained a variety of scrapes and gouges, and the owner advised that the molding had to be replaced. But, the statement did not compare the PED with the condition of the components of the entertainment center as delivered. The member also stated that he chose to have the manufacturer estimate "the damage incurred during shipments from both FT Gordon, GA to FT Huachuca, AZ, and from FT Huachuca, AZ, to Heidelberg, Germany." Finally, the member stated that it was "unworkable" to have an estimator come to his quarters to estimate the damage from Fort Gordon to Fort Huachuca.

3. The correct citation is *American Van Services, Inc.*, B-247767, Sept. 4, 1992.

4. Some service claims officials refer to such practices as "pencil whipping."

5. In this regard, the carrier is also free to offer an appropriate estimate which may show in some instances that the repair of the additional damage is distinguishable and has its own discreet cost.