

DATE: July 31, 2000

In Re:

Air Land Forwarders, Inc.

Claimant

Claims Case No. 00071709

CLAIMS APPEALS BOARD DECISION

DIGEST

A notification of loss or damage is adequate to alert a carrier that all or parts of a set of encyclopedias was missing, not just one book, when the Descriptive Inventory in a household goods shipment contained boxes of books, and a *timely dispatched Notice of Loss or Damage* (DD Form 1840R) advised the carrier that there were "Missing of Ledger [sic] sets" with respect to some encyclopedias.

DECISION

Air Land Forwarders, Inc. (ALFY) appeals the June 9, 2000, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 00060612, in which DOHA denied ALFY's request for a refund of \$1,493 of the \$2,042 set off by the Army for transit loss and damage from the shipment of a service member's household goods. [\(1\)](#)

Background

The record indicates that ALFY's agent picked up the shipment in Germany on October 8, 1997, and delivered it to the member at Fort Knox, Kentucky, on December 8, 1997. The Descriptive Inventory noted 3.0 cubic foot cartons containing "books." [\(2\)](#) On the *Notice of Loss or Damage* (DD Form 1840R), dispatched on January 6, 1998, the member noted that "Metropolitan Educ. Encliclopedia [sic]" was "Missing of Ledger [sic] sets." The member did not note an

item number on the DD Form 1840R. The member claimed an entire set of encyclopedias, claiming a depreciated replacement cost of \$1,493. The member supported his claim with a written statement dated February 10, 1998, in which he stated that the encyclopedias were still in the "box" in which the seller had dispatched them to the member; that the encyclopedias were no longer present in his old residence after ALFY's agent had packed up and carried away the household goods; and that when the household goods were unpacked at Fort Knox, some of the numbering on some boxes did not match the inventory. The member also provided a receipt showing a Statement of Account associated with the purchase of the encyclopedias.

On appeal, ALFY contends that the member notified it of the loss of only one book, not an entire set. ALFY points to part of a sentence in the member's supporting statement which reads: "There is no way that the book was not packed the day the movers came to pick up the household good. . ."

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 on 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). Under the Military-Industry Memorandum of Understanding for Loss and Damage Rules (MIMOU), when 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 shall be accepted by the carrier as overcoming the presumption of the correctness of the delivery receipt. In the adjudication and settlement process, ALFY had argued that the member had timely notified it of only one missing book; that an entire set of encyclopedias could not have fit into a 3.0 cubic foot carton; that the member had not provided evidence that he owned or tendered encyclopedias for shipment; and that the member had not provided evidence of the value of the encyclopedias. In this appeal, ALFY focuses on its argument that the member had notified it that only one book was missing.

In this claim, the member dispatched notice to ALFY within 75 days of delivery indicating that he had lost "sets" of encyclopedias. The member did not specify a particular Descriptive Inventory item number. If ALFY had any question concerning what the member meant in the DD Form 1840R by the word "sets," what volumes, if any, had been delivered, and how many were in the collection, it could have exercised its right to inspect. The Descriptive Inventory indicates that some cartons of "books" had been tendered, and in tender disputes, we have inferred tender where there is a reasonable relationship between the items claimed as lost and the inventory, especially when it would not have been unusual to pack the item in the carton and the carrier did the packing and prepared the inventory. *See* DOHA Claims Case No. 00050804 (May 25, 2000) and decisions cited therein. We have also found that the notification of loss or damage is adequate even if an unknown number of items are lost or damaged as long as it is written, timely dispatched, and sufficient in content to alert the carrier that damage has occurred for which reparation is expected. *See, for example*, DOHA Claims Case No. 98060121 (June 24, 1998); DOHA Claims Case No. 97122314 (February 23, 1998); and DOHA Claims Case No. 97112401 (December 11, 1997). In our view, the wording of the DD Form 1840R should have alerted ALFY to determine what set(s) of an encyclopedia in a box (es) of books were missing. The member's later statement was not necessary to support the notification.

If the member's statement had been necessary to support notification, we would look at the entire statement and not just to selected portions of it. A fair reading of the entire statement indicates that the member was claiming more than one book. The member's writing style did not clearly distinguish between the singular and the plural, but the second sentence, for example, clearly indicates that more than one book was missing: "These Encyclopedia was taken from our

shipment they could not have been left behind [sic] because we did the cleaning of our home."

Conclusion

We affirm the Settlement Certificate.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Arthur A. Elkins

Arthur A. Elkins

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) ZP-297,416; Army Claim No. 98-201-0463; and ALFY Claim No. ALI 980414.
2. Our review indicates that cartons at four Descriptive Inventory Item numbers involved this description: 85, 86, 174 and 193.