

DATE: February 9, 2001

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In Re:

Resource Protection

on behalf of

Allied Van Lines, Inc.

Claimant

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Claims Case No. 01012916

## CLAIMS APPEALS BOARD DECISION

### DIGEST

There is sufficient evidence to reasonably support a finding that a member tendered audio CDs in a carton of "books" for purposes of establishing a *prima facie* case of liability against a carrier when the member presents evidence that his CDs were shipped in book-like case which held such CDs, the member shipped a CD player, and there is no other item described as containing CDs in the carrier-prepared inventory.

### DECISION

Resource Protection, on behalf of Allied Van Lines, Inc. (Allied), appeals the January 3, 2001, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 00121803, affirming the Marine Corps' offset of \$1,130.44 to recover loss and damage to a household shipment of a service member. [\(1\)](#)

### Background

The record shows that on July 1, 1997, Allied's agent picked up the shipment in North Carolina, and delivered it in Texas on August 18, 1997. Among other things, the Descriptive Inventory indicated that Item 76 was a 1.5 cubic foot, carrier-packed, carton containing books. On the *Joint Statement of Loss or Damage at Delivery*, DD Form 1840, Item 76 was listed as missing books. However, on the *List of Property and Claims Analysis Chart*, DD Form 1844, the member claimed 105 missing audio compact disks (CDs) from Item 76. Setoff in the amount of \$1,130.44 was completed against Allied on November 23, 1999. Allied declined liability because there was no evidence that CDs were tendered. In response, the member supported tender with a statement that his CDs were "shipped" in a book-like case

that holds CDs, and he provided photographs showing this container.

On appeal, Resource Protection argues that the DD Form 1840 was insufficient because it did not apprise the carrier of the true nature of the missing contents of Item 76, namely CDs, and that there is no evidence that the member actually tendered CDs in Item 76. Additionally, Resource Protection suggests that it was due a refund of \$329.58 on account of loss or damage to other items, and it is inappropriate to use that money to help offset for the missing CDs when, due to the government's negligence, the initial offset did not include enough money to cover the total alleged loss for all of the CDs.

### Discussion

Tender of an item to the carrier is the first element in establishing a *prima facie* case of carrier liability for loss or damaged household goods; the shipper also must show that the item was not delivered (or was delivered in a more damaged condition) and the value of the item. *See Missouri Pacific Railroad Co. v. Elmore & Stahl*, 377 U.S. 134, 138 (1964). In a tender dispute where an item is lost, we have inferred tender when the lost item bears a reasonable relationship to the items described on the inventory as the carton's contents. There is no need for an exact match between the description of the lost item and the contents of the carton. That is particularly true when it would not have been unusual to pack the item in the carton, and the carrier did the packing and prepared the inventory list. Initially, however, the shipper must furnish substantive evidence to support his allegation that he tendered to the carrier property that he later claims was lost. *See DOHA Claims Case No. 96070226* (September 5, 1996) citing *American Van Services, Inc.*, B-249966, Mar. 4, 1993; and *Paul Arpin Van Lines, Inc.*, B-205084, June 2, 1982, *affirmed on reconsideration*, B-205084, June 8, 1983.

Although reasonable minds could have differed, the Marine Corps and DOHA's adjudicators had a rational basis for the factual finding that the member demonstrated tender of CDs to Allied's agent. The member's statement and photographs are corroborated by the fact that in the current market there exist book-like cases like the one pictured that accommodate approximately 105 CDs (but without jewel cases). Additionally, our review of the Descriptive Inventory shows that the member shipped a CD player, and none of the other items indicated that the CDs were contained within them.

There is no basis for Resource Protection's argument that the notice of loss was insufficient. The member merely repeated the description that Allied had used for Item 76: "books." The DD Form 1840 met threshold requirements: it alerted Allied to the fact that Item 76 was lost, that the member intended to make a claim, and that Allied should promptly investigate the facts surrounding the loss. The notice does not have to be specific. *See DOHA Claims Case No. 96121606* (June 6, 1997); and *DOHA Claims Case No. 96091701* (February 24, 1997) and decisions cited therein.

Finally, we find no problem with holding Allied potentially liable up to the amount of the setoff, \$1,130.44. It appears that the Marine Corps may have understated its claim against Allied with respect to the missing CDs, and it should have offset a total amount greater than it did. Resource Protection's argument is that DOHA should not protect the Marine Corps from its own mistake, and it seems to argue that if we follow the position of DOHA's adjudicators, we would hold Allied liable for a new claim, one that the carrier had no prior opportunity to settle. While the Marine Corps should have offset more than it did and then refunded back \$329.58 after acceding to Allied's position on other items, DOHA's adjudicators stayed within the amount in controversy, *i.e.*, the amount offset. Additionally, there was no new basis of recovery for the 105 itemized CDs that were specified in the Demand on Carrier (DD Form 1843) and accompanying DD Form 1844. *Compare Tri-State Motor Transit Co.*, B-259879, Mar. 22, 1995 and cited decisions.

## Conclusion

We affirm the Settlement Certificate.

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: Jean E. Smallin

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Jean E. Smallin

Member, Claims Appeals Board

1. This matter involves Personal Property Government Bill of Lading No. YP-333835; USMC Claim No. 387627736314706; and ALLV File No. 221635.