

September 12, 2001

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In Re:

Resource Protection

on behalf of

Allied Van Lines

Claimant

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Claims Case No. 01081401

## CLAIMS APPEALS BOARD DECISION

### DIGEST

A *prima facie* case of carrier liability is established when an item claimed as lost is reasonably related to similar items shown on the inventory. Thus, the tender of "table legs" is sufficient evidence to show that the alleged missing legs were tendered to a carrier where the carrier failed to note the number of legs on the inventory.

### DECISION

Resource Protection, on behalf of Allied Van Lines (Allied), appeals the February 7, 2001, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 01020502, in which DOHA affirmed the arine Corps' offset to collect transit damages to the household goods of a service member. [\(1\)](#)

### Background

The record indicates that the member placed his household goods into non-temporary storage at Twenty-Nine Palms, California, on June 5, 1991. On August 18, 1995, Allied picked up the member's goods in Twenty-Nine Palms and delivered them to the member in Havelock, North Carolina, on September 12, 1995. Upon delivery, the member reported on the *Joint Statement of Loss or Damage at Delivery* (DD Form 1840) that one table leg was missing. Apparently, the driver made a notation on the DD Form 1840 which stated "disagreed" on the line that shipper asserted that a leg was missing. There were no other comments on the DD Form 1840 explaining the basis for the disagreement.

Additionally, member reported a second leg missing on the *Notice of Loss or Damage* (DD Form 1840R).

The member submitted his claim to the Marine Corps on September 21, 1995. On June 20, 1996, the Marine Corps dispatched its *Demand on Carrier* (DD Form 1843) for \$150.00 to Allied for the cost of replacing the two ornamental wooden table legs. In response, Allied returned the *List of Property and Claims Analysis Chart* (DD Form 1844) to the claims office with a notation that only two legs were listed on the original inventory. On February 4, 1998, the Marine Corps claims office responded to Allied by letter, informing Allied that its denial of liability was unacceptable. The Marine Corps claims office reasoned that while the inventory did not note the number of legs tendered, it did in fact imply that several legs were tendered by the use of the plural form of the word "leg" on the inventory in lines 8 and 9. Allied did not respond to the Marine Corps letter dated February 4, 1998. Therefore, an offset for \$231.15 occurred. The total amount of the offset was calculated to be \$150 for the replacement of the two legs, plus \$56.15 in interest and \$25. in administrative fees.

Resource Protection, acting as Allied's agent, appeals the denial of his request for refund of the \$150 offset for the replacement of the two missing legs. Resource Protection argues that the shipper has the burden to prove the number of table legs tendered to the carrier. In support of this argument, Resource Protection asserts that the replacement estimate was dated the same day as the shipment was delivered, the distance of the delivery address from the place from which an estimate was obtained, and the wood legs replaced were constructed of a different type of wood from what the dining room table listed on the inventory was constructed from.

### Discussion

Generally, a shipper establishes a *prima facie* case of liability against a carrier by establishing that it tendered the goods to the carrier in a certain condition; that the carrier delivered the goods in a more damaged condition or not at all; and the amount of damages. Thereafter, 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 Co. v. Elmore & Stahl*, 377 U.S. 134, 138 (1964). Resource Protection's argument focused on the member's ability to prove the number of table legs tendered to the carrier.

While the inventory list does not specifically note the number of table legs, evidence of tender involving broad item descriptions are generally sufficient to place the burden of proof on the carrier. *See Cartwright Van Lines*, B-241850.2, Oct. 21, 1991; *see also*, DOHA Claims Case No. 99081804 (September 13, 1999). Moreover, a *prima facie* case of tender of an item is established when the item claimed as lost or damaged is reasonably related to the items shown on the inventory. *See* DOHA Claims Case No. 98031913 (May 28, 1998). For instance, the Comptroller General has found that the tender of a tool box to a carrier was sufficient evidence to establish tender of tools that shipper claims were located inside the tool box. *See American Vanpac Carriers*, B-247876, Aug. 24, 1992. In the instant case, the inventory contains a broad description of "table legs" without limiting that description to indicate the number of legs tendered. Further, there is no indication in the record that the driver made a statement indicating the number of legs that were tendered at pick-up or delivery. Thus, there is a reasonable basis for the Marine Corps' finding liability for the table legs.

Resource Protection's arguments relating to the time and place of the estimate, as well as the material the legs were constructed of are immaterial at this point in the appeal process. Evidence supporting these claims should have been presented to the Marine Corps during the adjudication. A factual determination was made on all of the relevant evidence at the time of the adjudication. It would be inappropriate to consider new theories of recovery in this appeal. *See* DOHA Claims Case No. 98021008 (February 27, 1998); *see also* Comptroller General Decision B-252972.2, July 14, 1995 and *A&A Transfer and Storage Inc.*, B-252974, Oct. 22, 1993.

## Conclusion

We affirm the Settlement.

/s/ \_\_\_\_\_

Michael D. Hipple

Chairman, Claims Appeals Board

/s/ \_\_\_\_\_

Jean E. Smallin

Member, Claims Appeals Board

/s/ \_\_\_\_\_

Jennifer I. Campbell

Member, Claims Appeals Board

1. This matter relates to Personal Property Government Bill of Lading (PPGBL)

VP-660, 934. The Settlement Certificate erroneously indicated that it was DOHA Claim No. 00110729, but the events and service member whose move was involved are DOHA Claim No. 01020502.