DATE: September 6, 2000

In Re:

Resource Protection

on behalf of

Carlyle Van Lines, Inc.

Claimant

Claims Case No. 00080813

CLAIMS APPEALS BOARD DECISION

DIGEST

A shipper may dispatch notice of loss or damage anytime up to 75 days after delivery, even if he moves his damaged household goods prior to the dispatch of the notice. The carrier's inspection right under the *Military-Industry emorandum of Understanding on Loss and Damage Rules* is not vitiated by such movement.

DECISION

Resource Protection, on behalf of Carlyle Van Lines, Inc. (Carlyle), appeals the June 16, 2000, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 00061211, which disallowed a refund of $278.40 of the $315.19 offset by the Air Force against Carlyle for transit damage to a service member's household goods.[(1)]

Background

The record shows that the shipment was originally picked up by another carrier in August 1995 and placed into non-temporary storage (NTS) in Spokane, Washington. On August 14, 1996, Carlyle obtained the shipment from the NTS facility and on August 20, 1996, delivered it to the member at a mini-storage unit in Southbeach, Oregon. Carlyle had noted damage to several items on its rider when it obtained them from the NTS facility, including, in relevant part, Descriptive Inventory Item Nos. 32, 36, 37, 69, 70 and 120. At delivery, the member and Carlyle's agent noted damages to Items 16, 32, 37, 69, 70, and 120 on the *Joint Statement of Loss or Damage at Delivery (*DD Form 1840*)*. On October 29, 1996, the member dispatched a *Notice of Loss or Damage* (DD Form 1840R), advising Carlyle of additional

damages to Items 36, 67, 78, 98, 99, 100, 105, and 113. The liability assessed against Carlyle was for damages noted on both the DD Forms 1840/1840R that were not noted on the rider.

In this appeal Resource Protection acknowledges that some damage was reported at delivery, but maintains its position that all other correspondence in the file refers to damage reported at an address other than the delivery address in Southbeach. Citing the *Military-Industry Memorandum of Understanding on Loss and Damage Rules* (MIMOU), effective January 1, 1992, Resource Protection argues that it cannot determine where and when the damage occurred for the liability assessed against it for those damaged items reported on the DD Form 1840R Resource Protection argues that the subsequent movement after delivery but before dispatch of the DD Form 1840R "did away with the rights [under the MIMOU] of the carrier to make an intelligent and informed decision as to how and when or where the damage occurred."

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). Under the 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.

As the Settlement Certificate indicated, Resource Protection's argument here is not much different than Resource Protection's argument in DOHA Claims Case No. 00050802 (May 17, 2000) where it also represented Carlyle Van Lines. In DOHA Claims Case No. 00050802, *supra*, Resource Protection argued that paragraph 37 of the *Tender of Service* provides for one-time placement of delivered items; therefore, this necessarily restricts the 75-day notice provision in the IMOU to the delivery point. Otherwise, permitting the member the full 75 days to dispatch notice of additional damage while allowing him to subsequently move the damaged delivered item may make the carrier liable for something more than a one-time placement at one address if damage occurs in the subsequent move. Resource Protection also suggested that the subsequent movement had the effect of displacing Carlyle as the last custodian of the property because persons unknown later moved the property an additional 15 miles to the permanent quarters after the member had acknowledged receipt of the property. Now, in the current claim, Resource Protection does not mention the *Tender of Service* but simply argues that Carlyle's inspection right under the MIMOU was vitiated by subsequent movement because Carlyle would not have been able to determine the condition of the damaged item as delivered since it was later moved. Our decision in DOHA Claims Case No. 00050802, *supra*, fully considered the carrier's rights under both the *Tender of Service* and the MIMOU, and also cited a Comptroller General decision which had rejected a carrier's argument that its inspection rights were vitiated by subsequent movement. *See Stevens Worldwide Van Lines, Inc.*, B-251343, Apr. 19, 1993. Resource Protection has not offered legal authority that contradicts either our position in Claims Case No. 00050802 or the Comptroller General's position in *Stevens Worldwide Van Lines, Inc., supra*.

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 (PPGBL) VP-732,629; Air Force Claim cChord AFB 98-557; and Carlyle Claim 98-0157. The Air Force noted in its administrative report that due to mathematical error it had offset $36.79 in excess of the proper amount of Carlyle's liability and agreed to refund that amount. DOHA disallowed Resource Protection's request for a refund of the balance ($278.40).