DATE: May 23, 2001

In Re:

Andrews Forwarders, Inc.

Claimant

Claims Case No. 01050801

CLAIMS APPEALS BOARD DECISION

DIGEST

Generally, DOHA will not question an agency's calculation of the value of damages in transit loss and damage refund claims unless the carrier presents clear and convincing evidence of the agency's unreasonableness.

DECISION

Andrews Forwarders, Inc. (Andrews) requests review of the December 19, 2000, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 00061212, in which DOHA allowed Andrews $703 of the $1,909.25 that the Army offset for loss and damage to the household goods of a service member.[(1)]

Background

On July 26, 1994, the member tendered his household goods to a non-temporary storage (NTS) facility in Colorado, and Andrews picked up the shipment from the NTS facility on or about November 15, 1995, delivering it to the member in South Carolina on November 27, 1995. The only issues remaining in this appeal are the amounts of the damages on Descriptive Inventory Item 257 (a waterbed mattress) and Item 268/269 (a queen-size mattress).

On Item 257, Andrews states that it was offset $374, but its proper liability is only $199.60. It states that the item was purchased in 1989 and that the replacement cost shown was $499. The shipment was delivered in 1995, thus making it 6 years old. Andrews notes that if one multiplies 6 years by 10 percent depreciation per year, the item depreciated by 60 percent. The residual percentage (40 percent) multiplied by the $499 replacement cost is $199.60. Andrews requests a refund of $174.40, or the difference between $374 and $199.60.

On Item 268/269, Andrews notes that the Army offset $209, but its proper liability is only $174.15. Andrews notes that the item was purchased in 1979, the replacement cost was $699. The shipment was delivered in 1995, thus the item was 16 years old. At a 5 percent depreciation rate per year, the total depreciation is 80 percent. Since the maximum depreciation is set at 75 percent, the 25 percent residual percentage multiplied by replacement cost is $174.15. Andrews requests a refund of $34.85, or the difference between $209 and $174.15.

The *List of Property and Claims Analysis Chart* (DD Form 1844) confirms a May 1989 purchase date and replacement cost of $499 for Item 257. It also confirms a July 1979 purchase date for Item 268/269, with a replacement cost of $699. The Army adjudicated the claim with a 25 percent overall depreciation for Item 257 and an overall depreciation of 70 percent for Item 268/269. Andrews did not explain the basis for the respective depreciation rates, nor did it offer an explanation and legal support on the proper method for determining when to start and when to end the period for depreciation. DOHA's Settlement Certificate noted that Andrews failed to explain its damage computation on each of the two items, and the Army Claims Service's supplemental administrative report of December 6, 2000, noted that Andrews had not raised the depreciation issue until after it filed a claim at DOHA.

Discussion

Generally, we do not question an agency's calculation of the value of damages unless the carrier presents clear and convincing evidence that the agency acted unreasonably. *See* DOHA Claims Case No. 96070206 (September 5, 1996) citing *Andrews Forwarders, Inc.*, B-255697, Apr. 22, 1994 and *American Van Services*, B-249833, Jan. 14, 1993.

Our examination of the appeal and the DD Form 1844 indicates a difference of opinion on the annual rate of depreciation applicable to Item 257 and the time-frame used to calculate depreciation on both items. In view of Andrews' failure to cite and explain a proper basis for calculating depreciation, even when its failure to explain was noted in the Settlement Certificate, our role on appeal is to determine if the Army had any reasonable justification for the bases it used to adjudicate the claim. We believe that it did.

At the time of movement, the *Joint Military/Industry Depreciation Guide* (JMIDG) provided a 5 percent annual rate of depreciation against replacement costs for all listed mattresses, with a maximum depreciation at 90 percent (not 75 percent), assuming average care and usage. Accordingly, the only depreciation rate between the services and industry appears to be the 5 percent rate that the Army used to adjudicate this claim.

On Item 257, the Army applied 5 years of depreciation while Andrews applied 6 years. It appears that the one year difference relates to whether depreciation applies while the item is in NTS. Service adjudicators and DOHA will consider evidence from the carrier that demonstrates that an item is subject to wear and usage even while it is in NTS. But, as we pointed out to Andrews in a prior DOHA Claims Case, when a carrier provides no evidence nor specific argument regarding why depreciation should be applied during NTS, we may accept a Service's calculation of depreciation which does not include depreciation during storage. *See* DOHA Claims Case No. 96080207 (June 6, 1997).

On Item 268/269, the Army applied 14 years of depreciation while Andrews applied 16 years. It appears that the Army did not depreciate during NTS for the reasons noted above. Additionally, it applied the rules from the internal Department of Defense (DoD) *Allowance List -Depreciation Guide* (ALDG) to reach the precise inception and conclusion point.[(2)]

We do not directly apply internal DoD publications in settling contractual disputes between members of the moving industry and the military services. However, in this particular area, where the JMIDG is silent on the inception point and conclusion point for calculating the period of depreciation, we have recognized the reasonableness of the Air Force's business practice in generally applying some of the ALDG rules when adjudicating recovery claims against the carrier. *See* DOHA Claims Case No. 96070214 (January 6, 1997). Our decision noted that service adjudicators and DOHA claims officials will not apply these rules to the extent that it would be unreasonable under the circumstances.[(3)] However, with no explanation from Andrews concerning the propriety of its position, we conclude that the Army had a reasonable basis for applying most of the ALDG practices to the recovery claim.

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: Arthur A. Elkins

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Arthur A. Elkins

Member, Claims Appeals Board

1. This matters relates to Personal Property Government Bill of Lading No. YP-238,376; Army Claim No. 98-291-0137; and Andrews Claim No. 98-0036.

2. In adjudicating members' claims against the military services, the ALDG provides for one year of depreciation when an item is 6-17 months old, two years when an item is 18-29 months old, with additional increments of 12 months counted as an additional year up to 173 months. Thus, for example, items 174 months or older in age reach maximum depreciation when maximum depreciation is set at 75 percent (which would not have applied against the industry here) and there is an annual rate of depreciation of 5 percent. The month of purchase and pick up are not counted.

3. We noted, for example, that the Services and the industry had agreed to a maximum depreciation of up to 90 percent for mattresses in the JMIDG, while the ALDG generally limits depreciation against the member to lower percentages.