DATE: June 13, 2001

In Re:

Air Land Forwarders, Inc.

Claimant

Claims Case No. 01053003

CLAIMS APPEALS BOARD DECISION

DIGEST

In the absence of an agreement between the military services and the industry, where the military service applies a 10 percent rate of depreciation against a service member to the service member's claim for damage to a receiver and cassette deck, but allows only seven percent to the carrier when it recovers for this damage, the Service must provide a clear explanation for the difference in treatment and the basis for the depreciation rate.

DECISION

The Air Force Legal Services Agency (AFLSA) appeals the May 4, 2001, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 01040907, wherein DOHA allowed Air Land Forwarders, Inc. (ALFY)'s request for a refund of $135.66 of the $314.16 offset for the depreciated replacement cost of Descriptive Inventory Items 27 (a Kenwood cassette tape deck) and 30 (a Sansui receiver). These items were damaged in transit and were part of a shipment of a service member's household goods.

Background

On December 28, 1998, ALFY's agent picked up the shipment in Korea, and on February 16, 1999, another agent delivered it to the service member in Louisiana. At delivery, the member and ALFY's agent reported that Items 27 and 30 had been damaged. *See Joint Statement of Loss or Damage at Delivery* (DD Form 1840).

On the *List of Property and Claims Analysis Chart* (DD Form 1844), the member stated that he purchased the cassette player in February 1991 for $300, and the replacement cost was $169. The Air Force allowed $42.25 based on a depreciation rate of 10 percent per year, with a 75 percent maximum depreciation limitation. The carrier's liability was listed as $74.36, or an additional $32.11, based on a seven percent per year depreciation rate. The member purchased the Sansui receiver in June 1990 for $600, and the replacement cost was $545. The Air Force allowed the shipper $136.25, based on a 10 percent per year depreciation rate, with a maximum depreciation of 75 percent. The carrier's liability was listed as $239.80, based on a seven percent depreciation rate, which results in an additional liability of $103.55

compared to the 10 percent rate. AFLSA's administrative report indicates that it adjudicated its claim against ALFY based on the seven percent depreciation rate found in the *Joint Military/Industry Depreciation Guide* (JMIDG) for phonographs under the general category of major electrical appliances.

ALFY claimed a refund of $135.66, based on the difference between the seven percent depreciation rate and the 10 percent rate for the two items. ALFY cited our decision in DOHA Claims Case No. 98051108 (May 27, 1998). In that decision we held that in the absence of an agreement between the military services and the industry, where a service applies a 10 percent annual rate of depreciation to the replacement cost of an item, but allows only a seven percent rate to the carrier when it recovers for the loss, the service must provide a clear explanation for the difference in treatment and the proper basis for depreciation. The agreement between the services and the industry is found in the JMIDG, but in DOHA Claims Case No. 98051108, the lost item (a camcorder) was an article that did not exist when the JMIDG was last revised. ALFY argues that the JMIDG was outdated and that the seven percent rate noted therein applied only to console stereo systems, not to individual stereo components. DOHA found for ALFY in the absence of an explanation from AFLSA.

In this appeal, AFLSA acknowledges that it failed to explain the basis for the use of the seven percent annual depreciation rate; however, it now provides an explanation. It points out that in the first instance, we must look at the JMIDG as the basis for determining the depreciation rate that applied to carrier recoveries. The JMIDG provided two possibly applicable categories. The first was "Electrical Appliances-Minor" followed by a list of specific sub-category articles. No depreciation rates are listed for the general category, but each specific sub-category has the same depreciation rates: 10 percent depreciation rate on the first year; 10 percent for each subsequent year; and a maximum depreciation rate of 75 percent. The second general category was "Electrical Appliances-Major." This category was constructed in the same manner and likewise was followed by a list of specific sub-category article types. Like the minor appliance category, no depreciation rates are listed for the general category, but unlike the minor appliance category, depreciation rates vary by specific sub-category. For example, the depreciation rates for the Phonograph item are seven percent for the first year, seven percent for each successive year, and a maximum depreciation of 75 percent. The Air Force argues that the small portable phonograph sub-category under minor appliances was designed for self-contained units such as 45-rpm phonographs with integrated speakers. It argues that "minor phonographs are of lower quality and are subject to more wear and tear because they are portable." AFLSA then compares these to "major phonographs." It believes that the major phonographs sub-category "is for components of or a whole stereo system where the speakers are separate units . . . [and] are more expensive and last longer." AFLSA acknowledges that it discharged its liability to the member by depreciating Items 27 and 30 at 10 percent per year in accordance with the *Allowance List Depreciation Guide* (ALDG), but it indicates that it will refund the member any additional proceeds that it collects from the carrier, if the member can be located.

Discussion

In effect, AFLSA argues that these two items are fairly included within the language of the JMIDG, and as a matter of contract interpretation, the rates from the phonograph subcategory of major electrical appliances in the JMIDG must be applied to them. We are not convinced that the JMIDG may be interpreted in this manner.

As DOHA's adjudicators indicated, AFLSA had a duty to more specifically justify its use of the seven percent rate. ALFY had argued that the rate was designed only for console components. We note that the two key words in the JMIDG sub-category description that AFLSA believes must apply are "phonograph" and "console." These two words do not apply to Items 27 and 30.

AFLSA's delayed appellate explanation is not helpful. AFLSA notes that the small portable phonographs under minor electrical appliances depreciate faster because they are cheaper and more portable, while the type of components involved here are not so portable and are more expensive. However, it can also be argued that the components involved here are significantly more portable (hence more prone to loss or damage) than similar components mounted within a console. Additionally, the expensive nature of the cassette deck is somewhat marginal - the current standard between major and minor appliances is at $200. We agree that all included stereo or Hi-Fi components of a 1970s console-type phonograph would have been included within the phonograph sub-category of major electrical appliances, but AFLSA has not convinced us that stand-alone components like a cassette deck either fall within the specific language of this sub-category or that it was reasonable to treat them as such.

Conclusion

We affirm the Settlement Certificate, and allow ALFY's claim for $135.66.

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