

This decision was affirmed by the DoD Deputy General Counsel (Fiscal) on March 8, 2002.

DATE: June 20, 2001

In Re:

Resource Protection

on behalf of

Cartwright International Van Lines, Inc.

Claimant

Claims Case No. 01060501

CLAIMS APPEALS BOARD DECISION

DIGEST

On disputed questions of fact between the claimant and the administrative office, we accept the statement of fact of the administrative office in the absence of clear and convincing contrary evidence.

DECISION

Resource Protection, on behalf of Cartwright International Van Lines, Inc. (CRWV), appeals the April 5, 2001, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 01031504, in which DOHA disallowed Cartwright's claim for a refund of \$507.50 of the \$1,372.00 offset by the Air Force for transit damage to the household goods of a service member. [\(1\)](#)

Background

The record shows that CRWV's agent picked up this shipment in Germany on January 25, 1999, and another agent delivered it to the service member in North Carolina on March 15, 1999. The member and CRWV's agent reported several items as damaged on the *Joint Statement of Loss or Damage at Delivery* (DD Form 1840), and the member reported additional damage on the *Notice of Loss or Damage* (DD Form 1840R) which was dispatched to CRWV on May 6, 1999. Some of the items involved in CRWV's refund claim were reported as damaged at delivery in the DD Form 1840-[\(2\)](#); others were reported in the DD Form 1840R. Notably, Block 9 of the DD Form 1840 stated that CRWV's address was at: "11901 Cartwright Ave., Grandview, O 64030," and Block 3a of the DD Form 1840, indicates

in handwritten form that the DD Form 1840R was dispatched to this address.

The record also indicates that the member submitted his claim to the Pope Air Force Base claims office on April 30, 1999, and on May 25, 1999, the Air Force paid the member (\$1,516). On the same day, the Air Force dispatched its *Demand on Carrier* (DD Form 1843) for \$1372 to CRWV. The demand included \$792.50 for the repair of the eight pieces in dispute. In response, by letter dated June 11, 1999, which was received by Pope Air Force Base on June 22, 1999, CRWV asserted a liability of only \$285 for these eight items based on an inspection and repair estimate from a contractor for CRWV that was dispatched to Fort Bragg. On June 24, 1999, the Pope Air Force Base claims office requested CRWV to fax a copy of the carrier's inspection report (which was prepared and mailed to the carrier by an estimator on April 29, 1999). By letter dated July 12, 1999, Pope Air Force Base claims officials advised CRWV that they had been unaware of CRWV's inspection and estimate until they received CRWV's June 11, 1999, letter.

CRWV believes that the *Military-Industry Memorandum of Understanding on Loss and Damage Rules* (MIMOU), effective January 1, 1992, requires use of its estimate. Paragraph III states, in relevant part, that (A) ". . . the military services shall evaluate itemized repair estimates submitted by a carrier from a qualified and responsible firm in the same manner as any estimate submitted by a claimant . . . (B) Carrier estimates: (1) If the appropriate claims office receives an itemized repair estimate from the carrier within 45 calendar days of delivery, the claims office will use that estimate if it is the lowest overall . . . (2) The claims office will also use an itemized carrier estimate received more than 45 calendar days after delivery if the claim has not already been adjudicated and that estimate is the lowest overall . . . (3) If the carrier provides the appropriate claims office with a low repair estimate after the Demand on Carrier has been dispatched to the carrier's home office, it will be considered in the carrier's recovery rebuttal or appeal process if lower than the estimate used by the claims office and if it establishes that the estimate submitted by the member was unreasonable in comparison with the market price in the area or that the price was unreasonable in relation to the value of the goods prior to being damaged.

Resource Protection points out that Block 20 of the PPGBL stated that Fort Bragg was the responsible destination installation transportation office (ITO), and it alleges that CRWV dispatched a copy of the carrier's estimate to the Fort Bragg ITO on May 6, 1999, the day that the Air Force claims to have dispatched a copy of the DD Form 1840R to CRWV. Resource Protection argues that "under the 'Long Arm' theory of law, the transportation office is a direct agent of the base claims office." It also argues that its client was unaware that Pope Air Force Base was the responsible claims office until it received the *Demand on Carrier*. It argues that the DD Form 1840R was misaddressed⁽⁴⁾, suggesting that the Pope Air Force base claims official may have dispatched a copy to his own office, and, in any event, disputes that it was dispatched to CRWV on May 6, 1999, as the handwritten entry in Block 3 of the DD Form 1840R indicates. Resource Protection contends that the DD Form 1840R was not dispatched until May 25, 1999, when it was dispatched with the *Demand on Carrier*. Resource Protection also suggests that even if CRWV had not met the requirements of paragraph III (B) (1) and (2), the Air Force failed to consider CRWV's estimate under paragraph III (B) (3).

Discussion

Preliminarily, we must determine whether, as a matter of fact, the DD Form 1840R was dispatched on May 6, 1999, as the Air Force contends. The Air Force's position is reasonably supported by the record. Claims officials at Pope Air Force Base mistakenly stamped their address in both Block 3a and 4a of the DD Form 1840R; they should have stamped it only in Block 4a. It reasonably appears that the dispatching official noticed this mistake and then handwrote CRWV's DD Form 1840 Block 9 address into Block 3a next to the mistaken stamped address of the Pope Air Force Base claims office. Resource Protection's argument that the DD Form 1840R was misaddressed is specious - a reasonable person would not dispatch a copy of the DD Form 1840R to himself. The handwriting in Block 3a is the same handwriting as the May 6th dispatch date in Block 3b, as well as the signature, date (also May 6th) and phone number in Blocks 4b, 4c, and 4d. In our view, the handwriting entries were a present recording of the dispatch of the DD Form 1840R on May 6, 1999, to CRWV's Block 9 address. On disputed questions of fact between the claimant and the administrative office, we accept the statement of fact of the administrative office in the absence of clear and convincing contrary evidence. *McNamara-Lunz Vans and Warehouses, Inc.*, 57 Comp. Gen. 415, 419 (1978).

The record does not contain evidence that CRWV forwarded its April 29, 1999, estimate to the Fort Bragg ITO on May

6, 1999. Assuming, without deciding that it did so, we can reasonably infer that CRWV would have known on or shortly after May 12, 1999, that the Pope Air Force Base claims office was the responsible claims office for purposes of paragraph III of the MIMOU. At that point, CRWV should have provided a copy of its estimate to that office. Paragraphs III (b)(1) and (2) of the MIMOU clearly state that the claims office, not a servicing ITO, must receive the carrier's estimate. ⁽⁵⁾ If CRWV had acted with reasonable dispatch, it could have provided the Pope Air Force Base claims office with a copy of its estimate prior to the dispatch of the *Demand on Carrier* on May 25, 1999. However, as Pope Air Force Base claims officials indicate, they were unaware of the carrier's estimate until they had received CRWV's June 11, 1999, letter on June 22, 1999, 47 days after dispatch of the DD Form 1840R. Under all of these circumstances, the Air Force was reasonably justified in not adopting CRWV's estimate under IMOU paragraph III (b) (1) or (2).

On July 28, 1999, the Pope Air Force Base claims office advised CRWV that CRWV had failed to specify why the claimant's estimate was unreasonable; therefore, advising the carrier that it had failed to state a basis for acceptance of CRWV's estimate under paragraph III(b)(3) of the MIMOU. In its initial correspondence to DOHA on March 23, 2000, Resource Protection noted the substantial difference between the member's estimate and CRWV's estimate, but other than arguing that its estimate was more detailed, it provided no evidence demonstrating that the member's estimate was unreasonable.

Conclusion

We affirm the Settlement Certificate.

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: Christine M. Kopocis

Christine M. Kopocis
Member, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

1. This matter involves Personal Property Government Bill of Lading (PPGBL) YP-777,321; Air Force Claim No. Pope 99-304; and CRWV File No. 182266.
2. Items 17 (dining table top), 55 and 59 dining chairs, and 31 (bookcase).

3. Items 14, 54 and 60 (dressers) and 71 (a fan).

4. Block 3a of the DD Form 1840R contains the ink-stamped address of the Pope Air Force Base claims office: "43 AW/JAD 374 MAYNARD ST., STE A POPE AFB, NC 28308-2381." Block 4a (Name and Address of the Claims Officer) contains the same ink-stamped address.

5. Resource Protection provided no legal authority to support its view that a "Long Arm theory of law" would modify this contractual provision to allow receipt by the servicing ITO as an alternative to receipt by the claims office.