

KEYWORD: Transit Damage

DIGEST: In the absence of clear and convincing contrary evidence from a carrier, we will accept a *Notice of Loss or Damage*, DD Form 1840R, that the military service certifies as a part of its official claims file and that appears to be properly prepared, as evidence that a copy was dispatched to the carrier at the address and on the date indicated therein.

CASENO: 02041501

DATE: 05/14/2002

DATE: May 14, 2002

In Re:

Resource Protection

on behalf of

Covan World-Wide Moving

Claimant

Claims Case No. 02041501

CLAIMS APPEALS BOARD DECISION

DIGEST

In the absence of clear and convincing contrary evidence from a carrier, we will accept a *Notice of Loss or Damage*, DD Form 1840R, that the military service certifies as a part of its official claims file and that appears to be properly prepared, as evidence that a copy was dispatched to the carrier at the address and on the date indicated therein.

DECISION

Resource Protection, on behalf of Covan World-Wide Moving, Inc. (Covan), appeals the April 4, 2002, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 02031403, that sustained the Air Force's offset of \$ 1,071.54 for transit loss/damage to a service member's household goods. [\(U\)](#) Resource Protection

seeks the recovery of \$996.98.

Background

The record indicates that Covan's agent obtained the member's household goods in Wyoming and delivered them to him in Virginia on April 19, 1999. The Air Force and Resource Protection disagree on the timeliness of the dispatch of three of the four *Notices of Loss or Damage*, DD Form 1840R, that the Air Force Legal Services Agency (AFLSA) reports the Air Force dispatched to Covan. (2) Both agree that a DD Form 1840R with three items reported as missing (a tennis bag, a gym bag, and large duffle bag) was timely dispatched to Covan on June 7, 1999, at 1 Covan Drive, P.O. Box 960, Midland City, AL 36350. This is the address found in block 9 of the DD Form 1840. AFLSA contends that three other DD Form 1840Rs, which listed other missing or broken items in a total amount equal to the amount in dispute, also were timely dispatched to this address. The dates of dispatch shown on the three forms were May 6, 1999 (two forms) and May 27, 1999 (one form).

Resource Protection contends that the Air Force failed to timely dispatch the May 6th and May 27th forms notwithstanding the dispatch date and the Covan address shown on each. Resource Protection supports its position in the following manner.

The record indicates that Resource Protection wrote to AFLSA on February 1, 2001, stating that it had been retained by Covan to assist in recovering the amount set off. Resource Protection contends that Covan had received only one DD Form 1840R, the one with the June 7, 1999, dispatch date listing only three items. Covan was unaware of any additional loss or damage until it received an undated demand letter from the Air Force listing 25 missing or damaged items. Accordingly, in Resource Protection's view, since the member and the Air Force did not notify Covan about the remaining items within 75 days as required by the JMIMOU, Covan is presumed not liable for the remaining items. AFLSA responded to Resource Protection on August 24, 2001, explaining that the official file contained four DD Form 1840Rs dispatched on three different occasions as explained above. AFLSA noted that each form was properly signed and dated and dispatched to the address listed in box 9 of the DD Form 1840 in accordance with the JMIMOU. On August 31, 2001, Resource Protection asked for copies of the May 6th and May 27th forms. On October 9, 2001, another AFLSA representative responded and provided the copies. On November 12, 2001, Resource Protection countered the AFLSA response alleging that AFLSA actually sent the October 9th correspondence to the Joint Personal Property Shipping Office (JPPSO) in San Antonio, Texas, and that JPPSO then re-mailed the October 9th correspondence to Resource Protection in an envelope post marked November 5, 2001. Resource Protection argues that this is evidence that material intended for Covan was actually forwarded to JPPSO and not to Covan.

Discussion

The issue here is a factual one. The question is whether Resource Protection has presented sufficient evidence to overcome the documentation indicating the timely dispatch of the three additional DD Forms 1840R to the address listed in block 9 of the DD Form 1840. Generally, because the administrative office is in a better position to consider and evaluate facts, on disputed questions of fact between the claimant and administrative officers, we accept the statement of fact furnished by administrative officers in the absence of clear and convincing contrary evidence. *See McNamara-Lunz Vans and Warehouses, Inc.*, 57 Comp. Gen. 415, 419 (1978). In our view, Resource Protection has

not met its burden of proof.

The DD Form 1840R is an official form that the member and claims officials must properly complete and dispatch to the carrier as discussed above. (3) The purpose of the form is to advise the carrier that the member, and the military service in subrogation, may file a claim against the carrier for the loss or damage to the item(s) indicated, and to record the date and address to which the claims office's representative dispatched a copy of the notice. Each of the three additional DD Forms 1840R appear to be regular on their face and copies were maintained, as required, in the claims file for this transaction. We find that each contains substantial evidence of dispatch to the address indicated, on the date indicated (within 75 days of delivery).

Resource Protection's observation that AFLSA actually dispatched to the JPPSO later correspondence on which it was the addressee, an observation that we assume to be true for purposes of this appeal, is not very probative. The DD Forms 1840R were dispatched to Covan by two claims office representatives at Langley Air Force Base, but the October 7th correspondence involved a different official at a different office, AFLSA, that dispatched correspondence directly to Resource Protection.

Our consideration of claims is not limited by the restrictions in the Federal Rules of Evidence, but it appears that each of the three additional forms, if challenged in a Federal court, would also meet the indicia for competent evidence under Rule 803 (6), records of regularly conducted activity, Rule 803 (8), public records and reports, and possibly Rule 807, the residual exception. Under these exceptions to the hearsay rule, records, reports, memorandum, and statements that meet the criteria for each exception are deemed to be trustworthy and admissible evidence. *See also Air Land Forwarders, Inc. V. United States*, 38 Fed. Cl. 547 (1997), *aff'd* 172 F. 3d 1338 (Fed. Cir. 1999). If these meet the indicia for trustworthiness in litigation, clearly, in the absence of clear and convincing contrary evidence, there is an inference that they are trustworthy for purposes of our decision here.

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 relates to Personal Property Government Bill of Lading ZP-613,579; Air Force File No. Langley AFB 00-116; and Covan File 01-1163-99.
2. The DD Form 1840R is on the opposite side of the *Joint Statement of Loss or Damage at Delivery*, DD Form 1840. Under the *Joint Military-Industry Memorandum of Understanding on Loss and Damage Rules* (JMIMOU), the carrier shall accept written documentation on the DD Form 1840R, dispatched within 75 calendar days of delivery to the address listed in block 9 on the DD Form 1840, as overcoming the presumption of correctness of the delivery receipt. Generally, loss or damage reported by the member to the claims office more than 75 days after delivery will be presumed not to have occurred while the goods were in the possession of the carrier.
3. See JMIMOU; Air Force Instruction 51-502, *Personnel and Government Recovery Claims*, Chapters 2 and 3 (March 1, 1997); and *Domestic Personal Property Rate Solicitation D-5*, Item 25.