KEYWORD: General; carrier's liability; depreciated replacement cost

DIGEST: Generally, a carrier's liability for transit damage is the lesser of depreciated replacement cost or repair cost, but if a Service obtains a repair estimate on a damaged item, it is not required to also document the depreciated replacement cost unless the carrier offers one. Under the *Joint Military-Industry Memorandum of Understanding on Loss and Damage Rules* , the carrier has the right to inspect the damaged property and may offer its own repair estimate or determine the appropriate replacement cost for the damaged item. However, depreciated replacement cost is not calculated by depreciating the purchase price. The carrier cannot overcome a repair estimate for purposes of a *primafacie* case of liability against it merely by arguing that the "depreciated replacement value," based on depreciation of purchase price, is less than the repair cost.

CASENO: 02090311

DATE: 9/19/02

DATE: September 19, 2002

In Re:

Resource Protection

on behalf of

Carlyle Brothers Forwarders, Inc.

Claimant

Claims Case No. 02090311

CLAIMS APPEALS BOARD DECISION

DIGEST

Generally, a carrier's liability for transit damage is the lesser of depreciated replacement cost or repair cost, but if a Service obtains a repair estimate on a damaged item, it is not required to also document the depreciated replacement cost unless the carrier offers one. Under the *Joint Military-Industry emorandum of Understanding on Loss and Damage Rules*, the carrier has the right to inspect the damaged property and may offer its own repair estimate or determine the appropriate replacement cost for the damaged item. However, depreciated replacement cost is not calculated by

depreciating the purchase price. The carrier cannot overcome a repair estimate for purposes of a *primafacie* case of liability against it merely by arguing that the "depreciated replacement value," based on depreciation of purchase price, is less than the repair cost.

DECISION

Resource Protection, on behalf of Carlyle Brothers Forwarders, Inc. (Carlyle), appeals the August 22, 2002, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 02062416 wherein our Office disallowed Carlyle's claim for a refund of $525.06 of a larger amount offset by the Army for extensive transit loss and damage to a service member's property.[(1)]

Background

The record indicates that the member tendered his household goods to the carrier's agent in North Carolina in June 1995, and the carrier delivered them to him in Florida in July 1995. For purposes of this appeal, there is only one issue now in dispute: the calculation of damages to an overstuffed sofa, Descriptive Inventory Item, Item 283. In this appeal, it is uncontested that the right arm of the sofa was damaged in transit.

The *List of Property and Claims Analysis Chart* (DD Form 1844) indicates that the sofa was purchased for $375 in August 1989. The member and Carlyle submitted estimates that included the repair of the right arm ($250 in an estimate obtained by the member, and $275 in an estimate made at Carlyle's request). The first estimator also stated that the sofa was an "antique," but the Army Claims Service's administrative report notes that the member did not submit sufficient evidence to justify the antique status.[(2)] As a check on its use of repair costs, the Army Claims Service also noted in its administrative report that the cost of repair is still a proper measure of damages in this case because, under the Table of Adjusted Dollar Value (TADV) method of calculating damages, the adjusted value of the sofa in 1995 was $322.87, an amount greater than the $250 assessed.[(3)]

Resource Protection now argues that the "depreciated replacement value" of Item 283 is $150, and that damages are limited to this amount when the cost of repair is higher. The Army offset $250 to recover repair costs, and Resource Protection seeks a refund of $100. In support of its position that "depreciated replacement value" applies in lieu of repair costs here, Resource Protection cites several prior decisions by our Office and the Comptroller General.[(4)] It appears that Resource Protection calculated its version of depreciated replacement cost using the 1989 purchase price. Carlyle's estimator did not indicate the cost of an appropriate new replacement sofa. Finally, Resource Protection impeaches the Army's use of the TADV method of calculating damages by simply referring to our prior criticisms of applications of this method in particular circumstances.

Discussion

To establish a *prima facie* case of liability against the carrier, the service member (or the Service in subrogation) must show that the carrier received the goods in a certain condition; that it delivered them in a more damaged condition; and the amount of damages. Thereafter, the burden shifts to the carrier to show that it was free from negligence and that the damage was due to an excepted cause relieving it from liability. *SeeMissouri Pacific Railroad Company v. Elmore & Stahl*, 377 U.S. 134, 138 (1964)

We agree with Resource Protection that generally a carrier's liability is limited to the lower of the repair costs or the depreciated replacement costs. *See*, *e.g.*, *Domestic Personal Property Rate Solicitation D-4*, Item 5, para. 2b.[(5)] *Compare also* the claims involving the Air Force in DOHA Claims Case No. 97122315 (January 12, 1998); and DOHA Claims Case No. 97062427 (July 15, 1997), which is cited by Resource Protection. Moreover, we recognize that there are limitations in the application of the TADV method of calculating damage especially where ordinary household goods are involved. *See* DOHA Claims Case No. 97122315, footnote 7, *supra*. However, the Army did not employ TADV to calculate Carlyle's liability here, and so far as we are concerned, TADV is a non-issue here.

Our focus is whether Resource Protection is correct in asserting that the Army is required to demonstrate the depreciated replacement cost of the sofa, as well as its repair cost, and whether it can competently prove depreciated replacement cost (and consequently lower liability) simply by depreciating the purchase price. We specifically rejected this approach in another claim where Resource Protection also represented Carlyle. *See* DOHA Claims Case No. 99081805 (October 5, 1999). As we pointed out in DOHA Claims Case No. 99081805, the general practice in calculating depreciated replacement cost is to depreciate the replacement cost of an item at the time and place of delivery. We are not aware of any authority that sanctions a depreciation of the price of purchase several years earlier as the basis for depreciated replacement cost. Under the *Joint ilitary-Industry Memorandum of Understanding on Loss and Damage Rules* , effective January 1, 1992, the carrier has the right to inspect the damaged property and may offer its own repair estimate. The carrier's estimator is also free to determine the price of the appropriate replacement (to which depreciation is applied). In DOHA Claims Case No. 99081805, Carlyle did not avail itself of these opportunities. Here, Carlyle's inspector/estimator did propose a repair cost. Additionally, it could have proposed replacement cost based on the inspection of the actual property damaged, but it did not do so. Resource Protection now proposes depreciating the purchase price, but in this appeal it appears to ignore our decision in DOHA Claims Case No. 99081805, *supra*, which specifically rejected such an approach.[(6)] Additionally, it did not offer other precedent supporting this approach. The Army reasonably adjudicated damages based on the $250 estimate submitted by the member's estimator, which was more beneficial to Carlyle in terms of its liability than the one that Carlyle's own estimator submitted. Resource Protection significantly failed in meeting its burden of proving, by clear and convincing evidence, that the Service acted arbitrarily, capriciously or unreasonably. *See* DOHA Claims Case No. 99080320 (August 20, 1999).

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 XP-055,154; Army Claim No. 96-261-1649; and Carlyle's Claim No. 95-0094.

2. According to Carlyle's estimator, the sofa is cut green velvet and appears to have a Victorian era-type of style. Perhaps this is the reason that the first estimator concluded that it was an antique. In any event, the actual age is not provided.

3. The Army calculated TADV damages by multiplying the $375 purchase price in 1989 by a factor of 1.23 for loss/damage in 1995, then deducting depreciation of 30 percent. TADV factors can be found in Department of the Army Pamphlet (DA Pam) 27-162, *Claims Procedures*, April 1, 1998, at p. 395.

4. In the order cited by Resource Protection, the decisions cited are: DOHA files 96070220 (September 5, 1996); 96081208 (December 20, 1996); 96091908 (February 10, 1997); 97020311 (March 25, 1997); 97062427 (July 15, 1997); 97092208 (November 26, 1997); and 97111818 (January 30, 1998). The Comptroller General decisions are: B-240051, December 12, 1990 and B-258665, April 6, 1995. Three of the DOHA files are Settlements and have no value as precedent. Not all of the others are applicable to the issues involved, but as noted in the discussion, we agree with those that indicate that carrier liability is generally assessed at the lesser of depreciated replacement cost or repair cost.

5. We cannot locate a copy of *Domestic Personal Property Rate Solicitation D*-3, which was effective through October 31, 1995. But, as the *Changes to Reissue of the Domestic Personal Property Rate Solicitation* at the beginning of D-4 indicates, this provision in Section 1, Item 5 was similar in both D-3 and D-4.

6. We expect that a professional representation before this Board by an experienced industrial representative includes citation to an adverse Board decision against that representative in another claim involving similar issues. The representative may distinguish the current claim or present reasonable argument in opposition to the prior decision, but the precedent must be cited.