

April 17, 2003

In Re:

Ace Van Lines, Inc.

Claimant

Claims Case No. 03041004

CLAIMS APPEALS BOARD DECISION

DIGEST

A carrier can be charged with loss even if items are not listed on the inventory, where other circumstances are sufficient to establish that the goods were tendered and lost.

DECISION

Ace Van Lines, Inc. (Ace) appeals the March 3, 2003, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 03022402, in which this Office disallowed Ace's claim for a refund of \$391.97, of the amount offset by the Navy to recover transit loss of a mattress and box spring. [\(1\)](#)

Background

In relevant part, the record indicates that on May 29, 1998, Dale J. Cook oving & Storage, Inc., placed part of the shipment into non-temporary storage (NTS) at its warehouse in Charleston, South Carolina. On June 2, 1998, it picked up the other portion of the shipment and placed it into NTS at a different warehouse in Charleston. The NTS prepared inventory for the second portion of the shipment contained the following descriptions: Inventory Item No. 151, "night stand;" Item No. 152, "head board;" Item No. 153, "Queen Bed Rails (USCD) clean;" Item Nos. 154 and 155, television stand and television respectively; Item No. 156, "dresser;" Item No. 158, "master bedroom mirror;" and Item No. 159, "night stand." On December 9, 1998, the carrier's agent removed the latter shipment from the warehouse. It was delivered to the shipper's wife in Phoenix, AZ by another agent of the carrier on December 23, 1998.

The shipper and the carrier's representative noted "no box spring & mattress" on the portion of the *Joint Statement of*

Loss and Damage at Delivery (DD Form 1840) for referencing missing items. The *Notice of Loss and Damage* (DD Form 1840R), which was dispatched on February 16, 1999, noted with respect to Item 153 that the "bed" was missing. Both the shipper and his wife submitted statements that the shipment contained a Queen-size mattress and springs when it was tendered, and that those items were not delivered. The amount of \$391.97 was offset against the carrier for loss of those items.

In the Settlement Certificate, our office denied the carrier's appeal of the Navy's offset. On appeal, the carrier seeks reversal of that decision based upon its contention that a "mattress and box springs" are not listed on the inventory prepared by the NTS facility, and that the phrase "Queen Bed Rails" used in the description of Item No. 153 refers only to the rails themselves. It is not sufficiently broad to encompass the whole bed, including the mattress and box springs.

Discussion

A *prima facie* case of carrier liability is established by showing that the shipper tendered property to the carrier, that the property was not delivered or was delivered in a more damaged condition, and the amount of damages. *See Missouri Pacific Railroad Co. v. Elmore & Stahl*, 377 U.S. 134, 138 (1964). The burden then shifts to the carrier to rebut the *prima facie* liability. Normally, if household goods are not listed on the descriptive inventory, the carrier will not be charged with tender. *See* DOHA Claims Case No. 96070203 (September 5, 1996). However, a carrier can be charged with loss even if items are not listed on the inventory, where other circumstances are sufficient to establish that the goods were tendered and lost. *See Id.*; and B-235558.4, ar. 19, 1991. Moreover, when goods pass through the custody of more than one bailee, it a presumption of the common law that the damage or loss occurred in the hands of the last one. *See* B-260768, Dec. 28, 1995.

On the facts before us, we think the adjudicator's conclusion that the mattress and box springs were tendered to the carrier or its agents was a reasonable one. The record contained statements from both the shipper and his wife that the items in question had been tendered and not delivered. The loss was consistently noted on the DD Form 1840, DD Form 1840R, and the DD Form 1844. The record contained no evidence which would suggest fraud on behalf of the shipper. The inventory reflected that a headboard, bed rails, a dresser, and two night stands had been tendered--circumstances sufficient to support a conclusion that a complete bedroom set, including a mattress and box springs, had been tendered. And a mattress and box springs were the type of items that would normally be shipped in such circumstances and are reasonably related to the other tendered items. *See* DOHA Claims Case No. 96070203 (September 5, 1996); and B-235558.4, Mar. 19, 1991.

The carrier's contention that the shipper could have disposed of the mattress and box springs prior to moving, with the idea of buying new ones upon arrival at his new destination, is speculative. The carrier can point to no evidence in the record to support that argument or otherwise establish that the items were not tendered to it by the NTS facility. Further, it was reasonable for the adjudicator to interpret the phrase "Queen Bed Rails" as including a complete bed with mattress and box springs--as if the phrase had been "Queen-size bed with rails." It is not unusual to see simple, shorthand descriptive phrases, lacking in connector words, used to cover systemic items with multiple components.

Conclusion

We affirm the Settlement Certificate.

/s/
Michael D. Hipple
Chairman, Claims Appeals Board

_____/s/_____
William S. Fields
Member, Claims Appeals Board

_____/s/_____
Jean E. Smallin
Member, Claims Appeals Board

1. This matter involves Personal Property Government Bill of Lading ZP-562,556; Navy Claim No. 0201115; and carrier Claim No. #98-79009.