

February 14, 2003

In Re:

Resource Protection on behalf of

General Van Lines, Inc.

Claimant

Claims Case No. 03012901

CLAIMS APPEALS BOARD DECISION

DIGEST

A functional toy steam engine is considered a "toy" for the purposes of calculating depreciation pursuant to the *Joint Military-Industry Depreciation Guide* (JMIDG).

DECISION

This decision responds to the United States Army's appeal of the October 11, 2002, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 02091001, which granted the carrier's claim for refund in the amount \$144.00 for damage to a toy steam engine which occurred during the shipment of a member's household goods. [\(U\)](#)

Background

The record shows that the carrier, General Van Lines, Inc., picked up the shipment of household goods from non-temporary storage (NTS) at Baltimore, Maryland, on January 28, 1998, and delivered it to Kansas City, Missouri, on February 3, 1998. On the *Notice of Loss and Damage*, DD Form 1840R, dispatched on April 10, 1998, the member claimed damage to a "German Toy Steam Engine." The Army eventually offset \$324.00 for the item, using the 10-percent rate for the depreciation of "bric-a-brac" provided for in the *Joint Military-Industry Depreciation Guide*

(JMIDG).⁽²⁾ The carrier appealed that decision to our office, arguing that the steam engine was a toy and should have been depreciated at the JMIDG's 50-percent rate for "toys."⁽³⁾

In the Settlement Certificate, our claims examiners agreed with the carrier's contention that the steam engine was a toy, subject to the 50-percent depreciation rate, and granted them a refund in the amount of \$144.00. Their decision was based upon the fact that the member had described the item as a "toy steam engine" on his DD Form 1840R, and that the German manufacturer of the item, a Wilesco Steam Engine D20, referred to its own product as a "spielzeuge"--the German word for plaything or toy. On appeal, the Army contends that the item should not be considered a toy because it was not designed to be a child's plaything.⁽⁴⁾ In support of their contention, they note that the item is relatively expensive and point to warnings in the manufacturer's literature which state that the item should only be operated under adult supervision and never by children under eight years of age. They also argue that the item should not be considered a toy because its operation can expose individuals to potential physical injury in the form of burning, scalding, or explosion impact. It is the Army's position, that the item should be considered either bric-a-brac or a hobby for the purposes of depreciation under the JMIDG.

Discussion

The manufacturer and/or distributor of the Wilesco Steam Engine D20 repeatedly use the word "toy" to describe the item in their literature. The member uses the word "toy" to describe the item in his DD Form 1840R. The common usage definition of the word "toy" is sufficiently broad so as to include all playthings--not just those items used exclusively by children. See *The American College Dictionary* 1282 (1970)("an object, often a small imitation of some familiar thing, for children or others to play with; a plaything"[emphasis added]); and *Webster's Third New International Dictionary* 2419 (1966)("something designed for amusement or diversion rather than practical use"). The fact that the item is a relatively expensive, functioning, diminutive version of a standard-size item, which is dangerous to operate, does not preclude it from being considered a toy. For instance, electric trains are designated as toys in the JMIDG⁽⁵⁾ and radio-controlled planes are designed as toys in the *Allowance List--Depreciation Guide* (ALDG).⁽⁶⁾ Like the toy steam engine in question, those items are relatively expensive, functioning, diminutive versions of stand-size items, which can be dangerous to operate, and are often played-with by adults. There are considerable similarities between those two items and the toy steam engine in question.

No representative examples are given under the category "bric-a-brac" of the JMIDG.⁽⁷⁾ However, the ALDG states that the category includes "inexpensive figurines, sculptures, and ornamental or sentimental items as distinguished from expensive objects of art."⁽⁸⁾ It also cross-references the "collections and hobbies," and the "objects of art" categories, and implies that the category is most appropriate for considering items valued at less than \$100.⁽⁹⁾ The approach taken in the ALDG is consistent with the common usage definition of the term "bric-a-brac." See *The American College Dictionary* 149 (1970)("miscellaneous ornamental articles of antiquarian, decorative, or other interest"); and *Webster's Third New International Dictionary* 275 (1966)("miscellaneous objects regarded as decorative or of a sentimental value . . . curios [small china, figurines, seashells, ornamental ashtrays and other such . . .]"). There are few similarities between the relatively expensive, functioning mechanical steam toy in question and the miscellaneous, inexpensive, small, static, minor art objects that fall into the category "bric-a-brac." On balance, the toy steam engine in question is more like the electric trains and the radio-controlled planes in the "toys" category, than it is like the china, figurines, seashells, and ornamental ashtrays in the "bric-a-brac" category.

Further, we do not think that the category of an item is necessarily determined by its use. Therefore, the fact that an individual may use a clock, firearm, or toy steam engine as a decorative item for display, would not convert that item to bric-a-brac--particularly in situations such as this, where the item easily falls within a more specific category. The category "bric-a-brac" appears to be a catchall category, designed to accommodate a wide variety of small, inexpensive items, which do not fall readily into other more specific classifications.

The JMIDG does not have a separate category for hobbies. The ALDG has a joint category for "collections and hobbies."⁽¹⁰⁾ However, the enumerated examples appear to only encompass such limited edition items as coins, stamps,

sequentially numbered plates or items, and manufactured items which are designed to be interrelated so that the loss or damage to one item decreases the value of the whole collection.⁽¹¹⁾ The discussion for the category states that "[i]f an item is specifically addressed under another category, that other category will be used."⁽¹²⁾ There is no evidence to suggest that the toy steam engine in question is a sequentially numbered, limited edition type of item, or that it is so interrelated to other similar toys owned by the member, that its loss or damage would decrease the value of the whole set. Further, as noted above, the category of an item is not necessarily determined by its use, and the fact that an individual may collect toys does not convert the items to the "collection or hobbies" category under circumstances where they would still fall more appropriately into the "toys" category.⁽¹³⁾

In summary, both the manufacturer/distributor and the member use the word "toy" in their description of the Wileco Steam Engine D20. The item bears more resemblance to items typically classified under the "toys" category of the JMIDG, than it does to items typically classified under the "bric-a-brac" category of the JMIDG or the "collections and hobbies" category of the ALDG. Therefore, we think it properly falls into the "toys" category of the JMIDG for the purposes of calculating depreciation.

Conclusion

We affirm the Settlement Certificate.

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

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

/s/
Catherine M. Engstrom
Member, Claims Appeals Board

1. Personal Property Government Bill of Lading No. ZP-202981; Army Claim No. 99-171-0633; Carrier Claim No. 11-0046-98.

2. A copy of the applicable JMIDG is found in Department of the Army Pamphlet 27-162, *Claims Procedures*, p. 440 (1 April 1998).

3. *Id.* at p. 443.

4. The Army argues that here the word "toy" is not being used as a noun to describe a child's plaything, but merely as an adjective referring to a diminutive version of a standard-size item--like a toy poodle. They also argue that the toy steam engine could be used "to generate power to run other equipment," but state that it has never been used in such a way, and give no examples as to why and how such a use would be practical.

5. *Id.* at p. 443.

6. A copy of the applicable ALDG is found in Department of the Army Pamphlet 27-162, *Claims Procedures*, at p. 387 (1 April 1998).

7. *See* source cited *supra* note 2, at p. 440.

8. *See* source cited *supra* note 6, at p. 375.

9. *Id.* The discussion for the ALDG's "bric-a-brac" category states that certain items "that exceed \$100 may be considered under Nos. 59 or 111, if they are more appropriate." The discussion for the ALDG's "objects of art" category states that as a general rule "figurines less than \$100 should be considered bric-a-brac . . ." *Id.* at p. 383.

10. *Id.* at p. 377. It also has a category for "hobbies or collections," which merely refers users of the ALDG to the category "collections and hobbies." *Id.* at p. 381.

11. *Id.* at p. 377. The common usage definitions of the term "hobby" focus on the activities of the individual more than the item involved. *See The American College Dictionary* 575 (1970)("a favorite occupation, topic, etc., pursued for amusement"); and *Webster's Third New International Dictionary* 1075 (1966)("a specialized pursuit [as stamp collecting, painting, woodworking, gardening] that is outside one's regular occupation . . .").

12. *See* source cited *supra* note 6, at p. 377.

13. The Army's argument that the item should be considered under the "collections and hobbies" category of the JMIDG rests principally on two representations in the manufacturer's or distributor's literature: one reference to using the item as an "educational hobby" and another reference that the item is "meant for adult collectors only." However, the paragraphs from which the quotes are drawn use the word "toy" on multiple occasions in their description of the item:

No steam *toy* is suitable for use by young children under age 8. Children over the age of eight should never use steam *toys* without direct, knowledgeable adult supervision. These *toys* involve the use of fire, flammable (sic) materials and metal parts. These *toys* are meant for adult collectors only. [emphasis added]

. . . .

Welcome to the fascinating world of steam powered *toys*. Here you will find a vast array of Wilesco *toy* steam engines, including . . . much more. We are authorized dealers of Wilesco *toys* . Wilesco *Toy* Steam Engines are built just like old steam

engines . . .etc. Now you can enjoy this . . . educational hobby of turning
fire and water into mechanical power. [emphasis added]