

DATE: May 22, 2003

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In Re:

Andrews Van Lines, Inc.

Claimant

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Claims Case No. 03052001

## CLAIMS APPEALS BOARD DECISION

### DIGEST

We accept an agency's finding of fact that a carrier failed to provide the member with a copy of the DD Form 1840/1840R as required by the *Joint Military-Industry Memorandum of Understanding on Loss and Damage Rules*, absent clear and convincing contrary evidence in the record.

### DECISION

Andrews Van Lines, Inc. (Andrews) appeals the January 28, 2003, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 03011301, wherein, the Marine Corps offset \$390.73 against Andrews for transit loss in the shipment of a service member's household goods. [\(1\)](#)

### Background

The record shows that on July 8, 1999, American Carriers, Andrews' agent, delivered the shipment to the member in Quantico, Virginia. A *Notice of Loss or Damage*, DD Form 1840R, describing additional damage was dispatched to American Carriers on October 1, 1999. It also included a statement that the member was not provided a DD Form 1840R at the time of delivery and that the local transportation office provided this form to the member to notify the

carrier of the additional damages. The Marine Corps dispatched its claim to the agent, and offset followed against Andrews. Andrews contends that it cannot be held liable for a *prima facie* case of liability because neither the Marine Corps nor the member dispatched the DD Form 1840R to the address listed in Block 9 of the *Joint Statement of Loss or Damage at Delivery*, DD Form 1840, the opposite side of the DD Form 1840R.<sup>(2)</sup> In its administrative report, the Department of the Navy found that the member and driver completed the DD Form 1840 at delivery, but that the driver retained all copies of the DD Form 1840/1840R set without providing the member a copy.<sup>(3)</sup> The agent neither returned the 1840R nor denied the claim.

On appeal the only issue raised by Andrews is whether the Department of the Navy and our adjudicators erred in finding that the member established a *prima facie* case of liability against Andrews, even though the DD Form 1840R was not dispatched to Andrews.

### Discussion

The issue in dispute is controlled by the *Joint Military-Industry Memorandum of Understanding on Loss and Damage Rules* (MOU), effective January 1, 1992. Paragraph 1A of the MOU provides that "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." However, paragraph 1C provides that "the carrier's failure to provide the DD Form 1840/1840R to the military member and to have proof thereof will eliminate any requirement for notification to the carrier." Based on the statement on the DD Form 1840R and other evidence in the record, the Department of the Navy found that the carrier's agent failed to provide the member with any copy of the DD Form 1840/1840R, and the record is otherwise devoid of clear and convincing evidence of proof that the member was provided with copies of the DD Form 1840/1840R.

The issue here is a factual one. 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. *Compare* DOHA Claims Case No. 02041501(May 14, 2002), *and see* 57 Comp. Gen. 415, 419 (1978).

### Conclusion

We affirm the Settlement Certificate.

Signed: Michael D. Hipple

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Michael D. Hipple  
Chairman, Claims Appeals Board

Signed: William S. Fields

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William S. Fields  
Member, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin  
Member, Claims Appeals Board

1. This matter relates to Personal Property Government Bill of Lading AP-027,833; Marine Corps Claim No. 1456494326800, Navy Claim No. 0205191, and Carrier Claim 20-0294.
2. In reply to a facsimile transmittal from the Marine Corps, the record indicates that Andrews wrote that it was enclosing a DD Form 1840 signed by the member's spouse with Block 9 information. But there is no such document with legible Block 9 information in the record, and Andrews failed to obtain a statement from the driver rebutting the member's position.
3. The Department of the Navy's administrative report was prepared by the Naval Support Activity Mid-South, Carrier Recovery Branch .