

DATE: July 10, 2003

In Re:

Andrews Van Lines, Inc.

Claimant

Claims Case No. 03062301

CLAIMS APPEALS BOARD DECISION

DIGEST

When an item is not listed on the inventory, the member must present at least some substantive evidence of his tender of the item to the carrier beyond his claim and the acknowledgment on it of the penalties for filing a false claim. Such evidence may be a statement reflecting personal knowledge of the circumstances surrounding the tender of the item to the carrier or evidence that the item was actually delivered to the shipper by the carrier, albeit missing some minor parts.

DECISION

Andrews Van Lines, Inc. appeals the May 20, 2003, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 03042805, seeking a refund of \$58.48 that was offset by the Navy for transit loss in a service member's household goods. [\(1\)](#)

Background

On appeal, Andrews takes issue with the offsets related to three items: item #291, a basketball goal (hardware); item #205, a filing cabinet; and item #200, a freezer. With respect to item #291, the basketball goal (hardware), Andrews requests a refund of \$25, based upon its contention that there was "no proof of tender whatsoever for the goal or for the hardware." In support of that contention, it notes that the item was not listed on the original inventory of items tendered.

With respect to item #205, the filing cabinet, Andrews requests a refund of \$16.49, based upon its contention that the Navy accepted its offer of \$30, but instead set off \$46.49.

Finally, with respect item #200, a freezer, Andrews requests a refund of \$16.99, based upon its contention that the Navy should have accepted its \$70 estimate of repair instead of using a \$95.97 estimate submitted by the shipper.

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. 03041004 (April 17, 2003) citing 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.* citing B-235558.4, Mar. 19, 1991. Delivery of an item is circumstantial evidence of tender. *See* B-254197, Feb. 2, 1994. Further, it is not necessary for a shipper to itemize small, individual items which are ancillary to a larger component--such as tools in a tool box. *See* DOHA Claims Case No. 97102410 (December 23, 1997) citing B-256546, Sept. 23, 1994; and B-247876, Aug. 24, 1992.

Here, the record shows that although the basketball goal was not listed on the inventory, it was actually delivered by Andrews to the shipper, minus assorted parts such as nuts and washers.⁽²⁾ *See* B-254197, *supra*. As part of the record, the shipper provided a statement reflecting personal knowledge of the circumstances surrounding the tender of the items to the carrier.⁽³⁾ *See* DOHA Claims Case No. 00091204 (September 21, 2000) citing DOHA Claims Case No. 98072215 (August 24, 1998); DOHA Claims Case No. 96070220 (September 5, 1996); B-260695, Sept. 29, 1995; and B-256688, Sept. 2, 1994. That evidence was sufficient for the adjudicator to conclude that the shipper had met his *prima facie* burden of establishing that item #291 had been tendered. Accordingly, a setoff of \$25 with respect to that item is appropriate.

With respect to the filing cabinet, the record shows that the Navy originally claimed a depreciated replacement costs of \$46.49.⁽⁴⁾ The carrier stated that it would allow \$30 for the item.⁽⁵⁾ The Navy subsequently agreed with \$30 as the appropriate amount of liability.⁽⁶⁾ Their administrative report suggests that the carrier's repair estimate was the only proper estimate available in this claim.⁽⁷⁾ Therefore, we think a setoff of \$30 for item #205 is appropriate. If the Navy has in fact setoff more than that amount for the item, then they should return the excess to the carrier.

Finally, with respect to the freezer, the record shows that the shipper claimed a repair cost of \$95.97, based upon the cost of repair parts obtained from the Sears national repair parts system. That estimate did not appear to include the cost of any labor. The carrier argued for a repair cost of \$70, based upon an estimate of repair prepared by its inspector, Markel--Doctor of Wood. In its administrative report, the Navy stated that because the claimant was not qualified to perform repairs and did not represent a qualified repair firm, liabilities had been arrived at by using the carrier's sole estimate of repair.⁽⁸⁾ Therefore, we think a setoff of \$70 for item #200 is appropriate. If the Navy has in fact setoff more than that amount for the item, then they should return the excess to the carrier.

Conclusion

We affirm the Settlement Certificate, except to the extent modified above.

_____/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 (PPGBL) AP-751,514; Navy Claim No. 02-0202; and carrier reference 220222.
2. *See Joint Statement of Loss or Damage at Delivery*, DD Form 1840, dated August 23, 2001. This statement was signed by the carrier's agent. *Compare* B-243922, July 22, 1991.
3. *Id.* ("#291, Basketball Goal, Mover's disassemble it and no idea where the parts are--they never reassemble it and had no intention to do so as it was told to me. Mover said 'He would not reassemble it' Now no parts").
4. *See List of Property and Claims Analysis Chart*, DD Form 1844.
5. *See* Letter from Andrews Van Lines, Inc., dated August 26, 2002. ("#205, Filing cabinet--We will allow per our estimate---- \$30.00").
6. *See* Letter from the Department of the Navy, dated September 17, 2002. ("Item #205: Concur with your analysis").
7. *See* Department of the Navy, Administrative Report, dated April 23, 2003, at page 4.
8. *Id.*