

DATE: December 9, 2003

In Re:

AAA Transfer & Storage, Inc.

Claimant

Claims Case No. 03120201

CLAIMS APPEALS BOARD DECISION

DIGEST

A carrier can be charged with loss even when the item number is not listed on the notice of loss or damage.

DECISION

AAA Transfer & Storage, Inc. (AAA) appeals the November 20, 2003, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 03111001, insofar as it disallowed AAA's claim for a refund with respect to the transit loss of inventory item #36, listed as "wardrobe, clothes."[\(U\)](#)

Background

In relevant part, the record shows that the shipment was picked up on July 29, 1998, in Jacksonville, Florida, and delivered on August 21, 1998 to Point ugu, California. On the descriptive inventory, item #36 was listed as "wardrobe, clothes." On the *Notice of Loss and Damage* (DD Form 1840R), the shipper reported as missing, but with no inventory number, "clothes, assorted mens & womens * several boxes had no inventory stickers (fell off), therefore it is difficult to identify an inventory #." When the shipper submitted his claim on the *List of Property and Claims Analysis Chart* (DD Form 1844), he identified the missing clothes as being contained in the missing wardrobe box, inventory item #36. He also stated that the missing box was discovered three days after delivery. It was not noted at delivery because much of the shipment arrived with inventory stickers missing. There is no evidence in the record to show that the carrier attempted to obtain any additional information concerning the claim for items lost or damaged during the shipment. The Navy offset AAA with respect to item #36.

The carrier appealed the aforesaid offset stating that item #36 had been delivered sealed and intact. However, AAA provided no evidence in support of that assertion. The carrier also denied liability based upon the fact that it had not been provided a copy of the *Claim for Loss of or Damage to Personal Property Incident to Service* (DD Form 1842).

Again, however, AAA offered no explanation or evidence as to how that circumstance prejudiced their case, or justified a refund.

In the Settlement Certificate, our adjudicators denied the carrier's appeal of the Navy's offset because: 1) tender of the clothing contained in item #36 was established by the facts that the shipper had seen the clothes packed in the carton, and that clothes were specifically listed on the inventory, and 2) the carrier was put on notice that the stickers which identified cartons and items to the inventory had fallen off.

On appeal, the carrier seeks reversal of that decision based essentially upon its previously asserted contentions--arguing that the Navy provided no explanation as to why AAA did not receive the DD Form 1842 and why item #36 is deemed to be missing. It offers no additional evidence or argument in support of its position.

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* case of liability.

Here, the record contained evidence from the shipper that the property in question had been tendered and not delivered. The loss of the clothing was adequately noted on the DD Form 1840R--given the fact that the stickers had fallen off of several of the boxes by the time of delivery--and it was subsequently tied to item #36 in the DD Form 1844. The notice of loss is adequate if it is written, timely (dispatched within 75 days) and sufficient in content to alert the carrier that there may be a claim for loss or damage and that it should investigate the facts surrounding the loss or damage. The shipper does not have to limit himself to specific descriptive inventory numbers, especially, as here, where stickers had fallen off several of the boxes. *See* DOHA Claims Case No. 97122314 (February 23, 1998); and DOHA Claims Case No. 97112401 (December 11, 1997). AAA was given sufficient facts in the DD Form 1840R to investigate the loss.

We are unaware of any requirement to provide a carrier a copy of the DD Form 1842, or to provide any claim related documents other than the DD Form 1840R within a certain limit prior to the expiration of the statute of limitations.

The carrier provided no evidence to support its contentions that item #36 had been delivered sealed and intact. It also offered no explanation or evidence as to why the receipt of the DD Form 1844 subsequent to the date of delivery justified a refund. Therefore, on the facts before us, we think the adjudicator's conclusion that the clothing in item #36 was tendered to the carrier and subsequently not delivered was a reasonable one. *Id.*

Conclusion

We affirm the Settlement Certificate.

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

_____/s/
William S. Fields

ember, Claims Appeals Board

/s/

Christine M. Kopocis
ember, Claims Appeals Board

1. This matter involves Personal Property Government Bill of Lading YP-763051; Navy Claim No. 0202009; and carrier Claim No. Unknown.