

DATE: October 20, 2003

In Re:

Resource Protection

on behalf of

Carlyle Van Lines, Inc.

Claimant

Claims Case No. 03100615

CLAIMS APPEALS BOARD DECISION

DIGEST

The burden of establishing fraud rests upon the party alleging it, and must be proven by evidence sufficient to overcome the presumption of honesty and fair dealing

DECISION

Resource Protection, on behalf of Carlyle Van Lines, Inc. (Carlyle) appeals the September 23, 2003, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 03090208, which disallowed Carlyle's claim for a refund of \$401.95 offset against it for transit damage to a service member's household goods. [\(1\)](#)

Background

The record indicates that Carlyle picked up the member's household goods in Salisbury, Maryland on November 15,

2001, and delivered them to his new duty station in Mayport, Florida, on December 10, 2001. The member claimed damage on two items in the Descriptive Inventory: Item 19, a speaker system; and Item 33, a Sony receiver (serial number 8139256). The record also contains, among other things, a repair estimate dated December 18, 2001, for the stereo receiver with the above-referenced serial number, Model STR-DE345, indicating the need to re-build a display board at a total repair cost of \$301.28. There was a separate signed repair statement dated December 20, 2001, from the repairer explaining that there was no external damage to the receiver but the display board was broken. The member's statement dated December 21, 2001, explained that the receiver was in working order on November 13, 2001, when he listened to it while packing.

The record also contains similar documentation with regard to Item 19: a repair estimate for \$448.46 dated December 18, 2001, indicating a need to repair the cabinet and replace the front grill cover of a Sony SA-VA15 speaker system; a separate signed repair statement from the repairer dated December 20, 2001, stating that he observed external damage to the speaker system; and a statement from the member dated December 21, 2001, stating that Item 19 was working on November 14, 2001, when he watched television with it and that it did not work after delivery.

The record includes a copy of a *Notice of Loss or Damage* (DD Form 1840R) listing the two damaged items, but does not contain a date of dispatch or the address to which dispatched. It was signed by a claims office representative on "01 Dec 17."

The record indicates that a demand on the carrier was dispatched on December 4, 2002, and apparently included a copy of the *Joint Statement of Loss or Damage at Delivery* (DD Form 1840) with the two damaged items noted on it and crossed-through. Carlyle responded on January 24, 2003, denying liability (replacement cost) of \$161.95 for the receiver because the damage was concealed mechanical damage and \$240 for replacement of the speaker system because the Navy failed to include supporting documentation.

Resource Protection contends that there is only one issue on appeal: "the fraudulent copies of the 1840/1840R used by the Navy to pay the claim." As we understand Resource Protection's position, the only thing actually written on the DD Form 1840 was the number "64," and the DD Form 1840R was fraudulent because it had a "dispatch date" of December 1st, a date prior to delivery. Resource Protection suggests that its client relied on these misleading documents to settle the claim in January 2003. Based on this, Resource Protection then argues that it ought to be allowed to now raise the inadequacy of the notice of loss, which failed to meet the requirements in the Joint Military-Industry Memorandum of Understanding on Loss and Damage Rules (JMIMOU) effective January 1, 1992. Resource Protection also provides a copy of a statement signed by the member on December 10, 2001, certifying the receipt of all stereo equipment and acknowledging their receipt in good order. Finally Resource Protection criticizes the Navy's failure to provide the carrier with copies of the damage estimates.

Discussion

The burden of establishing fraud rests upon the party alleging it, and must be proven by evidence sufficient to overcome the presumption of honesty and fair dealing. Circumstantial evidence is competent if it affords a clear inference of fraud and amounts to more than suspicion or conjecture. If, however, the circumstances are as consistent with honesty and fair dealing as with dishonesty, the finder of fact must draw an inference of honesty. *See* the Decision of the Comptroller General in B-255226 (Mar. 24, 1994); and B-207393 (May 23, 1983). The Navy's processing of this claim may have been haphazard for reasons we will discuss, but nothing that we can see here suggests fraud. First, we can interpret the signature date on the DD Form 1840R "01 Dec 17" as December 17, 2001, if this entry is read as year, month and day. (2) This would appear to be a reasonable interpretation given other facts on the record. Second, for whatever reason someone in the claims office, or perhaps the member as suggested in the Navy's administrative report, may have had for writing in the two damages on the Navy's copy of the DD Form 1840, it is also clear that they realized it was a mistake and crossed-through these entries. Finally, an experienced carrier like Carlyle, should have checked its own records when presented with a copy of a DD Form 1840R that arguably was facially incomplete (3) and with a copy of a DD Form 1840 with entries that were crossed-through. Such evidence is hardly consistent with fraudulent intent.

In summary, other than speculation, Resource Protection offers no evidence to support its bald assertion that the Navy

committed fraud, and it does not otherwise offer cogent reasons suggesting that we should now consider a defense that its principal failed to raise when it had the opportunity to do so. A piecemeal presentation of a claim is not favored. *See* DOHA Claims Case No. 98032303 (April 14, 1998). For the same reason, at this point in the process, we will not consider the member's purported statement at delivery indicating that all stereo equipment was delivered in good working order.

A *prima facie* case of carrier liability exists when the shipper shows tender in good condition, failure to deliver or arrival in damaged condition, and the amount of damages. Thereupon, the burden of proof is upon the carrier to show both that it was free from negligence and that the damage to the cargo was due to one of the excepted causes relieving the carrier of liability. *See Missouri Pacific Railroad Company v. Elmore & Stahl*, 377 U.S. 134, 138 (1964).

The Descriptive Inventory, plus the repairer's and shipper's statements as noted above provide a sufficient basis to meet this standard. The Navy's administrative report states that it provided copies of all necessary documentation, including estimates, to the carrier. On appeal, Resource Protection contends that Carlyle did not receive any estimate or the member's supporting statements. When there is a conflict in the facts between the government agency and the claimant, we accept the agency's statement of the facts absent clear and convincing contrary evidence. *See* 57 Comp. Gen. 415, 419 (1978). There is no clear and convincing contrary evidence here. However, we emphasize that providing supporting documentation to the carrier is not optional, and in some instances, the failure to do so could materially prejudice the carrier's ability settle the claim or defend itself.

Conclusion

We affirm the Settlement Certificate for the reasons stated herein.

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: William S. Fields

William S. Fields
Member, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

1. This matter involves Personal Property Government Bill of Lading AP-720,399; Navy Claim No. 0300283 and Carlyle Claim No. 02-177.

2. Such an approach is not unusual in the military services where dates are often expressed as year, month and day, except that the month is usually expressed in numerical form (*e.g.*, 011217 for 17 December 2001).

3. As Resource Protection points out, Paragraph 1A of the JMIMOU requires dispatch of the DD Form 1840R for reporting additional damages after delivery to the carrier at the address in Block 9 of the DD Form 1840. Navy officials failed to enter an address to which the DD Form 1840R was dispatched and a date of dispatch.