DATE: July 9, 2003

In Re:

American Eagle Van Lines, Inc.

Claimant

Claims Case No. 03062302

CLAIMS APPEALS BOARD DECISION

DIGEST

1. As the last custodian of the shipment, a carrier removing goods from a storage facility for delivery is presumed liable for any loss or damage.

2. Where a carrier provides no evidence nor specific argument as to why depreciation should be applied for the time period that a good is in storage, we accept the service's calculation of depreciation which may not include depreciation for that time period.

3. Where a carrier provides no evidence nor specific argument as to why minor preexisting damage warrants application of a depreciation rate different from the standard rate provided for in the *Joint Military/Industry Depreciation Guide* (JMIDG), we accept the service's application of the standard rate.

DECISION

American Eagle Van Lines, Inc., appeals the June 12, 2003, Settlement Certificate in DOHA Claim No. 03052705, which sustained the Navy's setoff against American Eagle for recovery of items lost or damaged in the transit of a shipper's household goods.[(1)] American Eagle seeks a refund of $126.65 with respect to two items--item #67, a bookcase, and item #76, a wheelbarrow.

Background

The record shows that the carrier picked up the shipment in Salinas, California, on March 16, 1998, and delivered it to non-temporary storage (NTS) at that same location. On the inventory, item #67 was listed as a glass book shelf, with

damage to it described as "front top, front bottom legs, right rear, left side, broken, scratched, gouged." Item #76 was listed as a wheelbarrow. The carrier's agent, Blue Ribbon Movers, picked up the shipment from NTS on October 16, 2000, and delivered it in Charleston, South Carolina, on November 21, 2000. The record does not show that carrier's agent performed an inspection of the shipment when it was picked up from NTS, and no rider or exception was prepared.

On the *Joint Statement of Loss and Damage at Delivery* (DD Form 1840), the shipper and the carrier's representative noted that item #67 was "completely destroyed." On the *Notice of Loss and Damage* (DD Form 1840R) which was dispatched on January 8, 2001, the shipper reported: "#76, wheelbarrow, wrong one delivered--moving company already took the wrong one away." The record does not show that the carrier or its agent performed an inspection, or an investigation of the reported loss or damage. Further, there were no statements from any of the drivers to dispute what was stated with respect to the two items, or explain whether the carrier had attempted to trace the last item.

In the Settlement Certificate, our adjudicator allowed an offset of $85 for item #67, based upon the application of a 10 percent deduction for depreciation to a replacement cost of $95, and an offset of $41.45 for item #76, based upon the application of a 15 percent deduction for depreciation to a replacement cost of $49. On appeal, American Eagle seeks reversal of the Settlement Certificate based upon their contention that the book case was already damaged when tendered, and it was the NTS's responsibility to get the correct wheelbarrow to the shipper. Alternatively, it argues for the application of a 30 percent depreciation rate for item #67, based upon a rate of 10 percent a year for the three year period 1997 to 2000. That three year period includes the two years that the item was being held in NTS. They also argue that there should be some deduction for the preexisting damage to that item. The carrier offers no additional evidence in support of its arguments.

Discussion

Under federal law, in an action to recover from a carrier for damage to a shipment, the shipper establishes a *prima facie* case when he 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). When the goods pass through the custody of several bailees, it is a presumption of the common law that the loss or damage occurred in the hands of the last carrier or forwarder to act as the custodian of the goods. *See* DOHA Claims Case No. 96070211 (October 2, 1996) citing 57 Comp. Gen. 415, 417 (1978).

In previous decisions, we have affirmed a military service's adjudication of damages against a carrier even where there is damage to an item similar to previously noted damage, if there was some documentary evidence that additional damage occurred during transit. *See* DOHA Claims Case No. 00080117 (August 29, 2000) citing DOHA Claims Case No. 96080215 (March 6, 1997); DOHA Claims Case No. 96070212 (November 27, 1996); and DOHA Claims Case No. 96070204 (September 5, 1996). Only where the record shows preexisting damage and lacks evidence of greater or different damage incurred in transit have we considered the carrier to not be liable. *Id.* citing B-248535, Oct. 23, 1992.

With respect to item #67, the evidence was sufficient to establish that it was tendered by the shipper with some discrete, noted, wear and damage, and delivered to the shipper "completely destroyed." Thus, the latter damage was clearly greater than, and different from, the preexisting damage. *Id.* A carrier accepts a shipment only in apparent good order. *See* B-193182, June 16, 1981. Had the item been completely destroyed at the time it was tendered, then it should not have been accepted for shipment. As the last custodian of the shipment, the carrier is presumed liable for the destruction of the item. It could have avoided liability by showing that the destruction did not occur while the item was in its custody. For a carrier removing goods from NTS for delivery, that showing may be made by preparing an exception sheet--a rider--to the inventory. The rider then can serve to rebut the general common law presumption of the last carrier's liability. *See* DOHA Claims Case No. 96070231 (February 10, 1997) citing B-252817, Apr. 19, 1993 and B-243477, June 6, 1991. In this case, there is no evidence that the carrier performed an inspection of the shipment when it was picked up from the NTS, and no rider or exception sheet was prepared. Accordingly, the carrier produced no

evidence sufficient to overcome its *prima facia* liability for the destruction of item #67.

Similarly, with respect to item #76, the evidence was sufficient to establish that it was tendered by the shipper and then never delivered, because the carrier apparently picked up a different wheelbarrow from the NTS. Again, as the last custodian of the shipment, the carrier is presumed liable for the missing item. It could have avoided liability by tracing and acquiring the correct wheelbarrow from the NTS. Thus, the carrier is not relieved of liability as the last custodian of the shipment if loss or damage arises. *See* DOHA Claims Case No. 96070231, *supra* citing 57 Comp. Gen. 415, 417-18, *supra* . Accordingly, the carrier produced no evidence sufficient to overcome its *prima facia* liability for the loss of item #76.

Finally, we do not question an agency's calculation of the value of damages unless the carrier presents clear and convincing evidence that the agency acted unreasonably. *See* DOHA Claims Case No. 01050801 (May 23, 2001) citing DOHA Claims Case No. 96070206 (September 5, 1996); B-255697, Apr. 22, 1994; and B-249833, Jan. 14, 1993. If the agency had any reasonable justification for the bases it used to adjudicate the claim then we affirm. *Id.*

At the time of movement, the *Joint Military/Industry Depreciation Guide* (JMIDG) provided a 10 percent annual rate of depreciation against replacement costs for item #67, with a maximum depreciation at 75 percent, assuming average care and usage. The Navy applied one year of depreciation while the carrier argues for applying three years. It appears that the two year difference relates to whether depreciation applies while the item was in NTS. Service adjudicators and DOHA will consider evidence from the carrier that demonstrates that an item is subject to wear and usage even while it is in NTS. But, when a carrier provides no evidence nor specific argument regarding why depreciation should be applied during NTS, we accept a service's calculation of depreciation which does not include depreciation during storage. *See* DOHA Claims Case No. 01050801, *supra* citing DOHA Claims Case No. 96080207 (June 6, 1997). Similarly, when a carrier provides no evidence nor specific argument as to why preexisting damage warrants application of a depreciation rate different from the standard rate provided for in the JMIDG, we accept a the service's application of the standard rate.

Conclusion

We affirm the Settlement Certificate.

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

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

/s/
Jean E. Smallin
ember, Claims Appeals Board

1. U.S. Government Bill of Lading No. AP-530,506; Navy Claim No. 0306483; and Carrier Claim No. 210029.