DATE: March 22, 2004

---

In Re:

Resource Protection

on behalf of

Covan International, Inc.

Claimant

---

Claims Case No. 04031503

## CLAIMS APPEALS BOARD DECISION

### DIGEST

A *prima facia* case of liability may be established with regard to internal damage to a refrigerator when the shipper provides (1) evidence that the item in question was in good working order at the time of tender, and (2) evidence of visible impact-caused damage to a normally sturdy internal component.

### DECISION

Resource Protection appeals Defense Office of Hearings and Appeals (DOHA) Settlement Certificate 03071801, February 25, 2004, in which this Office upheld the Navy's set off for transit damage to a service member's household goods.[(1)] In its appeal, the carrier takes issue with respect to an offset in the amount of $221.96 for damage to a refrigerator (inventory item 98/99). Accordingly, that is the only item which will be addressed in this decision.

### Background

In relevant part, the record shows that the shipment was picked up on June 20, 1994, in Chesapeake, VA, and placed in non-temporary storage (NTS) in Portsmouth, VA. On May 17, 1995, under a new government bill of lading, the carrier picked up the shipment from NTS in that city, and it was delivered on May 24, 1995, to Ironwood, I.

With respect to item 98/99, the refrigerator, the inventory stated that its mechanical condition was unknown, but that the top front of its exterior was scratched and rubbed. On the rider, it was noted that the item was badly soiled and stained.

The carrier never checked the mechanical condition of the item. On the *Notice of Loss or Damage* DD Form 1840R, the shipper simply noted that the refrigerator "doesn't work."

The record contained two repair estimates submitted by the shipper--both of which were quite similar. One estimate noted that there was no external damage to the item and that the evaluator was unable to determine with reasonable certainty the nature of any internal damage: "Found refrigerator not cooling due to freon shortage. Cause unknown. Possible damaged in moving?" His notations indicated only that the freon had "leaked out" and that "being 10 years old," the "refrigerator [was] not worth repairing."

The other estimate also noted that there was no external damage to the item and that the evaluator was unable to determine with reasonable certainty the nature of any internal damage: "damage may have been caused by shipping and handling." As in the case of the first estimate, the evaluator's notations indicated only that the freon had "leaked out" and that the refrigerator was not worth repairing because it was 10 years old. Additionally, his notations suggested that his speculative conclusion that the refrigerator's loss of freon may have been caused by shipping and handling was based principally upon statements made to him by the shipper, rather than upon his evaluation of the items physical condition: "I came to this conclusion because: customer said refrigerator in good working condition before shipping."

In the Settlement Certificate, our Office found that the service had established a *prima facia* case of liability against the carrier with respect to the item in question. On appeal, the carrier argues that it should not be held liable for that damage because: (1) the freon container was an internal component, totally within the framework of the refrigerator, and thus not reasonably subject to inspection; (2) under established procedures, carriers do not unplug and plug in appliances, and therefore have no opportunity to determine whether or not those items are in working order when received; (3) the evidence does not establish that the freon leakage was transit-related damage--it could have leaked out because of non-use; (4) the service took almost four years after the demand to make their setoff; and (5) the service did not maintain the records relating to this case in accordance with their regulations.

**Discussion**

The service's administrative report noted that the government's file for this claim had been destroyed. As a result, the appeal to our Office was based upon incomplete documentation which was provided by the carrier. In this case, we do not think the delay or the file's destruction affects the outcome. Neither party to this proceeding has directed our attention to anything in the Navy's destroyed claim file that would have been helpful to either party. Accordingly, we can evaluate the issue before us on its merits.

The issue here is whether the Navy presented enough evidence to establish a *prima facie* case of liability against the carrier. To do so, the service member, and the Navy in subrogation, generally must show that the carrier received the item in good condition; that it delivered the item in a damaged condition; and the amount of damages. Thereafter, the burden shifts to carrier to show that it was free from negligence and that the damage was due to an excepted cause relieving it from liability. *See Missouri Pacific Railroad Company v. Elmore & Stahl*, 377 U.S. 134, 138 (1964). Additionally, in concealed-damage cases, the claimant must establish that neither the shipper nor the consignee could have been responsible for the damage and that as a matter of logical deduction, the loss must have occurred while the goods were in the carrier's possession. *See* B-211222, Apr. 15, 1983 citing *Elder & Johnson Co. v. Commercial Motor Freight*, 115 N.E. 2d 179 (Ct. App. Ohio 1953); and B-183483, Nov. 29, 1976.

As a general rule, a carrier accepts a shipment only in apparent good order. *See* B-257515, Dec. 1, 1994 citing B-193182, June 16, 1981. However, a carrier is neither required nor expected to test an item such as an appliance prior to accepting it for shipment. *See id.*;and B-197911.5, June 22, 1989. That, however, does not end the matter. The carrier may still be held liable if two other circumstances are present. The first is that there is sufficient evidence to establish that the item was in proper working order prior to shipment. *See* DOHA Claims Case No. 96070220 (September 5, 1996); and DOHA Claims Case No. 98020215 (February 10, 1998) citing B-257884, Jan. 25, 1995. The second is that there is internal physical damage to the item which is consistent with its having been mishandled or dropped--in other words, "visible impact-damage." See *id*. This latter circumstance is established if there is evidence that "a normally sturdy internal component was physically broken." *See* B-255777.2, May 9, 1994; and DOHA Claims Case No.

98020215, *supra.* Such evidence is not present in this case.

Here, the evidence, in the form of the two repair estimates, showed only that freon, a gas, had leaked out of a 10 year-old refrigerator that had been in storage for almost a year. That evidence did not describe or identify the source of the leak. Nor did it describe or identify any visible, impact-caused physical damage, to any normally sturdy internal component of the refrigerator. Accordingly, liability has not been established. *See* DOHA Claims Case No. 96070220, *supra*; and B-197911.5, *supra*. *Compare* B-255777.2, *supra*; B-257515, *supra*; and B-258665, Apr. 6, 1995. The carrier should be refunded $221.96 for the refrigerator.

**Conclusion**

The settlement is modified accordingly.

_____/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. This transaction involves Personal Property Government Bill of Lading VP-390,021; Navy Claim No. 0309333; and the carrier's Claim No. 06-1601-95.