

DATE: March 11, 2004

In Re:

Resource Protection

on behalf of

Cartwright International Van Lines, Inc.

Claimant

Claims Case No. 04030801

CLAIMS APPEALS BOARD DECISION

DIGEST

The carrier is liable for transit damage when the pre-existing damage involved cracked trim but the claimed damage involved broken and missing molding or trim.

DECISION

Resource Protection, on behalf of Cartwright International Van Lines, Inc. (Cartwright)⁽¹⁾ appeals the February 23, 2004, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 03071802 that affirmed the Navy's disallowance of Cartwright's claim for a refund of part of the amount that the Navy had set off against Cartwright for transit damage to a service member's household goods.⁽²⁾

Background

In relevant part, the record indicates the shipment was picked up on April 20, 1988, in San Diego, California, and placed into non-temporary storage (NTS) in that city. Inventory Item No. 5 (Item 5) on the NTS inventory described the item as a "hutch top panel" with significant pre-existing damage (PED). Item 6 on the NTS inventory was described as a "hutch top" also with PED. Cartwright obtained the shipment from NTS on January 25, 1993, and delivered it to the member in South Carolina on February 3, 1993.

An examination of the inventory indicates that some of the PED remarks about Item 5 are legible and some are not. We construe those remarks as follows: the sides and edges were chipped and dented; the right front corner was broken; the front trim pieces were cracked and contained other damage that is not legible; and the edges were damaged in some

manner that is not legible. When Cartwright obtained the shipment from Allstate, it reported the following exceptions for Item 5: the right, side, front corner was chipped and broken. On the *Joint Statement of Loss or Damage at Delivery* (DD Form 1840), the member's representative and Cartwright's driver noted the following damage to Item 5, which was described there as a "hutch top" or "hutch tab": "(7) corner trim tips broken." On the *List of Property and Claims Analysis Chart* (DD Form 1844), the member claimed \$275 of repairs on the "china hutch top panel" for five missing or broken moldings under Item 6. The portion of the repairer's estimate involving the \$250 repair described repair work to the "china hutch top panel" as five broken or missing moldings (one new and four reconstructed).

DOHA's Settlement Certificate found that the Navy had established a *prima facie* case of liability against the carrier and that the repair estimate indicated damage to Item 6. It found that the repaired damages were not PED, and that the carrier never inspected the damaged shipment. Noting that the Navy had destroyed its claim file in this matter in accordance with its record retention regulation, the Settlement Certificate settled Cartwright's claim based on documents that Resource Protection submitted.

On appeal, Resource Protection noted that the demand against it was submitted on May 18, 1993, but offset did not occur until November 1, 1997. Resource Protection forwarded an appeal of the offset in correspondence dated August 13, 1998, to the Naval Legal Service Office in Charleston, South Carolina, with an advance copy to DOHA that was received by DOHA on August 17, 1998. Resource Protection contends that it timely appealed, that the Navy destroyed its claim records in violation of its own regulations, and that under those regulations the Navy should have retained the claim file until November 1, 2000, three years after the offset. We interpret Resource Protection's argument on this point to be that the Settlement Certificate erred to the extent that DOHA did not fully re-adjudicate the refund claim but limited its analysis to the records still available. Finally, on the substance, Resource Protection contends that Item 5, not Item 6, is the item involved in the claim. The DD Form 1840 reported broken "tips," while Item 6 reported "tips chipped." In effect, Resource Protection argues that the member is seeking recovery for damage to PED that Cartwright is not liable for.

Discussion

In order to hold a common carrier liable for damage in transit, the shipper bears the initial burden of establishing a *prima facie* case of liability by showing that the goods transported were in better condition when received by the carrier at origin than when delivered by the carrier at destination. See *Missouri Pacific Railroad Company v. Elmore & Stahl*, 377 U.S. 134, 138 (1964); and the Comptroller General's decision in 63 Comp. Gen. 479, 480 (1984). The burden was on Cartwright and its agent to clearly document remarks concerning any PED because they prepared the inventory. Compare B-260695, Sept. 29, 1995.

While we do not understand why the Navy delayed the processing of this claim for as long as it did, we do not see how the delay or claim file destruction would affect the outcome here. Neither Resource Protection nor any component of the Department of Defense have directed our attention to anything in the Navy's destroyed claim file that would have been helpful to either party. In effect, the issues here are whether Item 5 or Item 6 is the item claimed by the member for repair, and whether those estimated repairs would repair any new, transit-related damage.

First, reviewing the copies of the documents submitted by Resource Protection, we agree with Resource Protection the claim involves Item 5, not Item 6. The descriptive inventory clearly distinguished between a "hutch top panel" and a "hutch top." The estimate referred to the "hutch top panel," and the DD Form 1844 described the damaged item as a "china hutch top panel." While the member also described the "china hutch top panel" as Item 6, we are not persuaded that this numbering is more important than the description itself. Moreover, the types of damages noted in the DD Form 1840 under Item 5 are more consistent with the damage claimed and the repair estimate.

The remaining question is whether the estimated repair would have repaired any new, transit-related damage to Item 5. Where the record shows the existence of pre-existing damage and lacks evidence of greater or different damage incurred in transit, the carrier is not liable for damages. See 63 Comp.Gen.479, *supra*. Often, in such situations, we cannot distinguish between the PED and the claimed damages. Here, however, the PED described front trim pieces that were cracked, but there is no indication that trim or molding was broken or missing. Therefore, there is substantial evidence

that the repair involved new, transit-related damage. Cartwright has not demonstrated by clear and convincing evidence that the broken and missing moldings could have been repaired for less than \$250. *See* DOHA Claims Case No. 97032112 (September 8, 1997); and DOHA Claims Case No. 97021808 (June 25, 1997).

Conclusion

As modified, we affirm the Settlement Certificate.

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. In this appeal Resource Protection also represents the interests of Allstate Van & Storage, who appears to be Cartwright's origin agent and NTS warehouseman.
2. This matter involves Personal Property Government Bill of Lading VP-207,340; Navy Claim No. 0309323; and Cartwright's claim 976,736.