April 27, 2004

In Re:

Resource Protection on behalf of

Blue Sky Van Lines

Claimant

Claims Case No. 04041907

CLAIMS APPEALS BOARD DECISION

DIGEST

Generally, a carrier's liability for transit damage is the lesser of depreciated replacement cost or repair cost, but if a Service obtains a repair estimate on a damaged item, it is not required to also document the depreciated replacement cost unless the carrier offers one. Under the *Joint Military-Industry Memorandum of Understanding on Loss and Damage Rules*, the carrier has the right to inspect the damaged property and may offer its own repair estimate or determine the appropriate replacement cost for the damaged item. However, depreciated replacement cost is not calculated by depreciating the value of the property at acquisition. The carrier cannot overcome a repair estimate for purposes of a *prima facie* case of liability against it merely by arguing that a depreciated replacement cost, based on a depreciation of the value of the property at acquisition, is less than the repair cost.

DECISION

Blue Sky Van Lines appeals the March 31, 2004, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 04022309, which disallowed Blue Sky's claim for a refund of $472.50 of a $722.50 offset for the cost of repair to a dining room table and two chairs damaged during an employee's shipment of household goods. (1)

Background

The record indicates that the employee's household goods were picked up in Silverdale, WA, on July 18, 1997, and delivered to Burke, VA, on November 7, 1997. The shipper claimed damage to the items at issue and submitted the supporting documentation in the form of an estimate of the value of $1,000 for the set of items at the time they were inherited in March 1987, and a repair estimate of $885 for the set of items: $650 for the table, $85 for one chair, and $150 for the other chair. The carrier did not conduct an inspection of the items or offer its own repair/replacement estimate.

The Navy offset $722.50 for the items, based upon a deduction for preexisting damage from the $1000 value of the items at the time of inheritance. The carrier appealed the Navy's decision to our office contending that the service should have instead applied the *Joint Military-Industry Depreciation Guide* (JMIDG)annual depreciation rate for "ordinary" wood of seven percent to the $1,000 value at inheritance--a circumstance which they claim would have resulted in a correct offset of only $297.50. The carrier claims that that figure would have been significantly lower than either the Navy's offset or the repair costs, and that it is only liable for the lower figure. In their administrative report, the Navy responded that the items at issue were "solid" wood. Therefore, the $1,000 value of the items at the time they were inherited would only be subject to an annual depreciation rate of two percent. Our Office affirmed the Navy's offset, accepting their conclusion that the items at issue were "solid" wood but noting that it is the replacement cost that is depreciated, not the original value at acquisition.

The carrier now appeals that determination, arguing in essence that it had "accepted" the shipper's $1,000 valuation of the items at the time of inheritance, in the place of its replacement cost, but that that figure should first have been depreciated at the annual rate for "ordinary" wood. They further argue that had they not accepted that valuation, the shipper would have failed to establish its *prima facia* case as to the amount of damages. In support of that position, they cite to the decision of the Comptroller General in B-247430, July 1, 1992.

Discussion

To establish a *prima facie* case of liability against the carrier, the employee (or the Service in subrogation) must show that the carrier received the goods in a certain condition; that it delivered them in a more damaged condition; and the amount of damages. Thereafter, the burden shifts to the carrier to show that it was free from negligence and that the damage was due to an excepted cause relieving it from liability. *SeeMissouri Pacific Railroad Company v. Elmore & Stahl*, 377 U.S. 134, 138 (1964). In so far as damages are concerned, as a general rule a carrier's liability is limited to the lower of the repair costs or the depreciated replacement costs. *See, e.g.*, DOHA Claims Case No. 02090311 (September 19, 2002).

The principal issue on appeal is whether Resource Protection is correct in asserting that the Navy was required to demonstrate the depreciated replacement cost of the items, as well as their repair costs, and whether it can competently prove depreciated replacement cost (and consequently lower liability) simply by depreciating the value of the items at acquisition. We note that we have repeatedly rejected this approach when it has been advanced by Resource Protection in other cases. *See Id.* and DOHA Claims Case No. 99081805 (October 5, 1999). As we pointed out in DOHA Claims Case No. 99081805, the general practice in calculating depreciated replacement cost is to depreciate the replacement cost of an item at the time and place of delivery. We are not aware of any authority that sanctions a depreciation of the value at the time of acquisition years earlier as the basis for depreciated replacement cost. Under the *Joint Military-Industry Memorandum of Understanding on Loss and Damage Rules*, effective January 1, 1992, the carrier has the right to inspect the damaged property and may offer its own repair estimate. The carrier's estimator is also free to determine the price of the appropriate replacement--to which depreciation is applied. In DOHA Claims Case No. 99081805, as in this case, the carrier did not avail itself of those opportunities. In this case, the carrier could have conducted an inspection of the damaged property, and proposed either a repair cost or a depreciated replacement cost based on that inspection. It did not do so. Resource Protection once again proposes depreciating the value at the time of acquisition and once again appears to ignore our previous decisions rejecting such an approach in prior cases where it represented other clients. In this regard, Resource Protection has significantly failed in meeting its burden of proving, by clear and convincing evidence, that the Service acted arbitrarily, capriciously or unreasonably. *See* DOHA Claims Case No. 99080320 (August 20, 1999).

In the present case, the only figure for damages which has been proven with reasonable certainty is the $885 estimated repair costs for the items which was submitted by the shipper. The carrier has not offered any evidence to support a lesser amount. Accordingly, in this case, the Navy could have offset that larger amount against the carrier. Because the $772.50 offset is less than that amount, we will not disturb it on appeal.

The carrier' reliance on the decision of the Comptroller General in B-247430, *supra*, is misplaced. In that case, the shipper did not offer evidence as to the item's replacement cost, and because the item at issue was lost, repair costs were not in issue. Moreover, because the property at issue had been lost, the carrier had no opportunity to inspect it and offer its own evidence.

Finally, we can reach no conclusion with respect to the parties conflicting contentions as to whether the items at issue are made of "solid" or "ordinary" wood for the purposes of depreciation. The JMIDG provides for a two percent annual depreciation rate for "expensive, solid wood furniture such as cherry, walnut, teak, rosewood, oak, etc." It provides for a seven percent annual depreciation rate for "Ordinary Wood (including all other natural woods and man-made woods and wood veneers, such as pressed wood, Particle Board)." As a general rule, with respect to disputed questions of fact, because the administrative office is in a better position to consider and evaluate the facts, we will accept the statement of facts furnished by the administrative office, in the absence of clear and convincing contrary evidence offered by the member or other claimant. *See* DOHA Claims Case No. 01060501 (June 20, 2001), *aff'd* Deputy General Counsel (Fiscal) (March 8, 2002) citing 57 Comp. Gen. 415, 419 (1978). In the current case, however, the record does not contain sufficient evidence for us to determine whether the items in question are made of "solid" wood or "ordinary" wood. The evidence in the record, such as the inventory, the DD Form 1840, DD Form 1840R, DD Form 1844, and the repair estimate, only describe the items generically as a dining table and chairs--with references indicating that they had damaged or missing "wood." The Navy concluded that the items were "solid" wood based upon the fact that the items were inherited in 1987, subsequently well cared for, and "the mass production of presswood [only] made its mark in the furniture industry in the late 1980s." That speculative conclusion is not an adequate substitute for record evidence, particularly in a case like this where definitive evidence is readily obtainable.

For similar reasons, the carrier's assertion that the items at issue are "ordinary" wood, because they are described in the inventory as "unfinished wood" is also speculative. The items are not described in the inventory as "unfinished wood." The inventory merely stated that the chairs had "seat[s] unfinished"--a description which would suggest that the seats were unupholstered or unpadded. Once again, we note that the carrier had an opportunity to inspect the items at issue and acquire the evidence necessary to support its position. It failed to do so.

Conclusion

We affirm the Settlement Certificate for the reasons stated herein.

_____/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 matter involves Personal Property Government Bill of Lading ZP-114,420; Navy Claim No. 0204023; and Carrier Claim No. 01-58.

2. The depreciation rates under the then applicable JMIDG are found in Department of the Army Pamphlet 27-162, *Claims Procedures*, Table 11-4, at pp. 439-43 (1 April 1998).