AFF'D August 9, 2004

DATE: April 29, 2004

In Re:

AAA Transfer & Storage, Inc.

Claimant

Claims Case No. 04042702

CLAIMS APPEALS BOARD DECISION

DIGEST

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

2. When items are not listed on the inventory, the member must present at least some substantive evidence of his tender of the items to the carrier beyond his claim and the acknowledgment on it of the penalties for filing a false claim. Such evidence may be a statement reflecting personal knowledge of the circumstances surrounding the tender of the item to the carrier or evidence that the item was actually delivered to the shipper by the carrier, albeit in a damaged condition.

DECISION

AAA Transfer & Storage, Inc. (AAA) appeals the January 12, 2004, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 03121201, in which this office upheld the Navy's set off of $955.63 for transit damage to six items in a service member's household goods shipment.[(1)] In its appeal, the carrier takes issue with respect to the total amount of the offset as well as the specific offsets for four items.

Background

In relevant part, the record shows that the shipment was picked up on May 25, 2001, in Winter Park, Florida, and delivered on August 6, 2001, to Mayport, Florida. On the *Notice of Loss and Damage* (DD Form 1840R), which was dispatched on August 28, 2001, the shipper reported the following with respect to the four items at issue: #207, "Damaged Gateway computer (not working)"; #212, "Damage end tables cracked & scratched"; #213, "Lost Legs to SM. Round Table (3)"; and #261, "Damaged Futon Frame Cracked (Unusable)."

The shipper submitted a repair estimate for item 207 which stated that there was no external damage to the computer, but that internal components, including two drives, the motherboard, and the keyboard, had been damaged. The repairman stated to the best of his belief, the damage had been caused by impact, and the shipper submitted a statement that the computer had been in working order before it was tendered. With respect to item 261, the shipper submitted a

replacement cost estimate which contained a telephone number to call if there were any questions. On the *List of Property and Claims Analysis Chart* (DD Form 1844), the items are listed as having the following depreciated replacement costs: #207 ($359.10), #212 ($79.20), #213 ($10), and #261 ($211.15). There was no evidence in the record that the carrier had conducted an inspection of the reported damage.

By letter dated October 16, 2002, the Navy stated their willingness to accept the carrier's offer of settlement with respect to items 212, 213, and 261, but maintained that the carrier was still liable for item 207. By letter dated October 22, 2002, the carrier responded to the Navy's letter by continuing to deny liability for item 207 and stating that they regretted that settlement could not be achieved with respect to the case.

The carrier appealed the aforesaid offset to our Office contending that the shipper had failed to establish a *prima facia* case of liability for damage to the four items. With respect to item 207 (the computer), the carrier argued that it was out of warranty, had no external damage, and there was no proof the internal damage occurred during the shipment. With respect to items 212 (end tables) and 213 (three legs to small table), the carrier argued that there had been no tender because the items were listed separately on the inventory. Rather, they were items transported in cartons containing the generic description "decorations." With respect to item 261 (the futon frame), the carrier argued that there was no proof that it was not repairable. Finally, the carrier noted that the amount listed in the "total amount allowed" column of DD Form 1844, $865.64, was less than the $955.63 listed in the "carrier liability" column of that same form and offset against them by the Navy.

Our Office denied the carrier's appeal of the Navy's offset, and the carrier seeks reversal of that decision based essentially upon its previously asserted contentions. The carrier also argues for the first time that the cartons for items 212 and 213 were delivered intact, the end tables could not have fit in carton 212, and that both the end tables and the table legs could have belonged to another shipment or been erroneously entered on the DD Form 1840R. However, the carrier offers no evidence in support of any of these speculative arguments, nor does it indicate why it did not present these arguments to the Navy.

Finally, the carrier notes that in the Settlement Certificate, our Office requested that the Navy furnish the carrier with an explanation for the two different figures for carrier liability appearing on the DD Form 1844, but that no explanation has been forthcoming. Therefore, the carrier renews its assertion that the $955.63 figure is incorrect.

Discussion

A *prima facie* case of carrier liability is established by showing that the shipper tendered property to the carrier, that the property was not delivered or was delivered in a more damaged condition, and the amount of damages. *See Missouri Pacific Railroad Co. v. Elmore & Stahl* , 377 U.S. 134, 138 (1964). The burden then shifts to the carrier to rebut the *prima facie* case of liability.

The damage to item 207 (the computer) was internal rather than external. 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 a computer 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), *aff'd* Deputy General Counsel (Fiscal)(December 21, 2001) 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, impact damage. *Seeid*. This latter circumstance is established if there is evidence that "a normally sturdy internal component was physically broken." *See* B-255777.2, ay 9, 1994; and DOHA Claims Case No. 98020215, *supra.* Such evidence is present in this case with respect to item 207. The shipper submitted a statement that the computer was working (and that he had actually used it)

prior to tender and that it was not working after the carrier delivered it. He also submitted a repair estimate which showed impact damage, to multiple, normally sturdy internal components of the computer. Accordingly, a *prima facia* case of liability was 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 did not conduct an inspection of the item and did not offer any rebuttal evidence. Therefore, the setoff with respect to item 207 is appropriate.

The damaged end tables and the three lost legs from a small table at issue with respect to items 212 and 213 were not separately listed on the inventory. Rather, they were part of a group of multiple small items shipped in cartons which were labeled "decorations." Normally, if household goods are not listed on the descriptive inventory, the carrier will not be charged with tender. *See* DOHA Claims Case No. 03041004 (April 17, 2003) citing DOHA Claims Case No. 96070203 (September 5, 1996). However, a carrier can be charged with loss even if items are not listed on the inventory, where other circumstances are sufficient to establish that the goods were tendered and lost. *See id.* citing B-235558.4, Mar. 19, 1991. Delivery of an item is circumstantial evidence of tender. *See* B-254197, Feb. 2, 1994. Accordingly, a *prima facia* case of liability was established with respect to the end tables, identified as item 212, by their actual delivery albeit in a damaged condition. Again, the carrier did not conduct an inspection of the item and did not offer any rebuttal evidence. Therefore, the setoff with respect to item 212 is appropriate.

The situation with respect to the missing legs of a small table, identified as item 213, is slightly different. As a general rule, it is not necessary for a shipper to itemize small, individual items which are ancillary to a larger component. *See* DOHA Claims Case No. 97102410 (December 23, 1997) citing B-256546, Sept. 23, 1994; and B-247876, Aug. 24, 1992. Here, the record shows that the small table legs were not listed on the inventory, but that the shipper claimed that they were not delivered by the carrier to the shipper. Significantly, the items are nominally unrelated to the items described as the carton's content--decorations. Moreover, the shipper did not provide a statement reflecting personal knowledge of the circumstances surrounding the tender of the items to the carrier. *See* DOHA Claims Case No. 00091204 (September 21, 2000) citing DOHA Claims Case No. 98072215 (August 24, 1998); DOHA Claims Case No. 96070220 (September 5, 1996); B-260695, Sept. 29, 1995; and B-256688, Sept. 2, 1994. *Compare* DOHA Claims Case No. 03062301 (July 10, 2003). Therefore, the evidence was insufficient to conclude that the shipper had met his *prima facia* burden of establishing that the table legs attributed to item 213 had been tendered. Accordingly, the carrier should be refunded $10 for item 213.

With respect to item 261 (the futon frame), the shipper did not supply a repair estimate, but he did provide an estimate of replacement cost, which included a telephone number to call if there were any questions. That was sufficient evidence to establish a *prima facia* case. The carrier did not conduct an inspection of the item and did not offer any rebuttal evidence. Therefore, the setoff with respect to item 261 is appropriate.

Finally, based upon our review of the record, it is our conclusion that the $955.63 figure listed in the "carrier liability" column of the DD Form 1844 is the result of an arithmetical error and that the correct figure is in fact $865.64. Accordingly, the carrier should be refunded the $89.99 difference.

Conclusion

We modify the Settlement Certificate as set forth above; the carrier should be refunded $99.99.

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

_____/s/_____
William S. Fields

ember, Claims Appeals Board

_____/s/_____
Jean E. Small in
ember, Claims Appeals Board

1. This matter involves Personal Property Government Bill of Lading AP-745,551; Navy Claim No. 0205911.