

**This decision was affirmed by DoD Deputy General Counsel (Fiscal) on July 30, 2004.**

DATE: May 5, 2004

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In Re:

American Van Services, Inc.

Claimant

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Claims Case No. 04050401

## CLAIMS APPEALS BOARD DECISION

### DIGEST

1. 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.
2. The Defense Office of Hearings and Appeals will not question an agency's calculation of the value of the damages unless the carrier presents clear and convincing evidence that the agency acted unreasonably.

### DECISION

American Van Services, Inc. (American) appeals the March 29, 2004, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 04022601, in which this Office disallowed American's claim for a refund of \$870.21, of the amount offset by the Navy to recover transit loss for ten items. In its appeal, the carrier takes issue with respect to the offsets for three of the items.

### Background

In relevant part, the record shows that the shipment was picked up on March 30, 1999, in Alexandria, Virginia, and delivered on December 7, 1999, to Tampa, Florida. On the *Notice of Loss and Damage* (DD Form 1840R), which was dispatched on January 18, 2000, the shipper reported the following items (which are now at issue) missing: #203/4, "bunk bed plywood frames"; and #275, "Oak Computer desk" On the inventory, items 203 and 204 were both listed as "3/3 CTN. cp"; "mattress > plywood included" and item 275 was listed as a "Desk" with preexisting damage (PED) described as "scratched, rubbed, gouged, marred, dented." On the *List of Property and Claims Analysis Chart* (DD Form 1844), items 203 and 204 were described as a "set of 2 bunk bed plywood frames-missing" and item 275 was described as an "Oak computer desk-missing." The Navy offset \$44 for items 203 and 204, and \$510 for item 275. The Navy arrived at the offset for item 275 by deducting an additional 25% for preexisting damage (PED) after calculating a depreciated replacement cost of \$680.

The carrier appealed the Navy's offsets for the items to our Office, arguing that there was insufficient evidence in the

record to establish the shipper's tender of the two bunk bed plywood frames and that the PED to the oak computer table was so extensive that a 50% deduction should have been taken. In the Settlement Certificate, our office denied the carrier's appeal of the Navy's offset. On appeal to this Board, the carrier seeks reversal of that decision. With respect to items 203 and 204, it is the American's contention that the carrier's copy of the inventory only describes those items as cartons containing "mattresses," with no references to a plywood bed frame. With respect to item 275, it is American's contention that the PED to the oak computer table was so extensive as to warrant a 50% deduction. However, American offers no additional evidence of the PED in support of this latter contention.

### **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* liability. Normally, if household goods are not listed on the descriptive inventory, the carrier will not be charged with tender. *See* 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.*; and B-235558.4, ar. 19, 1991.

On the facts before us, we think the adjudicator's conclusion that the bunk bed plywood frames were tendered to the carrier was a reasonable one. The bunk bed plywood frames were the type of items that would normally be shipped in such circumstances and are reasonably related to the other obviously tendered items (the mattresses). *See* DOHA Claims Case No. 03041004 (April 17, 2003) citing DOHA Claims Case No. 96070203 (September 5, 1996); and B-235558.4, Mar. 19, 1991. Moreover, the loss was consistently noted by the shipper on the DD Form 1840R, the DD Form 1844, and on a Transportation Loss Report, dated March 12, 2000. [\(2\)](#)

The PED for item 275 did not necessarily suggest a condition that exceeded average care and/or use, but in the exercise of its judgement, the Navy concluded that an additional 25% depreciation was appropriate. As a general rule, a carrier accepts a shipment only in apparent good order. *See* DOHA Claims Case No. 04042702 (April 29, 2004) citing B-257515, Dec. 1, 1994 and B-193182, June 16, 1981. The carrier may seek additional depreciation where an item's PED exceeds that which would normally be expected in average care and/or use. The Navy gave American an additional 25% here over the average care and/or use, but American argues the Navy's action was unreasonable because it should have been 50%. American did not demonstrate by clear and convincing evidence that the Navy's 25% additional depreciation, instead of 50%, was unreasonable. Generally, we accept the Service's calculation of damages in the absence of clear and convincing contrary evidence. *See* DOHA Claims Case No. 96070221 (October 7, 1996), *aff'd* Deputy General Counsel (Fiscal)(December 21, 2001).

### **Conclusion**

We affirm the Settlement Certificate.

\_\_\_\_\_/s/  
Michael 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-718,206; Navy Claim No. 0202270.
2. As noted above, the copy of the inventory included in the administrative record contained the following description with respect to items 203 and 204: "3/3 CTN. cp"; "mattress > plywood included." A copy of the same inventory submitted by the carrier for the first time on appeal contained only the description: "3/3 CTN. cp"; "mattress." With respect to disputed questions of fact, we accept the statement of facts furnished by the administrative office, in the absence of clear and convincing contrary evidence offered by the 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).