

DATE: November 3, 2004

In Re:

American Van Services, Inc.

Claimant

Claims Case No. 04102901

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

1. A DD Form 1840R is considered to have been "dispatched" on the date entered on the form in the installation's claims office, even if the notice does not leave the installation on that day.
2. In the absence of clear and convincing contrary evidence, on disputed questions of fact between the claimant and an administrative office, we accept the statement of fact furnished by the administrative office.
3. Where a carrier offers no rationale as to why or how a consideration of the various factors and assertions it lists in its reconsideration request would result in a different outcome in the case, we are not permitted to guess as to possible theories of recovery that the carrier may have had. The theory of recovery must be reasonably clear.

DECISION

American Van Services, Inc. (American) requests a reconsideration of the September 30, 2004, appeal decision in DOHA Claim No. 04072706. [\(1\)](#)

Background

This case involves a refund of a \$360 offset for damage to inventory items #394 - a computer desk, and #400 - an office

chair, from the above shipment. The record shows that the shipment was delivered on October 3, 2002. Our office concluded that the pre-existing damage (PED) on the inventory for the computer desk and office chair may have been "overwritten." The dates of purchase listed on the DD Form 1844 indicated that the chair was purchased the month before the shipment was picked up, and the desk was purchased the same month as the shipment. On the inventory, the computer desk was listed as being soiled and rubbed, and the office chair was listed as being scratched, rubbed and marred. Also, on the only copy of the DD Form 1840 in the file, most of the information subsequent to block nine was not filled in.⁽²⁾ Among the missing information was the signature of the carrier's driver and the name of the delivering carrier/agent/contractor.

On the DD Form 1840R, which block 3b listed as dispatched by the Marine Corps on "021121 1," the shipper reported the new damage for the computer desk as "top hutch broken," and for the office chair as "wheel/leg broken off." Our office noted that the numbers listed as the dispatch date were the Marine Corps' way of writing November 21, 2002--the Navy's report having stated that the last digit (1) was a typographical error. The record failed to show that the 1840R was returned by the Post Office as undeliverable, so it is presumed it was delivered.

When the shipper submitted his claim, he included a repair estimate which described the damage to the computer desk as "shelf broken and chipped, parts missing," stated that damage could not be repaired, and listed the replacement value as \$160. It listed the damage to the office chair as "Metal base, one caster broken off, caster missing," stated that that damage could not be repaired, and listed the replacement value as approximately \$200. The shipper also furnished documentary evidence which listed the cost of what he stated were equivalent items. That evidence showed the cost for the computer desk as \$199.98, and the office chair as \$229.98. On the DD Form 1844, the shipper listed the original purchase cost of the computer desk as \$180, and the office chair as \$240. In the demand for payment letter despatched to the carrier October 9, 2003, the amount of the carrier's liability was listed as \$360. The DD Form 1844 showed that this was \$160 for the computer desk, and \$200 for the office chair. The evidence thus established a *prima facie* case of carrier liability for the amounts of damage claimed.

There was no evidence in the file to indicate that the carrier attempted to obtain any information concerning the claim--such as statements from its drivers--except what it received from the service. Nor is there any evidence that the carrier performed an inspection of the reported damage or obtained its own repair estimates to verify the amount of new damage that had occurred. Instead, the carrier based its appeal on the failure of the Navy to furnish it with explanations as to a number of questions that it proffered.

The carrier denied liability based upon its contention that both the DD Form 1840 and DD Form 1780 indicated that nothing was damaged in transit, and that the DD Form 1840R was not timely. This latter contention was based upon the carrier's assertion that it had received the DD Form 1840R in an envelope postmarked January 8, 2003.

Our office noted that the postdate of January 8, 2003 on the envelope, did not establish by itself the date of the first dispatch of the DD Form 1840R. We also noted that the carrier had not indicated the date its records showed that the DD Form 1840R was first received, or that it had submitted any notice to the Navy that the DD Form 1840R had not been timely received. In response to the carrier's assertion as to the timeliness of the DD Form 1840R, the service claims office, by letter dated November 3, 2003, had stated: "We have reviewed this file carefully and find that the 1840R was dispatched in a timely manner."

The appeal decision found that a *prima facie* case of carrier liability for the damages in the amount of \$360 had been established and that the carrier had not submitted any evidence to rebut that liability. In its request for reconsideration, the carrier once again asserts that the DD Form 1840R was not timely dispatched. It also takes exception, in multiple instances, to our office's interpretation of the record evidence, but offers no evidence in support of its alternative interpretations and does not explain how a different interpretation would result in a different outcome in the case. Finally, it asserts that the depreciation of the items was "not reasonable," but does not explain why, or cite any authority in support of its position.

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. In this case, the shipper met its burden of establishing a *prima facie* case of carrier liability for the amounts of damage claimed, and the carrier offered no evidence to rebut that *prima facie* case.

The *Joint Military/Industry Memorandum of Understanding on Loss and Damage* (MOU) provides that written documentation advising the carrier of later discovered loss or damage, if dispatched not later than 75 days following delivery, shall be accepted by the carrier as overcoming the presumption of the correctness of the delivery receipt. Consequently, the carrier is presumed liable for damage set out in a DD Form 1840R dispatched by the service to the carrier within 75 days of delivery.

We have previously held that the DD Form 1840R is "dispatched" for purposes of the MOU on the date entered on the form in the installation's claims office, even if the notice does not leave the installation on that day. *See* DOHA Claims Case No. 96070208 (January 27, 1997) citing B-249840, Mar. 1, 1993; and B-238982.4, Jun. 25, 1992, and its reconsideration, B-238982.6, Feb. 11, 1993. In this case, the date of dispatch on the form is within the required 75 day period. The fact that the envelope purportedly transmitting the DD Form 1840R was postmarked later than the dispatch date on the form is of no moment. Otherwise, we would have to infer that either (1) the claims office clerk who signed and dated the DD Form 1840R deliberately misstated the date of dispatch, or (2) that the clerk did not dispatch the DD Form 1840R as he or she was required to do when signing it. Dishonesty may not be inferred. *See id.* citing DOHA Claims Case No. 96070212 (November 27, 1996), DOHA Claims Case No. 96070226 (September 5, 1996) and B-213543, Dec. 7, 1983. Also, in the absence of clear evidence to the contrary, we must assume as a matter of administrative regularity that the clerk did dispatch the DD Form 1840R, as certified. We will not speculate as to why the DD Form 1840R was delayed after it departed the claims office. Moreover, whatever the cause of the purported subsequent delay, it was beyond the control of the claims office. *See id.*

In the absence of clear and convincing contrary evidence, on disputed questions of fact between the claimant and an administrative office, we accept the statement of fact furnished by the administrative office. *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). Here, the carrier has not met its burden of producing such clear and convincing contrary evidence.

Finally, the carrier offers no rationale as to why or how a consideration of the various factors and assertions it lists in its reconsideration request would result in a different outcome in the case, and we are not permitted to guess as to possible theories of recovery that the carrier may have had. *See* DOHA Claims Case 04072708 (August 4, 2004) citing Reconsideration of DOHA Claims Case No. 04042701 (April 28, 2004) *aff'd* Deputy General Counsel (Fiscal)(July 6, 2004). The theory of recover must be reasonably clear.

Conclusion

For the reasons stated, the request for reconsideration is denied, and the appeal decision is sustained. No further action is required by the Navy. In accordance with 32 C.F.R. Part 282, Appendix E, paragraph o(2), this is the final Department of Defense action in this matter.

_____/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 shipment involves Personal Property Government Bill of Lading JP-521,040 and Navy Claim No. 0309311.
2. There was only the shipper's signature and apparently the date he signed it.