

DATE: May 21, 2004

In Re:

Stevens Worldwide Van Lines, Inc.

Claimant

Claims Case No. 04051401

CLAIMS APPEALS BOARD DECISION

DIGEST

1. With respect to disputed questions of fact, the Board will accept the statement of facts furnished by a service's administrative office, in the absence of clear and convincing contrary evidence.
2. The erroneous use of a copy of a *Joint Statement of Loss or Damage at Delivery* (DD Form 1840) and an attached letter, instead of a *Notice of Loss or Damage* (DD Form 1840R), to notify the carrier of loss or damage discovered after delivery does not invalidate a service member's *prima facie* claim of liability against a carrier if the notice otherwise is timely and adequate to alert the carrier of the need to investigate for possible loss or damage on the shipment.

DECISION

Stevens Worldwide Van Lines, Inc. (Stevens) appeals the April 8, 2003, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 03040201, in which this Office disallowed Stevens' claim for a refund for the Army's offset of \$1,303 for loss/damage of items in a shipment of household goods. [\(1\)](#) In its appeal, the carrier contends that it did not have adequate notice of the loss/damage.

Background

In relevant part, the record shows that the shipment was picked up on August 12, 1996, in Woodbridge, Virginia, and delivered on September 4, 1996, to Herkimer, New York. On the DD Form 619-1, which was executed on the date of delivery, the shipper stated: "Nothing At This Time. Damage Claim Will Be Submitted After Unpacking." He also

stated that he did not waive unpacking and removal of packing material, boxes/cartons and other debris.

According to the Army's administrative report, the DD Form 1840R was timely dispatched to the carrier on November 14, 1996. On the copy of that form provided by the Army, the "List of Property Loss/Damage" section is completely blank. However, the reverse side of the document, which is DD Form 1840, states "Itemized Damage List To Following." When it dispatched the DD Form 1840R/1840 to the carrier, the Army's report indicates that attached to it was a copy of the shipper's November 10, 1996 letter to the Army, containing the list of lost/damaged items normally included on the DD Form 1840R. That letter stated in pertinent part: "This letter and the attached DD 1840 constitute my moving damage and loss claim associated with . . ."

In its appeal to our Office, Stevens contended that it did not receive the copy of the shipper's November 10, 1996 letter as an attachment to the DD Form 1840R/1840, and that the copy of the DD Form 1840R which it received contained the word "NONE" under the "List of Property Loss/Damage" section. In support of that latter contention, Stevens provided a copy of the DD Form 1840R which contains the word "NONE," as described. Stevens further argued that because the form at issue contained the word "NONE," the carrier had no reason to turn it over and see the notation on the DD Form 1840 on the other side. Therefore, they argue that they were not on notice of any loss or damage to items in the shipment--a position which is contradicted by the fact that the record also contains a form letter, dated November 20, 1996, which Stevens sent to the Army Claims Center, and which stated the carrier had received the DD Form 1840R, and as part of its investigative procedure, had forwarded a copy of it to each handler or agent involved and requesting that they furnish their comments and any pertinent documents.

In the Settlement Certificate, our Office concluded that Stevens had received adequate notice of the loss/damage. Stevens disagrees and appeals that decision.

Discussion

Generally, under federal law, in an action to recover from a carrier for damage to a shipment, the shipper establishes his *prima facie* case when he shows delivery in good condition, failure to deliver or arrival in damaged condition, and the amount of damages. Thereupon, the burden of proof is upon the carrier to show both that it was free from negligence and that the damage to the cargo was due to one of the excepted causes relieving the carrier of liability. *See Missouri Pacific Railroad Company v. Elmore & Stahl*, 377 U.S. 134, 138 (1964).

We have previously held that 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 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). The carrier has not met its burden of producing clear and convincing evidence that the Army did not provide the referenced documentation, including the attached letter.

Under the *Military-Industry Memorandum of Understanding on Loss and Damage Rules* (MOU), when loss or damage is not reported at delivery, a notice of later discovered loss or damage (usually the DD Form 1840R) dispatched to the carrier not later than 75 days following delivery shall be accepted by the carrier as overcoming the presumption of the correctness of the delivery receipt. In this case, the DD Form 1840R/1840 and attached letter was dispatched in a timely fashion. The issue here is whether that documentation was sufficient to serve as adequate notice of loss or damage. We think that it was. Even if the lost or damaged items were incorrectly referenced on the DD Form 1840 and an attached letter, instead of the DD Form 1840R, the DD Form 1840 at issue was on the reverse side of the otherwise blank 1840R, and referenced the member's name and the Personal Property Government Bill of Lading number of the shipment. It reasonably referenced the attachment which, in turn, adequately listed the items lost or damaged and was included with the DD Form 1840R/1840. We have previously held that a DD Form 1840, although used mistakenly to report loss or damage discovered after delivery, may still be adequate notice. *See* DOHA Claims Case No. 96070216 (November 5, 1996) citing B-247576, Sept. 2, 1992. Although the DD Form 1840R is the normal method to notify the carrier of loss or damage after delivery, other forms of timely notice are acceptable. *See* 67 Comp. Gen. 211 (1988). Minor flaws in the

manner in which a claim is presented do not relieve a carrier of liability, and a member is not required to complete forms in strict compliance with applicable instructions in order to prevail. *See* B-228702, Dec. 16, 1988. In this case, it was reasonable to conclude that a carrier in receipt of the documentation in question would have looked at the back of the blank DD Form 1840R and the attachments to it. Those documents, in turn, were sufficient to put the carrier on reasonable notice of the loss or damage, and the need for further investigation on its part. ⁽²⁾ That conclusion is further supported by the presence of the November 20, 1996, letter, sent by Stevens to the Army Claims Center, which stated the carrier had received the DD Form 1840R, and as part of its investigative procedure, had forwarded a copy of it to each handler or agent involved requesting that they furnish their comments and any pertinent documents.

Conclusion

We affirm the Settlement Certificate.

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

_____/s/
William S. Fields
Member, Claims Appeals Board

_____/s/
Jean E. Smallin
Member, Claims Appeals Board

1. This matter involves Personal Property Government Bill of Lading YP-133,168; Army Claim No. 97-421-0370; Carrier Claim No. 96-69073.
2. This case is distinguishable from DOHA Claims Case No. 00070331 (September 11, 2000) which is cited by the carrier in support of its appeal. In that case, the record contained insufficient evidence to conclude that the DD Form 1840 had been dispatched at the same time as the DD Form 1840R, or was sufficiently connected with the latter document for the carrier to conclude that the list it contained was a continuation of the list found on the DD Form 1840R.