DATE: February 10, 2005

In Re:

American International Moving, Corp.

Claimant

Claims Case No. 05011301

CLAIMS APPEALS BOARD
RECONSIDERATION DECISION

DIGEST

1. As the last custodian of the shipment, a carrier removing goods from nontemporary storage without inventorying it (or preparing a rider or exception sheet), will be presumed liable for any damage.

2. When a case of *prima facie* liability has been established with regard to shipment of household goods, the carrier is liable unless he presents sufficient evidence to rebut liability.

3. A carrier can be charged with damage even when incorrect item numbers are listed on the notice of loss or damage.

DECISION

American International Moving, Corp., (AIMV), requests reconsideration of a Defense Office of Hearings and Appeals (DOHA) appeal decision, DOHA Claims Case No. 04112217 (January 3, 2005).

Background

In September 1996 the household goods were picked up in Gushikawa, Okinawa, and were placed into non-temporary storage (NTS) in Jacksonville, Florida. On May 8, 1998, AIMV removed the shipment of household goods from the NTS contractor, Sun State Van Services, Inc., and on May 14, 1998, delivered them to the employee in Big Pine Key, Florida.[(1)] AIMV did not perform an inventory of the shipment when it was picked up from NTS, and no rider or exception sheet was prepared. Upon delivery AIMV's agent and the employee signed the Joint Statement of Loss or Damage at Delivery (DD Form 1840). A Notice of Loss or Damage (DD Form 1840R) was dispatched to AIMV on July 15, 1998. AIMV did not perform an inspection or an investigation of the reported damage. On February 21, 2001, the Navy dispatched to AIMV a Demand on Carrier/Contractor (DD Form 1843) for $2,295.81. On June 10, 2004, the Navy set off $2,295.81 against AIMV.

In its administrative report, the Navy stated that it will allow a $18 depreciation deduction for one of the damaged items.

DOHA's appeal decision affirmed the Navy's set-off in the amount of $2,277.81 ($2,295.81 - $18.00).

In its request for reconsideration, we understand AIMV's position to be that the Navy failed to present a *prima facie* case of carrier liability because the shipment AIMV delivered did not originate in Okinawa; it originated in Jacksonville, Florida. In addition, AIMV states that the set-off was improper; AIMV contends that it did not have adequate notice of the loss and damage because of differing items numbers on the DD Forms 1840R and 1844 as compared to the inventory. Finally, with regard to a specific item damaged in the shipment, the doll case, AIMV contends that the damage was caused while in the hands of the NTS contractor, not the carrier, and cites B-252430, June 10, 1993, 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. The burden then shifts to the carrier to rebut the *prima facie* case of liability. *See Missouri Pacific Railroad Co. v. Elmore & Stahl*, 377 U.S. 134, 138 (1964). When the goods pass through the custody of several bailees, it is a presumption of the common law that the loss or damage occurred in the hands of the last carrier or forwarder to act as the custodian of the goods.

In order to rebut this presumption and avoid liability, the last custodian must show that the damage or loss did not occur while the goods were in its custody. For a carrier removing goods from NTS storage for delivery, this showing is made by inventorying the goods and preparing an exception sheet. *See* DOHA Claims Case No. 03080416 (August 12, 2003). AIMV has offered no substantive proof to rebut its presumption of liability. At the time AIMV picked up the household goods from NTS, AIMV did not inventory the shipment. If AIMV had inventoried the shipment, it could have prepared an exception sheet (as set forth under paragraph 55m of the Tender of Service)[(2)] which would have noted damages and other discrepancies between what is written on the inventory and what AIMV received when it picked up the shipment. Therefore, the fact that this shipment may have originated in Okinawa does not relieve AIMV, the last carrier to handle the shipment, of liability.

As for the differing item numbers appearing on the DD Forms1840R and 1844, than on the inventory, we note that the 1844 was subsequently amended to match the inventory. However, this is not relevant as we have previously held that a carrier can be charged with damage even when the item number is not listed on the DD 1840R. *See* DOHA Claims Case No. 03120201 (December 9, 2003). The notice of loss or damage is adequate as long as it is in writing, timely and sufficient in content to alert the carrier that there may be a claim for loss of damage and that the carrier should investigate the circumstances surrounding the loss or damage. *See Id*. In the present case, the damage to the goods was adequately noted on the DD Form 1840R. We believe that AIMV was given sufficient facts in the DD Form 1840R to investigate the damage. However, AIMV did not avail itself of its right to inspect.

Finally, AIMV asserts that the doll case was damaged by the NTS facility and not the carrier due to faulty packaging. As mentioned above, to insulate itself from liability, AIMV could have performed an inventory at pick-up from NTS. AIMV seems to rely on a statement made on April 21, 2003 by a Navy Claims examiner as evidence of improper packaging. In the course of attempting to reach a settlement in the matter, the Navy claims examiner responded to AIMV's initial denial of liability for damage to the doll case on the basis that the doll case was too small to fit into the carton by stating the following: "It is more than reasonable to believe that this item was forcibly packed in the 3.1 carton, and the fact that the carton size is slightly smaller than the doll case would explain why it was received broken." We believe that the Navy claims examiner was merely stating an opinion to support its position in the course of trying to settle the matter. Further, based on the very case law AIMV uses to support its position, the burden is on AIMV to prove that faulty packaging was the sole cause of the damage. *See* B-252430 (June 10, 1993). AIMV has presented no substantive evidence to overcome the presumption that it caused the damage.

Conclusion

For the reasons stated, the request for reconsideration is denied, and the appeal decision is sustained. 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/_________________
ichael D. Hipple
Chairman, Claims Appeals Board

_________/s/__________________
Jean E. Smallin
ember, Claims Appeals Board

_________/s/_________________
Catherine M. Engstrom
ember, Claims Appeals Board

1. This shipment involved Government Bill of Lading (GBL) YP-761,516, and Navy Claim No. 0202151.

2. Under paragraph 55m of the Tender of Service, AIMV agreed to secure from the storage contractor, copies of the nontemporary storage inventory. AIMV agreed to check against the inventory each item in storage. If there were any differences, AIMV could have prepared an exception sheet where differing conditions could be noted.