

KEYWORDS: Carrier/contractor; pre-existing damage

DIGEST: The carrier is liable when the record shows that the condition of an item at delivery is more damaged than the described pre-existing damage.

CASENO: 05021501

DATE: 3/3/2005

DATE: March 3, 2005

In Re:

American Van Services, Inc.

Claimant

Claims Case No. 05021501

CLAIMS APPEALS BOARD

RECONSIDERATION DECISION

DIGEST

The carrier is liable when the record shows that the condition of an item at delivery is more damaged than the described pre-existing damage.

DECISION

American Van Services, Inc., (AVAS) requests reconsideration of the January 19, 2005, Appeal Decision of the Defense Office of Hearings and Appeals in DOHA Claim No. 04122102. [\(1\)](#)

Background

AVAS picked up the member's household goods in Pensacola, Florida, on May 15, 2001, and delivered them to San Diego, California, on June 13, 2001. Loss and damage to various

items was noted on the DD Form 1840, [\(2\)](#) *Joint Statement of Loss or Damage*, on the day of delivery. The DD Form 1840R, *Notice of Loss or Damage*, dispatched on June 25, 2001, listed loss and damage to various other items. On March 21, 2003, the Navy submitted a claim for \$3,342.84 to AVAS for goods that were either lost or damaged. On February 17, 2004, the Navy adjusted the carrier's liability, reducing it to \$3,125.34.

AVAS's request for reconsideration is a laundry list of unsupported factual assertions and legal conclusions that contains no rationale for why or how our consideration of these assertions would result in a different outcome.⁽³⁾ However, from what the Board is able to discern, AVAS's position is that it is not liable for the damages claimed because the inventory established pre-existing damage (PED) and the repair estimates do not distinguish among normal wear and tear, transit damage and PED.

Discussion

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 tender to the carrier, delivery in a more damaged condition, and the amount of damages. Once the shipper has established a *prima facie* case of liability, the burden is on the carrier to show either that the damage did not occur while in its custody, or that the damage occurred as a result of one of a number of causes for which the carrier is not liable. *See Missouri Pacific Railroad Co. v. Elmore & Stahl*, 377 U.S. 134, 138 (1964).

Once the government presents a *prima facie* case, if a carrier denies liability on the basis that damage did not occur in transit, it must offer clear and convincing contrary evidence, or such evidence must be clear from the record. With regard to the PED listed on the inventory, the shipper noted on the exception section, "Damages exaggerated." Upon delivery, new damage was noted on the DD Forms 1840 and 180R. Since AVAS chose not to inspect the damage to the items after delivery, it can provide no evidence to prove that the damages were part of the PED noted on the inventory. The appeal decision, administrative report and other documentation in the record noted specific instances where the damage at destination exceeded the level of damage described in the inventory. The government presented a *prima facie* case, and AVAS has presented no evidence to rebut its liability. *See* DOHA Claims Case No. 98021009 (March 5, 1998); B-265971, Jan. 25, 1996; and B-252972.2, July 14, 1995. 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).

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/

Michael D. Hipple
Chairman, Claims Appeals Board

/s/

Jean E. Smallin
Member, Claims Appeals Board

_____/s/_____
Catherine M. Engstrom
Member, Claims Appeals Board

1. This matter involves Government Bill of Lading (GBL) AP-680,553, and Navy Claim No. 0301098.
2. On the DD Form 1840, it is noted that a continuation sheet was used. However, it appears that the DD Form 1840R was used as a continuation sheet for other items damaged during the shipment. The top of the DD Form 1840R bears the same date as the day of delivery, June 13, 2001.
3. *See* DOHA Claims Case No. 04102901 (November 3, 2004). The theory of recovery must be reasonably clear, and the Board is not permitted to guess as to possible theories of recovery that the carrier may have.