

KEYWORDS: contractor liability; transit loss and damage

DIGEST: A member claimed the loss of over \$6,000 worth of tools in a missing tool chest. Where the quantity of tools claimed to have fit in the tool chest appears excessive, the record fails to support a *prima facie* case of carrier liability for the loss of the tools when the member fails to provide any evidence of ownership.

CASENO: 05111601

DATE: 12/22/2005

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In Re:

Carlyle Brothers Van Lines, Inc.

Claimant

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Claims Case No. 05111601

**CLAIMS APPEALS BOARD**  
**RECONSIDERATION DECISION**

**DIGEST**

A member claimed the loss of over \$6,000 worth of tools in a missing tool chest. Where the quantity of tools claimed to have fit in the tool chest appears excessive, the record fails to support a *prima facie* case of carrier liability for the loss of the tools when the member fails to provide any evidence of ownership.

**DECISION**

Carlyle Brothers Van Lines (Carlyle) requests reconsideration of the November 2, 2005, Appeal Decision of the

## Background

Carlyle picked up the member's household goods in Atlantic Beach, Florida, on March 7, 2003, and delivered the goods to Corpus Christi, Texas, on May 26, 2003. On the day of delivery, the member and carrier's agent reported on the *Joint Statement of Loss or Damage*, DD Form 1840, that item #457 ("toolbox") was missing. On May 23, 2003, the Navy dispatched a *Notice of Loss or Damage*, DD Form 1840R, to Carlyle in which the member advised the carrier that item #457 ("a large box full of tools") was missing.

On August 13, 2003, the member filed a claim against the Navy for loss of personal property incident to service on a DD Form 1842, and claimed \$14,198.00 in loss and damage. [\(2\)](#) He noted that item #457 was missing and that it was a "toolbox full of tools." He also provided Sears' catalog descriptions of a mobile tool cart with the catalog name "Pro-Chest," and of the tools that he alleged were inside the tool chest including various tool sets and power tools. The Navy's DD Form 1844, *List of Property and Claims Analysis Chart*, listed the tool chest and various tools with the replacement costs and dates of purchase for each.

On June 25, 2004, a DD Form 1843, *Demand on Carrier/Contractor*, was dispatched to the carrier for \$6,250.00, for goods that were either lost or damaged. [\(3\)](#)

On September 1, 2004, the carrier offered \$1,802.74, in final settlement of the claim and enclosed a draft for the amount. On October 15, 2004, the Navy rejected the offer, returned the draft of \$1,802.74, and reasserted its claim for \$6,250.00. On November 12, 2004, the carrier reasserted its denial of the claim, requesting that the Navy provide further documentation substantiating the claim for the tool chest and tools. On December 22, 2004, the Navy adjusted the carrier's liability, reducing it to \$5,138.95. The carrier continued to deny liability. A set-off in the amount of \$5,138.95, occurred on June 29, 2005.

On appeal to our Office, Carlyle claimed reimbursement for \$3,528.69, the portion which it says represents the amount offset for item #457. On November 2, 2005, our Office denied the carrier's appeal of the Navy's offset. In its request for reconsideration, Carlyle continues to claim reimbursement for the amount offset for item #457. Carlyle contends that there is no evidence that a tool chest with tools was ever tendered because item #457 was listed on the inventory as a toolbox and at destination, the member noted item #457 as missing, writing only "toolbox." Carlyle states that it was not until a year after delivery that the member first claimed the item as a tool chest. In addition, Carlyle attaches photographs and catalog descriptions of various tool chests and tools arguing that the various tools claimed to be missing could not have fit inside the tool chest.

## Discussion

Under federal law, in an action to recover from a carrier for damage to a shipment, the shipper establishes his *prima facie* case by showing that he tendered property to the carrier, that the property was not delivered or was delivered in a more damaged condition, and the amount of damages. Once the shipper has established a *prima facie* case of liability, the burden shifts to the carrier to rebut liability. *See Missouri Pacific Railroad Co. v. Elmore & Stahl*, 377 U.S. 134, 138 (1964). In a tender dispute where an item or items are lost, we have inferred tender when the lost item and contents of the container bear a reasonable relationship to the items described on the inventory as the carton's contents. There is no need for an exact match between the description of the lost item and the contents of the carton. This is particularly true when it would not have been unusual to pack the item in the container, and the carrier did the packing and prepared the inventory list. *See, e.g.*, Comptroller General Decision B-261577, Mar. 20, 1996. As a further extension of that rule, both our Office and the Comptroller General have held that it is not unreasonable to assume that a "tool box" or "tool chest" is shipped with tools. *See, e.g.*, DOHA Claims Case No. 97102410 (December 23, 1997), DOHA Claims Case No. 97022406 (June 18, 1997), and B-247876, Aug. 24, 1992. We reaffirm the reasonableness of that inference here even though that is not the legal issue in this case.

The carrier argues that the member has not proven tender of a tool chest since the inventory shows that item #457, was a toolbox, and at destination, the member describes item #457 as only a "toolbox." Although the member subsequently supplied the Navy with Sears' catalog descriptions of the tool chest (with listed price of \$1,199.99) and the missing tools, when asked for further information concerning his personal knowledge of the circumstances surrounding tender of the tool chest to the carrier, the member stated that the tool chest was full at pack out; all the tools were left in the tool chest; and he helped push the tool chest full of tools onto the truck. Therefore, if the only issue were whether the member tendered the tool chest to Carlyle, the member demonstrated that he did so. However, although we accept the inference that the tool chest contained tools, the main issue here is whether the record contains sufficient evidence to suggest that it contained tools with the value of which the member has claimed.

While there is evidence of tender of a toolbox or chest, we find the carrier's argument persuasive in that a fact finder could not reasonably conclude that all of the tools claimed as missing by the member who shipped them could fit into the toolbox or chest. Along with various power tools claimed as missing, the member also claimed various tool sets such as a 266 piece mechanic's tool set and a 97 piece mechanic's tool set that appear to have been designed to fit into the chest. The catalog description of the tool chest provided by the member reflects the dimensions to be 36 inches wide, 21 inches deep and 42 ½ inches height. Six of the seven drawers appear to vary in height between three to four inches and the seventh door, the bottom drawer, is the largest. However, the catalog description does state that the chest has no bulk storage area.

Additionally, a reasonable fact finder would expect more exacting proof of the nature and value of the item(s) tendered when those items are not ordinary tools but include a large number of relatively expensive power tools and total to more than \$6,000. *See, e.g.*, DOHA Claims Case No. 99080603 (September 10, 1999), where a shipper claimed loss of six baseball card collections worth \$6,000 in a box simply marked as "cards," and B-261577, *supra*, where a shipper claimed a ¾ length mink coat worth about \$1,500 in a box marked as "clothes." Prior to offset, during the negotiations between the carrier and the Navy, Carlyle requested that the Navy obtain more documentation concerning the tools and

chest claimed as missing. We find that considering the item was only listed as "toolbox" on the inventory, when the member finally made claim to over \$6,000 worth of tools contained in a tool chest, the Navy should have investigated the claim further, especially considering various tools and the chest were purchased from Sears only fifteen months prior to the move and some tools were purchased from Sears only three months before the member's move. We find that it would not be unreasonable for the purchaser of \$6,000 worth of tools to supply documentation concerning these purchases, either by supplying receipts, warranty documentation, his credit card statement (presumably from Sears) or by contacting Sears for its records of his purchases. In this situation, the evidence

presented was insufficient to conclude that the shipper had met his *prima facie* burden of establishing that the \$6,000 worth of tools attributed to item # 457 had been tendered.

### Conclusion

We reverse the Appeal Decision and remand this matter to the Navy Carrier Recovery Claims Branch to determine the value of the items tendered.

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Michael D. Hipple

Chairman, Claims Appeals Board

\_\_\_\_\_/s/\_\_\_\_\_  
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Jean E. Smallin

Member, Claims Appeals Board

\_\_\_\_\_/s/\_\_\_\_\_  
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Catherine M. Engstrom

Member, Claims Appeals Board

1. This matter involves Government Bill of Lading (GBL) ZP-006066, and Navy Claim No. 0407351.
2. The record reflects that the Navy approved payment to the member in the amount of \$9,657.54.
3. The carrier's maximum liability was limited to \$6,250.00 (5,000 pounds times \$1.25).