

KEYWORDS: carrier/contractor liability

DIGEST: 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.

CASENO: 06041701

DATE: 5/2/2006

May 2, 2006

In Re:

Stevens Forwarders, Inc.

Claimant

Claims Case No.06041701

CLAIMS APPEALS BOARD

RECONSIDERATION DECISION

DIGEST

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.

DECISION

Stevens Forwarders, Inc., requests reconsideration of a Defense Office of Hearings and Appeals' (DOHA) appeal decision, DOHA Claims Case No. 06020617 (March 23, 2006).⁽¹⁾

Background

Stevens' claim involves the issue of whether it is liable for damage to two slipcovers. The member's household goods were in non-temporary storage (NTS) in anassas, Virginia, for three years from June 2000 to August 2003. Stevens acquired control over them under Personal Property Government Bill of Lading No. ZY-674087 at the NTS facility on August 19, 2003. Stevens did not perform an inventory of the shipment when it was picked up from NTS, and no rider or exception sheet was prepared. Stevens transported the member's household goods to his residence in Tampa, Florida, on August 30, 2003. The NTS contractor's inventory noted that the two slipcovers were soiled and used. However, following delivery the member reported that the slipcovers were completely bleached/faded by sun exposure, and unusable. Stevens' agent performed an inspection and prepared a report of the damage. The Navy paid the member \$876.00 for the damage to the slipcovers and the Navy set off a total of \$876.00 from the carrier for the damage to the slipcovers plus \$28.35 for interest and administrative fees.⁽²⁾

In its request for reconsideration Stevens is seeking a refund in the amount of \$904.35. Stevens argues that the damage to the slipcovers occurred in the hands of the NTS contractor, not the carrier. Stevens points to the type of damage, "fading," arguing that it is inherently non-transit related because fading is the result of exposure to sunlight over an extended period of time, whereas Stevens asserts it had possession of the slipcovers for a mere six days in an enclosed trailer with no exposure to sunlight. Although Stevens agrees that it did not prepare a rider, Stevens contends that if its driver had prepared a rider, he could not have known that the slip covers were faded because he did not see the slipcovers in their original condition. Finally, Stevens points out that the member even stated that the covers faded due to being in extended storage for three years.

Discussion

The first issue is whether the shipper established a *prima facie* case of carrier liability. In order to do so, the shipper must show tender of property to the carrier, delivery in a more damaged condition, and the amount of damages. *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. The burden then shifts to the carrier to rebut the *prima facie* case

against it.

In this case the member has established a *prima facie* case of carrier liability because he noted the slipcovers were completely bleached/faded by sun exposure and unusable; this damage was not noted when he tendered the slipcovers to the NTS facility; this damage was not noted by the carrier upon obtaining the slipcovers from NTS; and the slipcovers were delivered with such damage. *See* DOHA Claims Case No. 96080202 (November 21, 1996). In order to rebut this presumption and avoid liability, the carrier (as the last custodian) must show that the damage did not occur while the goods were 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. It is our view that Stevens did not meet this burden of proof. When Stevens removed the goods from NTS storage for delivery, it did not inventory the goods and prepare an exception sheet. *See* DOHA Claims Case No. 03080416 (August 12, 2003), DOHA Claims Case No. 03062302 (July 9, 2003), DOHA Claims Case No. 96070231 (February 10, 1997) and DOHA Claims Case No. 96080202, *supra*. If Stevens had inventoried the slipcovers, it could have compared the condition of the slipcovers to the condition noted by the NTS contractor, and then noted any new damage to shield itself from liability. Having failed to do this, Stevens asks us to find clear evidence that the damage occurred during storage for three years and not during the six days it had possession.

Stevens' only factual evidence is a statement attributed to the member, contained in its inspection report, that the fading occurred due to being in extended storage for three years. However, in the report the inspector also noted that both slipcovers have severe fading along a 3 to 4 foot area at the top of the furniture and that he could not "visibly confirm specific cause of apparent fading." A statement by the retailer of the slipcovers suggests two causes for the fading: "Fading can occur from exposure to harsh chemicals or exposure to direct sunlight." The retailer further stated that under normal circumstances the slipcovers should not have faded in such a manner and that the retailer itself maintained these same slipcovers in storage for at least three years and the covers have not suffered any damage. Besides the statement attributed to the member in the inspection report, we have no further factual evidence that the damage involved here could have only occurred in the NTS facility. Although Stevens states that while in its possession the slipcovers were in a trailer without any exposure to sunlight, this does not explain how sunlight faded the slipcovers while in the possession of the NTS contractor where they also were most likely stored without exposure to sunlight. An unsupported statement that the damages were due to extended storage and occurred at the NTS facility is insufficient.

See DOHA Claims Case No. 96080202, *supra*. In addition, exposure to harsh chemicals could have caused the severe fading while in the carrier's possession. Again, if Stevens had prepared a rider to the NTS inventory, it would have been able to note any new damage, specifically that there was severe fading on top of each slip cover spanning an area 3 to 4 feet long. As for Stevens' allusion to an inherent vice in the fabric that led to fading, an inherent vice is something inherent in an item that leads to damage without any outside influence other than the laws of nature. *See* B-260768, Dec. 28, 1995. We have no basis to conclude that the fading would have taken place in the absence of a breach of duty to care by someone. As suggested by the retailer, the fading could have resulted from exposure to harsh chemicals, as well as exposure to direct sunlight.

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. The date noted on the Appeal Decision was March 23, 3005. The correct date is obviously March 23, 2006.
2. Stevens has accepted liability for damage to an entertainment center (\$75) and a dresser (\$40), and those items are not at issue in its request for reconsideration.