

DATE: August 16, 2006

In Re:

American Mopac International, Inc.

Claimant

)
Claims Case No.06080901

CLAIMS APPEALS BOARD

RECONSIDERATION DECISION

DIGEST

A shipper offers sufficient proof of a *prima facie* case of liability against a carrier for damage to a computer monitor when he offers evidence that the monitor was in good working order prior to tender to the carrier and the nature of the internal damage is consistent with its having been mishandled or dropped, *e.g.*, physical damage to otherwise sturdy components. The mere lack of external damage is not sufficient evidence to rebut the carrier's liability.

DECISION

American Mopac International, Inc., (Mopac) requests reconsideration of a Defense Office of Hearings and Appeals' (DOHA) appeal decision, DOHA Claims Case No. 06070325 (July 21, 2006).

Background

Mopac requests a refund in the amount of \$73.00. At issue in this request for reconsideration is the amount offset for a damaged computer monitor, \$48.00. [\(1\)](#) Specifically, the shipper reported on both the DD Form 1840 and the DD Form 1840R that the monitor would not power up. The shipper and his wife both certified that the monitor was in good working order before being moved by Mopac. In addition, the shipper submitted a repair estimate which stated that the damage was internal and there was no external damage. Although the repairman was unable to determine the cause of the damage, he stated that to his best knowledge and belief the damage was caused by "loose connections - bent and/or cracked diodes." The repairman came to this conclusion because "the unit had a number of loose components (internal) [and] this is frequently caused when bumping occurs in moving, transport or shipping." The repair estimate for the monitor exceeded its depreciated replacement cost. Based on this evidence, the Navy determined that a *prima facie* case of liability for the damaged monitor was established and held the carrier liable for \$48.00, the depreciated replacement cost.

In the July 21, 2006 appeal decision, the adjudicator upheld the Navy's determination that a *prima facie case* of liability had been established. In its request for reconsideration, Mopac continues to deny liability on the grounds that there is no evidence that the damage was transit-related. Mopac argues that it should not be held liable for damage sustained resulting from the normal movement of this type of shipment, and through no fault, act or omission of its agents.

Discussion

In an action to recover from a carrier for damage to a shipment of household goods, the shipper establishes a *prima facie* case of carrier liability by showing tender of the property to the carrier, the property was not delivered or was delivered in a more damaged condition, and the amount of damages. *See Missouri Pacific Railroad Co. v. Elmore & Stahl*, 377 U.S. 134, 138 (1964). The burden then shifts to the carrier to rebut the *prima facie* case against it. In order to challenge

an element of the *prima facie* case, such as absence of transit-related damage, the carrier must offer clear and convincing contrary evidence or such evidence must be clear from the record. *See* DOHA Claims Case No. 05010602 (January 27, 2005), and DOHA Claims Case No. 04110201 (November 10, 2004). Where damage to an item is internal, as in this case, we have consistently held that a *prima facie* case of liability may be established when a shipper provides evidence that the item was in proper working order at tender and there is evidence of impact-caused damage to the item's normally sturdy internal components. *See* DOHA Claims Case No. 04042702 (April 29, 2004), DOHA Claims Case No. 00041902 (May 2, 2000), DOHA Claims Case No. 98082504 (October 7, 1998), DOHA Claims Case No. 98060120 (June 16, 1998), DOHA Claims Case No. 98041507 (April 24, 1998), and DOHA Claims Case No. 98020215 (February 10, 1998).

In this case, the Navy had a reasonable basis to find sufficient evidence to establish a *prima facie* case of carrier liability, and the carrier has not rebutted that evidence. The shipper and his wife certified that the monitor was in good working order before tender to Mopac. At delivery, the shipper stated that the monitor would not power on. The repair estimate also showed impact damage to otherwise normally sturdy internal components (bent or cracked diodes). Thus, the mere lack of external damage to the monitor is not sufficient proof to rebut the carrier's liability. *See* DOHA Claims Case No. 98020215, *supra*.

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 carrier denied liability for the damage to the computer monitor. The carrier then reasoned, upon denial, that the balance of liability was only \$25. It declined to pay this amount citing the *Joint Military Industry Agreement on Claims of \$25 or Less* in which DoD agrees not to pursue carrier liability for claims \$25.00 or less as *de minimus*.