

DATE: September 26, 2006

In Re:

American Red Ball Transit Company

Claimant

)
Claims Case No.06090101

CLAIMS APPEALS BOARD

RECONSIDERATION DECISION

DIGEST

Where the non-temporary storage (NTS) contractor re-inventories a household goods shipment upon transfer from another NTS contractor's warehouse to its warehouse but omits various items that were on the original inventory, the carrier who removes the goods from the NTS contractor, absent evidence of tender, is not liable for the loss of items not listed on the re-inventory.

DECISION

The Carrier Recovery Branch of the Naval Support Activity Mid-South (hereinafter "the Navy") requests reconsideration of a Defense Office of Hearings and Appeals' (DOHA) appeal decision, DOHA Claims Case No. 06053035 (August 8, 2006).

Background

The Navy requests reconsideration of our Office's decision refunding American Red Ball Transit Company (Red Ball) the amount of \$8,862.16. The amount originally set off by the Navy against Red Ball for loss and damage to the member's household goods was \$9,601.10. Red Ball asserted that its liability was limited to \$738.94, and appealed the set-off to our Office.

On June 4, 1999, the member's household goods were picked up in San Antonio, Texas, and stored with Alamo Moving and Storage (Alamo). On November 11, 2001, the property stored with Alamo was transferred to McNamara Vans and Warehouses (McNamara). At this time, McNamara re-inventoried the goods but many items were omitted from the new inventory. cNamara failed to cross-reference the inventories and prepare appropriate exceptions. When Red Ball picked up the goods from McNamara, they were only provided with McNamara's re-inventory. At issue in this request for reconsideration is the amount offset for items missing at delivery that were not listed on McNamara's re-inventory.

In the August 28, 2006 appeal decision, the adjudicator found that the Navy had failed to establish a *prima facie* case of liability against Red Ball. The Navy requests reconsideration contending that the carrier has failed to present clear and convincing evidence that it did not receive the items in question from non-temporary storage facility as no rider was prepared and no exceptions were taken. Although the Navy agrees that McNamara violated procedures in the Tender of Service, the Navy states that Red Ball also violated procedures and, thus, is liable as the last handler of the goods.

Discussion

A *prima facie* case of carrier liability is established 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). When goods pass through the custody of several bailees, it is a presumption of the common law that the damage occurred in the hands of the last one. *See* Comptroller General decision B-243750, Aug. 28, 1991; and 57 Comp. Gen. 415 (1978). The last handler can avoid liability by showing that the damage or loss did not occur while the item was in its custody. A carrier removing goods from a non-temporary storage (NTS) contractor's storage facility should carefully check each item that it is receiving against the NTS inventory and note any differences.

In this case, the adjudicator found the record contained insufficient evidence to establish that the missing items were tendered to Red Ball. Therefore, the adjudicator found that the Navy failed to establish a *prima facie* case of carrier liability. The adjudicator further suggests that cNamara, as the last handler of the missing items, should be held liable. In its request for reconsideration, the Navy has not presented any evidence to show that the missing items were tendered to Red Ball.

When Red Ball picked up the household goods from the warehouse, they were only provided with McNamara's re-inventory. In fact, the file contains a document from McNamara stating that when they re-inventoried, they did so as if they were the original carrier picking up the shipment from the member's residence. There was nothing on this re-inventory to alert Red Ball to that fact that any additional items were involved. It would have been impossible for Red Ball to record or report any additional items on an exception report when they took possession of the shipment. Therefore, there is no evidence of tender of the claimed missing items to Red Ball. Thus, Red Ball was not the last handler of the missing items and is therefore not liable for them. *See* DOHA Claims Case No. 96070207 (September 5, 1996).

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