

DATE: March 29, 2007

In Re:

Blue Sky Van Lines, Inc.

Claimant

)
Claims Case No. 07032809

CLAIMS APPEALS BOARD

RECONSIDERATION DECISION

DIGEST

Under federal law, in an action to recover from a carrier for damage or loss in a shipment, a *prima facie* case is established by showing delivery in good condition, failure to deliver or arrival in a damaged condition, and the amount of damages. Where an item is not listed on the inventory, the shipper must provide some substantive evidence of his tender of the item to the carrier beyond a mere claim and the acknowledgment on it of the penalties for filing a false claim.

DECISION

Blue Sky Van Lines, Inc, through its representative Resource Protection, requests reconsideration of the March 12, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07020903, in which our Office disallowed Blue Sky's claim of \$395 for reimbursement of an improper set off against it for transit loss. [\(1\)](#)

Background

The record indicates that the service member tendered his household goods in Florida, on August 19, 2004, and that they were delivered to him in Rochester, New York on August 28, 2004. The member claims that numerous inventory items were lost or damaged in the move, resulting in a setoff in the total amount of \$2,154. Only one item, a Marine Corps NCO ceremonial sword, valued at \$395, is now in dispute. The record also indicates that the sword was not reflected in the inventory, but that the member immediately reported it missing in the *Joint Statement of Loss or Damage at Delivery*, DD Form 1840, on the date of delivery and thereafter provided a detailed written statement on the tender of the item. On reconsideration, the carrier again disputes its liability for the loss of the sword contending that there is no proof it was tendered to it, and emphasizing on reconsideration that even if there is proof that the service member tendered the sword to a driver, he tendered it to the warehouseman's driver and that the warehouseman was not an agent of Blue Sky.

In his written statement, the service member described the circumstances surrounding his tender of the ceremonial sword to the carrier. The member stated that on the day his goods were picked up in Florida, he had to leave to drive to New York. At that time, certain items (the sword, tools and an electric drill) had not yet been placed into the moving van. When he mentioned those items to the driver, the driver said that he would place those items into the van. The member states that he witnessed the driver place the sword into the section of the van with his goods, but the driver did not put it into a box or other container. The member also states that he met the same driver in New York two weeks later and told the driver that he needed to put his beds together but that he could not find his drills. The member then described the driver reaching under the seat of the cab of his truck and producing the member's drills. However, the sword was never found. The member described a bike that was mis-delivered to him, and the member advised the driver

that it was not his. The driver indicated he was not sure which bicycle belonged to the member. The member states that these items were never in storage and were unrelated to the goods that were placed into storage from an apartment he had prior to a tour in Japan.

Discussion

Under federal law, in an action to recover from a carrier for damage or loss of an item in transit, a *prima facie* case is established by showing delivery in good condition, failure to deliver or arrival in a damaged condition, and the amount of damages. The burden of proof then shifts to the carrier to show both that it was free from negligence and that the damage to the goods was due to one of the excepted causes relieving the carrier of liability. *See Missouri Pacific Railroad Company v. Elmore & Stahl*, 377 U.S. 134, 138 (1964).

As our adjudicator pointed out, when an item is not listed on the inventory, the member must present at least some substantive evidence of his tender of the item to the carrier beyond a mere claim and the acknowledgment on it of the penalties for filing a false claim. *See* DOHA Claims Case No. 00091204 (September 21, 2000). In this case, the member described in specific detail the circumstances surrounding his tender of the sword and other items to the driver, and the circumstances surrounding the delivery of some, but not all, of these items less than two weeks later by the same driver. The member also distinguished between the sword and other items tendered with it to the particular driver and the goods that were placed into non-temporary storage (which are unrelated to Blue Sky's services). Considering the level of detail in the statement, and comparing it with other record evidence or the absence of it, our adjudicators reasonably found that the member tendered the sword to Blue Sky's driver and that Blue Sky failed to deliver it to the member.

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.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

Signed: William S. Fields

William S. Fields

Member, Claims Appeals Board

1. This shipment moved under Personal Property Government Bill of Lading ZY-491,277 and involves USN Claim 0605451 and Blue Sky Claim 05-16.