KEYWORDS: carrier/contractor claim; last handler; storage-in-transit

DIGEST: Under the "last handler rule," the presumption of liability for damage to goods transfers from the carrier to the warehouseman upon the conversion of the goods from storage-in-transit (SIT) to permanent storage.

CASENO: 07120601

DATE: 1/08/2008

DATE: January 8, 2008

In Re:	)	
Stevens Forwarders, Inc.	)	Claims Case No.07120601
Claimant	)	

CLAIMS APPEALS BOARD
RECONSIDERATION DECISION

DIGEST

Under the "last handler rule," the presumption of liability for damage to goods transfers from the carrier to the warehouseman upon the conversion of the goods from storage-in-transit (SIT) to permanent storage.

DECISION

The Carrier Recovery Branch of the Department of the Navy requests reconsideration of the November 13, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07101802. In that decision, our Office allowed a $2,846.76 refund to the carrier.

Background

Stevens Forwarders, Inc., (Stevens) picked up a shipment of household goods from Papillion, Nebraska, on May 21, 2002, and transported it to Manassas, Virginia. The shipment was placed into storage-in-transit (SIT) in Manassas with Manassas Transfer, Inc., on May 31, 2002. Stevens delivered the shipment to Alexandria, Virginia, on August 5, 2003.

After the member accepted delivery of the household goods, the Navy submitted a claim to Stevens for goods either lost or damaged. The Navy then collected by offset $2,846.76 from Stevens. Stevens appealed the set-off, arguing that liability for the goods transferred from it to the warehouseman upon termination of SIT.

In the appeal decision, DOHA adjudicators allowed a refund to the carrier in the amount of $2,846.76. In that decision, our Office found that SIT terminated at 12:01 AM on May 26, 2003, and liability transferred to Manassas Transfer, the warehouseman.

In its request for reconsideration, the Navy argues that the shipment never converted to the member's expense. The Navy states that the member was not notified in writing by the Traffic Management Office (TO), the carrier, or the SIT agent of the expiration of SIT and conversion to the member's expense and his ability to obtain insurance. The Navy cites Part IV of the Defense Transportation Regulation (DoD 4500.9R), arguing that the carrier has not shown evidence that the entitlement ended. The Navy argues that the government has provided evidence by the DD Form 1857 of an extension and a written order from the TO for an additional five days. The Navy argues in the alternative if SIT had expired, the carrier was not justified in billing the Navy for storage, delivery out, and unpacking against the Government Bill of Lading (GBL). The Navy contends that the carrier should be required to pay back those charges.

Discussion

Under federal law in an action to recover from a carrier for damage to a shipment, the shipper establishes his *prima facie* case when he shows delivery in good condition, failure to deliver or arrival in damaged condition, and the amount of damages. Thereafter, the burden of proof is upon the carrier to show both that it was free from negligence and that the damage to the cargo was due to one of the excepted causes relieving the carrier of liability. *See Missouri Pacific R.R. v. Elmore & Stahl*, 377 U.S. 134, 138 (1964). When goods pass through the custody of several handlers, 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. *See McNamara-Lunz Vans and Warehouses, Inc*., 57 Comp. Gen. 415, 417 (1978); and DOHA Claims Case No. 96070205 (September 5, 1996).

In its reconsideration request, the Navy relies to some extent on *Fogarty Van Lines*, B-235558.7, Dec. 28, 1994. In this decision, the Comptroller General held that a carrier may be liable for damage to goods not delivered to the member within the period authorized for SIT, even though SIT had terminated where the carrier: (1) did not notify the government that the

carrier was placing the shipment in permanent storage, as required by the GBL; (2) did not annotate the inventory upon change of custody, as required by the *Tender of Service*; and (3) billed the government for SIT, not permanent storage. In DOHA Claims Case No. 01041617 (August 16, 2001), our Office overruled the three-pronged test outlined in *Fogarty Van Lines*, B-235558.7, *supra*, after examining the applicable regulations and contractual provisions. The language in the *Personal Property Traffic Management Regulation* (PPTMR), and the *Domestic Personal Property Rate Solicitation* make it clear that when a shipment remains in storage beyond the SIT entitlement period, carrier liability terminates at midnight on the last day of the SIT period. At this time, the GBL character of the shipment ceases and the warehouse becomes the final destination of the shipment. At conversion, the warehouseman becomes the agent for the property owner, and the shipment becomes subject to the rules, regulations, charges and liability of the warehouseman. *See* DOHA Claims Case No. 04082453 (December 8, 2004).

The Navy cites the language in paragraph 406(A)(2)(c) of Part IV of the DoD 4500.9R, in support of its argument that the carrier must show evidence that the SIT entitlement ended. The Navy argues that the government has provided evidence of SIT extension until August 5, 2003, with a second DD Form 1857, extending SIT until July 31, 2003, and another five-day extension through an e-mail transmitted by the TO to the warehouseman. Our Office reasonably relied on the record evidence to find that the last handler was Manassas Transfer, Inc. Our Office examined the record evidence and the applicable regulations and found that SIT terminated at 12:01 AM on May 26, 2003, even though SIT was approved far past the original 90 days authorized. The DD Form executed on November 14, 2002, advised Stevens that the SIT entitlement ended at the end of May 25, 2003. The DD Form 1857 executed on June 25, 2003, was ineffective in extending the SIT period because SIT had already expired. In addition, as stated in DOHA Claims Case 01041617, *supra*, there is no requirement that the carrier notify the member at conversion from SIT to permanent storage.

Although the government attempted to extend SIT through August 2003 there is no evidence in the record that they ever communicated the attempted extension to Stevens. The record shows that the shipment went into SIT on May 31, 2002, and was delivered out of storage on August 4, 2003. However, Stevens only billed the government for SIT for the shipment from May 31, 2002, through May 25, 2003.[1] In addition, the attempt to extend SIT to July 31, 2003, was approved on June 25, 2003, and faxed to Manassas Transfer, Inc., on June 26, 2003, after SIT had already expired. The attempt to extend SIT from July 31, 2003, to August 5, 2003, was faxed to Manassas Transfer, Inc., on September 16, 2003, after the shipment had already been delivered.

Finally, the Navy argues that the carrier should have to pay back what it charged for storage, delivery out and unpacking against the Government Bill of Lading (GBL). As explained above, the record available to this Office contains only one SF 1113, and in that document

[1] *See* Standard Form 1113, Public Voucher for Transportation Charges, dated October 7, 2003.

Stevens only billed the government for SIT for the shipment from May 31, 2002, through May 25, 2003. If Stevens billed for SIT and other charges under the GBL beyond May 25, 2003, that matter is a transportation overcharge cognizable by the General Services Administration under 31 U.S.C. § 3726.[2]

Conclusion

The Navy's request for reconsideration is denied, and we affirm the November 13, 2007, appeal decision. In accordance with DoD Instruction 1340.21, ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.

Signed: Michael D. Hipple

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Michael D. Hipple
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom
Member, Claims Appeals Board

[2]Under 31 U.S.C. § 3726, the Administrator of General Services audits transportation charges. For billing purposes, a transportation transaction is reviewed as it was intended to be, and not how the parties billed. The Administrator is responsible for recasting the transaction as it should have been, and determining the correct billing that follows from such a reconstruction. The statute generally provides only a period of three years to recover overcharges.