KEYWORDS: carrier/contractor liability

DIGEST: A fact finder had a reasonable basis to conclude that a *prima facie* case had been established and that the nature of the damage claimed by the shipper was consistent with the results of the Army's estimate two years later.

CASENO: 07051605

DATE: 6/13/2007

DATE: June 13, 2007

In Re: Piedmont Van Lines, Inc.	Claims Case No.07051605
Claimant	

CLAIMS APPEALS BOARD
RECONSIDERATION DECISION

DIGEST

A fact finder had a reasonable basis to conclude that a *prima facie* case had been established and that the nature of the damage claimed by the shipper was consistent with the results of the Army's estimate two years later.

DECISION

Piedmont Van Lines, Inc., through its representative Resource Protection, requests reconsideration of the April 30, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07030601, in which our Office disallowed Piedmont's claim for a refund of $1,169.00 from a set off against it for transit loss.

Background

Piedmont picked up the shipment of household goods from Hope Mills, North Carolina, on June 21, 2003, and delivered it to Cambridge, Massachusetts, on July 23, 2003. The member claimed that several items, including a treadmill, were damaged during transit. Piedmont denied liability for the treadmill because the damage was internal; the cause of damage was not verified; and no estimate of repair was submitted by the member.

In the appeal decision, the DOHA adjudicator denied the carrier's claim. On reconsideration, the carrier again disputes its liability for damage to the treadmill contending that there is no proof the damage was transit-related. The carrier states that the member did not file his claim until after he moved from Massachusetts to North Carolina. The carrier asserts that when its agent inspected the treadmill the claimed damage did not exist.[1] If it had existed, the damage would appear on the inventory prepared by the carrier who returned the property to North Carolina. In addition, the Army obtained an estimate after the member's move back to North Carolina, dated September 20, 2005, over two years after the carrier's delivery of the shipment to Massachusetts. The carrier asserts that if the damage claimed existed in Massachusetts, an estimate should have been done in Massachusetts and not after the member's move to North Carolina.

Discussion

Under federal law in an action to recover from a carrier for damage to 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. 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 R.R. v. Elmore & Stahl,* 377 U.S. 134, 138 (1964). Under the Military-Industry Memorandum of Understanding on Loss and Damage (MOU), effective January 1, 1992, when loss or damage is not reported at delivery, a notice of later-discovered loss or damage (usually the Notice of Loss or Damage, DD Form 1840R) dispatched to the carrier not later than 75 days following delivery shall be accepted by the carrier as overcoming the presumption of the correctness of the delivery receipt.

In this case, the DOHA adjudicator found the record contained sufficient evidence to establish that the treadmill was damaged while in the custody of the carrier. The adjudicator found that the carrier had not rebutted the *prima facie* case against it. In its request for reconsideration, the carrier has not presented any evidence to show that it is not liable for the damage to the treadmill.

When Piedmont picked up the household goods shipment, the inventory listed the item at issue as a Nordic Track treadmill with no pre-existing damage listed. However, the inventory

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[1]We are not sure why the carrier claims its agent did not perform an inspection until January 4, 2004, when the inspection report reflects the service date as October 2, 2003.

noted MCU and ECU (mechanical condition unknown and electrical condition unknown). On the DD Form 1840R, dispatched to the carrier on August 26, 2003, the member noted damage (scrapes and scratches, rocks when operates) to the treadmill. On October 2, 2003, the carrier's agent performed an inspection and noted only cosmetic damage to the frame of the treadmill. The inspector could not verify the nature of "rocks when operates." However, it does not appear that the inspector operated the treadmill to determine its condition and compare it with the member's complaint.

The member timely dispatched notice of damage to the carrier. Under the MOU, the member's subsequent move to North Carolina did not invalidate his right under the MOU to claim damage to the treadmill, nor did it vitiate the carrier's inspection right. *See* DOHA Claims Case No. 00080813 (September 6, 2000); and DOHA Claims Case No. 00050802 (May 17, 2000). In fact, we note that the carrier's agent timely inspected the treadmill after receiving the DD Form 1840R. The member's notice was therefore adequate to cover the damage considering the inspector noted only cosmetic damage to the frame but could not verify the "rocks when operates."

We do not agree with the carrier's argument that the Army's estimate was too old to be relevant. There is no conflict between the estimate and the claimed damage. The Army performed an inspection in September 2005 that described damage similar to the damage originally claimed by the member.

Conclusion

For the reasons stated, the request for reconsideration is denied, and the appeal decision is sustained. 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