KEYWORDS: carrier/contractor liability

DIGEST: Generally, we will not review a claim based on a theory of recovery which was not raised by the claimant until it filed a reconsideration request with this Office.

CASENO: 08061102

DATE: 6/17/2008

DATE: June 17, 2008

In Re:	)	
Stevens Transportation Co., Inc.	)	Claims Case No. 08061102
Claimant	)	

CLAIMS APPEALS BOARD
RECONSIDERATION DECISION

DIGEST

Generally, we will not review a claim based on a theory of recovery which was not raised by the claimant until it filed a reconsideration request with this Office.

DECISION

Stevens Transportation Co., Inc. (Stevens) requests reconsideration of the April 30, 2008, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 08041601. In that decision, DOHA affirmed the Navy's initial determination holding Stevens liable for transit loss and damage in the amount of $2,558.20 related to the transportation of a service member's household goods under Personal Property Government Bill of Lading (PPGBL) ZY-400,089.

Background

The record indicates that the household goods were originally packed and transported to a non-temporary storage (NTS) facility in Maryland in May 2005 by Quality Transfer & Storage Co., Inc (QTS). QTS prepared the inventory at that time. As shown on the PPGBL, Stevens obtained the shipment from the NTS facility in early August 2005, and other documentary evidence shows that it was delivered to the service member's family residence in California on August 24, 2005. On September 21, 2005, the member timely dispatched to Stevens a Notice of Loss and Damage (DD Form 1840R) for loss and damage not identified on the date of delivery. In relevant part, the DD Form 1840R included an entire box of hardware for beds and other articles (no item number referenced). In this reconsideration request, Stevens denies $50 in liability for the hardware on the basis of the Rider to Inventory (rider) it issued when it picked up the shipment at the NTS facility. The rider specifically indicated that no hardware was tendered: "Not-responsible for bed or assembly hardware." A representative from Stevens Van Lines (an affiliate of Stevens) and QTS signed the rider. Previously Stevens had objected to its liability for the hardware on other grounds and had discussed the rider with respect to its liability on other items, but a review of the correspondence in the record between the Navy and Stevens does not indicate that Stevens had previously raised this particular defense to its liability for the hardware.[1]

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 tender in good condition, failure to deliver or arrival in a damaged condition, and the amount of damages. *See Missouri Pacific R.R. v. Elmore & Stahl*, 377 U.S. 134, 138 (1964). When the goods pass through the custody of several bailees, 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* B-243750*,* Aug. 28, 1991; and 57 Comp. Gen. 415, 418 (1978). The burden then shifts to the carrier to rebut the *prima facie* case against it. In order to rebut this presumption and avoid liability, the carrier (as the last custodian) must show that the loss or damage did not occur while in its custody. For a carrier removing goods from a NTS facility for delivery, that showing is made by preparing an exception sheet or rider to the inventory. *See* DOHA Claims Case No. 07041001 (April 24, 2007); DOHA Claims Case No. 03080416 (August 12, 2003) and DOHA Claims Case No. 00052218 (May 31, 2000).

Stevens relies on facts already on the record, but it is inappropriate to give Stevens a full airing of its new theory of recovery this late in the administrative process. For whatever reason, Stevens failed to raise an obvious defense to liability early in its discussion of the claim with the Navy. In effect, Stevens asks us to entertain this new theory of recovery without resort to the component concerned and DOHA's claims experts, or to suspend all action and institute

[1]Examples of the correspondence we reviewed include letters dated April 3, 2008, March 6, 2008, May 9, 2007, April 24, 2007, March 6, 2007 and January 4, 2007.

supplementary discovery to help it perfect its late claim. We do not believe that it is appropriate to exercise our reconsideration authority to facilitate a dilatory presentation of a claim in these circumstances. *Cf.* DOHA Claims Case No. 04041302 (April 21, 2004); and DOHA Claims Case No. 99021627 (March 10, 1999). Without considering the rider language about the hardware, there is sufficient record evidence to show that: the member tendered hardware to QTS; QTS was a pick-up and delivery agent of Stevens;[2] Stevens failed to deliver the hardware; and the hardware cost $50 to replace. This meets the requirements of a *prima facie* case of liability against Stevens for the loss of the hardware. *See also* DOHA Claims Case No. 03062301 (July 10, 2003) (although a basketball goal was not listed on the inventory, the delivery of a basketball goal without hardware is substantial evidence of tender of the goal and associated hardware).

Conclusion

Stevens' request for reconsideration is denied, and we affirm the appeal decision. In accordance with DoD Instruction 1340.21, ¶ E7.15.2 (32 C.F.R. 282, Appendix E (o)(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: William S. Fields

_____

William S. Fields
Member, Claims Appeals Board

[2]The bill of lading which Stevens issued to transport the shipment and bill for its services states that QTS was Stevens' agent, both for the tendering of the shipment at the NTS facility and its final delivery. See Blocks 1 and 33a.