
DATE: September 5, 1996

In Re: National Claims Services, Inc.

on behalf of

Mid-State Moving & Storage, Inc.

Claims Case No. 96070203

Claimant

CLAIMS APPEALS BOARD DECISION

DIGEST

Tender of an item to a carrier is established as an element of a prima facie case of carrier liability where the item allegedly lost or damaged is reasonably related to the items shown on the inventory of a carton's contents, particularly where it would not have been unusual to pack the item in that carton, and the carrier did the packing and prepared the inventory list.

DECISION

This responds to National Claims Services' appeal of the U.S. General Accounting Office (GAO) Settlement Certificate Z-2869266-1, dated August 4, 1995, which allowed only \$71.50 of its claim of \$309.58, on behalf of Mid-State Moving & Storage, Inc. (Mid-State). Pursuant to Public Law No. 104-53, November 19, 1995, effective June 30, 1996, the authority of the GAO to adjudicate carriers' reclaims of amounts deducted by the Services for transit loss/damage was transferred to the Director, Office of Management and Budget who delegated this authority to the Department of Defense.

Background

National's claim involved damage to the household goods of a service member which Mid-State picked up under Personal Property Government Bill of Lading RP-932,090 at MacDill Air Force Base, Florida, on November 12, 1992, and delivered to Tyndall Air Force Base, Florida, on November 1, 1993. The Air Force paid the service member a total of \$347.34 for transit loss and damage to his household goods, and it collected \$346.55 from Mid-State by setoff.⁽¹⁾ National claims reimbursement of \$238.08 not allowed by the GAO. This amount involved: the tupperware in item 399 of the descriptive inventory, a carton described as containing plastic kitchenware; a mixer and a food processor, both in item 425, a carton described as containing kitchen supplies; Visionware glass pots in item 403, a carton described as containing kitchen glassware; and tree lights in item 371, a carton described as containing a Christmas tree. Mid-State packed the numbered items and prepared the descriptive inventory. On appeal, National argues that there is no proof that these items were tendered to Mid-State by the shipper service member because the member did not include a statement describing the circumstances surrounding tender even though each lost article may have reasonably resembled the description on the inventory. National contends that after being in storage for a year, it is doubtful that the member would know what was in each carton.

Discussion

A prima facie case of carrier liability is established by a showing that the shipper tendered property to the carrier, that 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 (1964). The burden of proof then shifts to the carrier to rebut the prima facie liability.

If household goods are not specifically listed on the descriptive inventory prepared at origin, the carrier will not be charged with their tender if the only support is a property owner's unsupported, self-serving acknowledgment in writing that he is aware of the criminal penalties for filing a false claim. In this regard, National refers us to Paul Arpin Van Lines, Inc., B-205084, June 2, 1982, which the Comptroller General affirmed on reconsideration in Department of the Army, B-205084, June 8, 1983. But, it is not necessary to list every household good on the descriptive inventory, and a carrier can be charged with loss of articles not specifically listed where other circumstances are sufficient to establish that such goods were tendered and lost. See Valdez Transfer, Inc., B-197911.8, Nov. 16, 1989.

In Paul Arpin the Army had arbitrarily assigned certain articles to specific inventory items (cartons) without evidence that those items were packed in them. The only evidence of tender was the member's written acknowledgment of the criminal penalties. In his decision, the Comptroller General suggested that a statement from the owner explaining the circumstances surrounding tender could have lead to a different result, but he did not suggest that such a statement was the only way in which other circumstances may be sufficient to establish tender. He also indicated that he would have more favorably considered articles which were related directly to any category of item listed on the inventory.

Later, the Comptroller General decided against the carrier on the issue of tender when most of the items in issue were claimed by the shipper to be in cartons described on the inventory as containing categories of effects (e.g., bathroom items) to which an article like a Waterpick appear to be directly related. See Cartwright Van Lines, B-241850.2, Oct. 21, 1991. The Comptroller General drew a distinction between items which were directly related to the inventory description and items like an unlisted compact disc player claimed to be in a box of "knickknacks." Compare Aalmode Transportation Corp., B-240350, Dec. 18, 1990.

Finally, the Comptroller General found evidence of tender where the article allegedly lost is reasonably related to items shown on the inventory of a carton's contents, particularly where it would not have been unusual to pack the article in the carton and where the carrier, like Mid-State, did the packing and prepared the inventory. See American Van Services, Inc., B-249966, Mar. 4, 1993.

In our view, the adjudicator reasonably found that the circumstances were sufficient to establish tender because the tupperware was plastic kitchenware; a mixer and a food processor were kitchen supplies; Visionware glass pots were kitchen glassware; and the tree lights were directly related to the Christmas tree.

Conclusion

We affirm the settlement.

\s\ Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

\s\ Joyce N. Maguire

Joyce N. Maguire

Member, Claims Appeals Board

\s\ Christine M. Kopocis

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Member, Claims Appeals Board

1. This matter involves Air Force Claims File: Tyndall AFB 94-229, and National's File No. N-0338.