_____ DATE: September 5, 1996

In Re: National Claims Services, Inc.

on behalf of

Swiftmode Forwarding Co., Inc.

Claims Case No. 96070204

Claimant

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CLAIMS APPEALS BOARD DECISION

DIGEST

A Navy officer whose household goods were damaged in a move submitted repair estimates or receipts for the damaged items, and the Navy based its damage calculations on those estimates. In the absence of clear and convincing evidence that the Navy acted unreasonably, this Office will not question the Navy's use of that information rather than repair estimates from a company hired by the carrier.

DECISION

This responds to your appeal of the U.S. General Accounting Office (GAO) Claims Settlement Certificate Z-2862336(8), dated September 21, 1995, which denied the claim of National Claims Services, Inc. (National), on behalf of Swiftmode Forwarding Co., Inc. (Swiftmode). 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 United States Navy service member, which Swiftmode picked up under Personal Property Government Bill of Lading TP-382,750 in North Kingstown, Rhode Island, on August 29, 1989, and delivered to Lakeside, California, on September 26, 1989. The Navy paid the member a total of $2,831.35 for transit loss and damage to his household goods, and it collected $2,731.35 from Swiftmode by setoff.[(1)] National claims reimbursement of $833.31 of that amount.

GAO agreed with the findings in the Navy's administrative report, and it provided a copy to National. On appeal, National generally objects to the administrative report and GAO's settlement, but it did not specify the bases for its objections. We affirm GAO's denial of all but $1.73 of the claim allowed by the Navy.

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.

It appears that National is generally concerned that the Navy based its damage calculations on repair estimates by companies chosen by the shipper rather than on lower estimates by the carrier's inspector. An example of this was the broken exercise bike (item 78) where the member claimed the amount he expended for repair parts ($72.58) versus the carrier's inspector's estimate of $55. In his decisions, the Comptroller General has held that he will not question a

Service's use of a shipper-supplied estimate, rather than the carrier's, in the absence of clear and convincing evidence that the Service acted unreasonably in doing so. See Fogarty Van Lines, B-257111, Dec. 29, 1994. In this claim there is no evidence that the Navy acted unreasonably when it based its damage calculations on repair estimates made by companies chosen by the shipper or, in the example here, the member's expenditures for repair parts.

With specific reference to the motorcycle helmet which was part of the shipment, there is no evidence that the Navy acted unreasonably in accepting the statement of a motorcycle shop representative that the helmet had to be replaced because it had been dropped. As the Navy points out, a motorcycle shop representative is usually an expert on motorcycle equipment. Therefore, we will not question the Navy's calculation of the value of damages. See American Van Services. Inc., B-259198, May 5, 1995.

National also suggests that some of the damage to a motorcycle occurred after delivery and that all of the damage should have been identified at the time of delivery. However, under the ilitary-Industry Memorandum of Understanding, Loss and Damage Rules, a prima facie case of carrier liability for additional damage not noted at the time of delivery can be asserted so long as the service member dispatches notice of such damage to the carrier not later than 75 days following delivery. National also contends that the carrier should not be held liable because the motorcycle was not present for inspection when the carrier's inspector arrived. But, the Navy found that Swiftmode did not aggressively pursue its inspection rights because Swiftmode never notified it of problems in arranging an inspection. In this situation the lack of an inspection does not relieve the carrier of liability. See Continental Van Lines. Inc., B-215559, Oct. 23, 1984.

National disputes the amount of its liability, in some instances, because damage was preexisting. For example, National contends that it is responsible for only $46 of damage to a handcrafted cedar chest because there was substantial preexisting damage (PED) to it, while the Navy contends that Swiftmode was liable for $446.25. On this item, the Navy found that the PED was minor compared to the additional damage caused in transit. To the extent that it was legible, the origin inventory referred to scratches and gouges, but the government's inspection at destination revealed structural splits, lock damage and other major damage. Based on this record, the Navy reasonably allocated the PED.

Finally, one of the damaged items at issue is a waterbed mattress. The mattress can be used, but the baffles which prevented waves were damaged in transit. National provided the Navy with a copy of the GAO's Settlement Certificate Z-2865092(07), in which the GAO's adjudicators found that a carrier was not liable for damage to a waterbed mattress. Settlements of the GAO are not binding precedent for any other claim pending before that agency. See B-239199.2, July 9, 1991. In the present situation, Swiftmode is liable for damage to the mattress unless National can provide evidence to rebut the presumption of carrier liability for improper packing and shipping. See McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415 (1978).

Conclusion

Accordingly, except for $1.73 which the Navy allowed for the salvage value of a lamp shade, we deny National's claim.

\s\ Michael D. Hipple

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Michael D. Hipple

Chairman, Claims Appeals Board

\s\ Joyce N. Maguire

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Joyce N. Maguire

Member, Claims Appeals Board

\s\ Christine M. Kopocis

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Christine M. Kopocis

Member, Claims Appeals Board

1. The Navy's File No. is CA 91-1127; National's File No. is 603007.