_____ DATE: September 5, 1996

In Re: Andrews Van Lines, Inc.

Claims Case No. 96070205

Claimant

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CLAIMS APPEALS BOARD DECISION

DIGEST

A delivering carrier is responsible for the loss of, or damage to, a service member's household goods that were prepacked by a nontemporary storage contractor if the service member otherwise presents a prima facie case of liability against the delivering carrier. While the carrier may not have an obligation to open prepacked containers of household goods to examine their contents when those containers are in apparent good order, the carrier is the last bailee to possess such goods prior to delivery, and, in the absence of evidence that the loss did not occur in its custody, it is presumed that the loss did occur in the carrier's custody.

DECISION

This responds to the appeal of Andrews Van Lines, Inc. to the U.S. General Accounting Office's (GAO) Settlement Certificate Z-2729037(107), dated September 19, 1995, which denied its claim for reimbursement of amounts deducted by the Air Force for transit loss and damage.[(1)] 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

Andrew's claim involved damage to the household goods of a service member. A nontemporary storage (NTS) contractor obtained the household goods from the service member at Vandenberg Air Force Base on October 15, 1992. Andrews obtained the property from the NTS facility under Personal Property Government Bill of Lading SP-308,363 in Lompac, California on December 28, 1992, and delivered them to the service member in Carmel, Indiana, on January 18, 1993. The Air Force deducted $339.19 from Andrews on account of transit loss/damage, and Andrews filed a claim for reimbursement with GAO in the amount of $194.34. In its administrative report, the Air Force allowed $68.59, and GAO's Claims Division otherwise disallowed the claim. The amount still in dispute is $125.75.

The amount in dispute involves a telephone answering machine claimed by the service member to be in Item 14 of the descriptive inventory. The NTS contractor described Item 14 as a 4.5 cubic feet carton of kitchen appliances. The other articles involved are a missing broom and missing scale from a 4.5 cubic feet carton, described at Item 60 on the descriptive inventory as "bath plunger-long poles." The record does not indicate that Andrews inspected either carton or created an inventory or rider for any of the household goods.

With respect to the broom, Andrews contends that it is not possible to pack a broom, normally 51 inches in length, into a 4.5 cubic feet carton. Andrews contends that the dimensions of a 4.5 cubic feet carton are 24" X 18" X 18." Generally, as to all articles, Andrews contends that the household goods were packed by the NTS contractor under a separate contract with the government, and unless the entire carton was missing or delivered to Andrews in an open condition, it would not have been alerted to a possible loss. Andrews' position assumes that it is not required to open prepacked containers from prior bailee when they are in appparent good order.

Discussion

Recently, the Comptroller General responded to the same general argument that Andrews presented here in the decision Carlyle Van Lines, B-270114, May 22, 1996. In Carlyle, the Comptroller General held that a delivering carrier is responsible for the loss of, or damage to, a service member's household goods that were prepacked by a NTS contractor if the service member otherwise presents a prima facie case of liability against the delivering carrier.[(2)] The Comptroller General stated that while the carrier is not under a general obligation to open prepacked containers of household goods in apparent good order to examine their contents, the carrier is the last bailee to possess such goods prior to delivery, and, in the absence of evidence that the loss did not occur in its custody, it is presumed that the loss did occur in the carrier's custody. The Comptroller General based his decision on the decision McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415 (1978), and our research indicates that at least two other Comptroller General decisions have followed the same rationale: Eastern Forwarding Company, B-248185, Sept. 2, 1992 and Air Land Forwarders, B-247425, June 26, 1992.

The courts also appear to follow the Comptroller General's analysis. In support of the decision in McNamara-Lunz, the Comptroller General cited and explained two judicial decisions involving successive transportation custodians of prepacked goods: General Electric Co. v. Pennsylvania R.R., 160 F. Supp. 186, 188 (W.D. Pa. 1958) and Julius Klugman's Sons, Inc. v. Ocean Steam Nav. Co., 42 F.2d 461 (S.D. N.Y. 1930).

We will not address Andrews' argument concerning the impossibility of fitting the broom into the carton. Andrews should have raised this factual issue much earlier in the claim process, not on appeal. Compare B-252972.2, Jul. 14, 1995. While most brooms may be the length suggested by Andrews, we have no evidence in the record concerning the size of the broom, and nothing suggests that the broom handle could not have been detached from the broom and fit into the carton. The description of Item 60 as containing "long poles" is consistent with such a detachment.

Conclusion

We affirm GAO's settlement.

Signed: Michael D. Hipple

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Michael D. Hipple

Chairman

Signed: Joyce N. Maguire

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Joyce N. Maguire

Member

Signed: Claude R. Heiny

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Claude R. Heiny

Member

1. The original amount in dispute was $194.34, but the Air Force allowed $68.59 in its administrative report. See Air Force Claims File 1L/B/CTGC/93/00223/CR, JACC File No. 9307792 and Andrews File 93-009.

2. A prima facie case of carrier liability is established when the service member or other shipper shows that the shipper

tendered property, 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 this prima facie evidence of liability.