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DATE: September 5, 1996

In Re: Andrews Forwarders, Inc.

Claims Case No. 96070207

Claimant

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**CLAIMS APPEALS BOARD DECISION****DIGEST**

Where a service member places his household goods into nontemporary storage (NTS), and the descriptive inventory prepared by the NTS contractor indicates that a shipment of a service member's household goods contained two televisions, a carrier who obtains the household goods from the contractor without documenting by rider or otherwise that it did not receive either television, is not liable for the loss where the evidence is clear that both sets were delivered out of NTS prior to the carrier's control over the household goods.

**DECISION**

Andrews Forwarders, Inc. (Andrews) appeals the U.S. General Accounting Office's (GAO) Settlement Certificate Z-2729037-127, dated October 5, 1995, which denied its claim for reimbursement of \$1,274 which was offset by the Navy for transit loss in a service member's household goods. [\(U\)](#) 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**

Andrews' claim involves the issue of whether it is liable for the loss of a Sony television from the shipment of the household goods of a service member. The service member tendered his household goods to a nontemporary storage (NTS) facility in Richmond, California on September 28, 1987, and Andrews acquired control of them under Personal Property Government Bill of Lading TP-739,961 at the NTS facility on March 27, 1991. Andrews transported them to the member's new residence in Burke, Virginia where they were delivered in April 1991. Upon delivery, the service member noted the loss of the television. The Navy paid the service member \$1,199 for the loss, and the Navy set off a total of \$1,274 from Andrews, \$1,199 for transit loss plus \$75 for unearned freight charges.

The descriptive inventory prepared by the NTS contractor indicates that there were two color televisions in this lot of household goods, Items 138 and 139. An application for Shipment and/or Storage of Personal Property (DD Form 1299) prepared August 18, 1988, by the Naval Supply Center, Oakland, California, designated various items for early delivery out from NTS to Coronado, California. This DD Form 1299 indicated that these items were to be received by the service member or his daughter. Item 138, but not Item 139, was one of the specified items. The record also indicates that on January 22, 1990, the service member filed a second DD Form 1299 to release a piano stool (Item 91) and a piano, not indicated in the inventory, to a third person. An annotation in the remarks section of the NTS contractor's descriptive inventory indicates that the third person received not only the piano, but also a Sony television, on February 22, 1990. No item number was annotated with respect to this television. Finally, the record indicates that Andrews prepared a rider taking specific exceptions to the NTS contractor's descriptive inventory, but it did not mention anything about the televisions.

The Navy's administrative report indicates that the member or his daughter did receive Item 138 as requested, but the Navy held Andrews liable for Item 139 because it was not delivered to the member at final destination. The Navy notes, notwithstanding the annotation in the remarks section of the NTS contractor's inventory, that there was no service order

or DD Form 1299 authorizing release of the Sony television. And, most significantly, so far as the Navy is concerned, Andrews should have taken exception to the descriptive inventory in so far as the televisions were concerned. The Navy believes that Andrews' failure to except to the NTS contractor's inventory makes it liable for a television.

GAO agreed with the findings in the Navy's administrative report, and it provided a copy of the report to Andrews. On appeal, Andrews denies liability because there is proof in the record that both of the televisions owned by the member had been removed prior to the time it received the shipment. Andrews believes that Item 138 also was delivered to the third person.

### **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). Additionally, when goods pass through the custody of several bailees, it is a presumption of the common law that the damage occurred in the hands of the last one. See Stevens Transportation Co., B-243750, Aug. 28, 1991; and McNamara-Lunz Vans and Warehouses, Inc., 57 Comp.Gen. 415, 418 (1978). Once the shipper has established a prima facie case of liability, the burden is on the carrier or other bailee to show either that the damage did not occur while in its custody, or that the damage occurred as a result of one of a number of causes for which the carrier is not liable.

Under paragraph 54 of the Tender of Service, Personal Property, Household Goods and Unaccompanied Baggage,<sup>(2)</sup> a carrier obtaining property from a NTS contractor should carefully check each item in storage that it is receiving against the NTS inventory and note any differences. Andrews' rider to the original inventory should have included comments on the absence of the televisions. However, Andrews' neglect of this contractual duty was not causally connected to the loss of the television, and this is the only reason why it escapes liability in this instance.

We see nothing in the record suggesting that the third person received Item 138 as alleged by Andrews, but the Navy's administrative report indicates that Item 138 was delivered to a proper consignee in accordance with the August 1988 DD Form 1299. Further, the Navy does not dispute that the third person did obtain a Sony television from this lot of household goods in February 1990; it only questions her authority to receive it. The record also indicates that only two televisions were shipped. In our view, therefore, there is clear evidence that the only two televisions in the shipment were delivered out of NTS long before Andrews obtained the service member's shipment. In such circumstances, the general rule that the last bailee is responsible for lost household goods when the shipper otherwise demonstrates a prima facie case of liability, does not apply.

### **Conclusion**

We reverse GAO's settlement.

\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\ William S. Fields

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William S. Fields

Member, Claims Appeals Board

1. This matter involves USN Claim No. 90-1126 and Andrews File No. F91-019.
2. The Tender of Service is contained at Appendix A to DoD 4500.34R, the DoD Personal Property Traffic Management Regulation.