

In Re:

Resource Protection

on behalf of

Carlyle Van Lines

Claimant

DATE: January 27, 1997

Claims Case No. 96070208

CLAIMS APPEALS BOARD DECISION

DIGEST

The Military-Industry Memorandum of Understanding governing claims for loss or damage to household goods directs that the notice to the carrier of loss or damage discovered after delivery on the Notice of Loss or Damage, DD Form 1840R, must be dispatched by the agency not later than 75 days following delivery. Although the record shows that the DD Form 1840R was dated as dispatched on July 1, 1992, the 70th day after delivery, but in fact was not postmarked until July 9, 1992, the 78th day, the postmark alone is not clear evidence that the claims office failed to dispatch the notice on the 70th day as indicated on the DD Form 1840R.

DECISION

Resource Protection, on behalf of Carlyle Van Lines (Carlyle), appeals the settlement of the U.S. General Accounting Office Settlement Certificate No. Z-2866671(43), dated December 13, 1995, which denied, in part, Carlyle's request for a refund of monies offset for damage to the household goods shipment of a service member.⁽¹⁾ Pursuant to Public Law No. 104-316, October 19, 1996, title 31 of the United States Code, Section 3702 was amended to provide that the Secretary of Defense shall settle claims by transportation carriers involving amounts collected from them for loss or damage incurred to property incident to shipment at government expense. The Secretary of Defense delegated this authority to this Office.

Background

The service member placed his household goods into non-temporary storage (NTS) on May 10, 1991. Carlyle obtained the shipment from the NTS contractor in Killeen, Texas, on April 2, 1992, and delivered them to the service member in Fayetteville, North Carolina, on April 22, 1992. A Joint Statement of Loss or Damage at Delivery (DD Form 1840) was not accomplished at delivery, but the service member alleged that Carlyle lost or damaged several items as described on a five-page Notice of Loss or Damage (DD Form 1840R) dispatched on July 1, 1992, the 70th day after delivery.

The Joint Military/Industry Memorandum of Understanding on Loss and Damage (MOU) provides that written documentation advising the carrier of later discovered loss or damage, if dispatched not later than 75 days following delivery, shall be accepted by the carrier as overcoming the presumption of the correctness of the delivery receipt. Consequently, the carrier is presumed liable for damage set out in a DD Form 1840R dispatched by the service to the carrier within 75 days of delivery.

Carlyle contends that the DD Form 1840R was not dispatched until after the 75th day. It argues that it was not dispatched on July 1, 1992, as indicated in Block 3b of the DD Form 1840R because the envelope containing the DD Form 1840R was not postmarked until July 9, 1992, the 78th day after delivery. Carlyle also contends that a July 16, 1992, letter from the Chief of the Claims Division at the XVIII Airborne Corps and Fort Bragg was an admission of fact that the letter was not timely dispatched on the 70th day as indicated. The letter stated: "due to the fact that you were not

provided with timely notice, this office has decided to close this file with regards to . . . recovery against your organization." This letter responded to a July 13, 1992, letter from Carlyle which stated that the date of dispatch on the DD Form 1840R was July 1, 1992; stated that the date of the postmark was July 9, 1992; and concluded that the notice was untimely because the MOU "states the carrier will be notified within 75 days of delivery" and that "this was dispatched in 79 days" (actually 78 days).

Because of the length of time between the dispatch date and the postmark date, and because of Carlyle's interpretation of the July 16th letter, we requested additional information from the U.S. Army Claims Service, including a sworn statement from the Chief of the Claims Division. If he was no longer available, we requested a statement from an official at the XVIII Airborne Corps explaining the whereabouts of the DD Form 1840R or the usual internal procedures for processing a DD Form 1840R. The Chief of the Claims Division was no longer available, but pursuant to our request, a person who was one of the recovery clerks or claims examiners at the XVIII Airborne Corps in July 1992 described the processing of such forms: 1) receipt of the form; 2) completion of blocks 3 and 4 (i.e., name and address of the carrier, dispatch date, name and address of the claims officer, signature, date signed, and telephone number); 3) forwarding the form to the administrative office in the building where the claims office was located; and 4) transport of the form to the Post Office at Fort Bragg which metered the mail. The claims office did not meter the mail and did not retain control of the form after completing blocks 3 and 4. The Army Claims Service points out that the Services have refused efforts by the industry to replace the dispatch date on the DD Form 1840R with the postmark on the envelope because claims offices have no control over the postmark.

Discussion

The Comptroller General held that the DD Form 1840R is "dispatched" for purposes of the MOU on the date entered on the form in the installation's claims office, even if the notice does not leave the installation on that day. See Senate Forwarding, Inc., B-249840, Mar. 1, 1993, 93-1 C.P.D. 302, and National Forwarding Co., Inc., B-238982.4, Jun. 25, 1992, and its reconsideration, B-238982.6, Feb. 11, 1993. However, Carlyle contends that the present claim is distinguishable because the chief of the claims division admitted, as fact, that the DD Form 1840R was not dispatched on July 1, 1992. We do not interpret the division chief's remark in that manner. In our view, the division chief's letter indicates that he believed as a matter of law or regulation, incorrectly as it turned out, that the DD Form 1840R had not been "dispatched" on July 1 because it was not postmarked until July 9. Otherwise, we would have to infer that either the claims office clerk who signed and dated the DD Form 1840R deliberately misstated the date of dispatch or that the clerk did not dispatch the DD Form 1840R as she was required to do when she signed it. Dishonesty may not be inferred. See DOHA Claims Case No. 96070212 (November 27, 1996), DOHA Claims Case No. 96070226 (September 5, 1996) and Captain Roger L. Reasonover, Jr., USN, B-213543, Dec. 7, 1983. Also, in the absence of clear evidence to the contrary, we must assume as a matter of administrative regularity that the clerk did dispatch the DD Form 1840R on July 1, 1992, as she certified that she did. It is most likely that the DD Form 1840R was delayed after it departed the claims office; however, this was beyond the control of the claims office.

Carlyle has suggested that the Army may be estopped from denying liability because of the July 16th letter. But it also stated that the division chief did not relieve the firm of liability, and it is Carlyle's position that the failure to notify within 75 days is what relieved Carlyle of liability. Accordingly, we see no point in discussing this issue here. Moreover, the administrative report of the U.S. Army Claims Service fully discussed the NTS rider issue and the pre-existing damage issue, and we find no error with the Army's positions on these issues.

Conclusion

We affirm GAO's 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

Christine M. Kopocis

Member, Claims Appeals Board

1. See Army Claim No. 94-301-1771 and the carrier's EFWD File 94-57.