
In Re:

Resource Protection

on behalf of

American Vanpac Carriers

Claimant

Claims Case No. 96070210

CLAIMS APPEALS BOARD DECISION

DIGEST

Where a service member places his household goods into nontemporary storage (NTS) and they are moved under the Direct Procurement Method, the delivering carrier cannot avoid liability for loss of a portion of the household goods merely by relying on the fact that a prior custodian of the shipment had failed to deliver an unspecified portion of the goods to the next custodian. The delivering carrier must present evidence, by offering a properly completed rider, which shows specifically what it received from its predecessor custodian, so that these items can be compared against the origin inventory.

DECISION

Resource Protection, on behalf of American Vanpac Carriers (American), appeals the General Accounting Office's (GAO) Settlement Certificate Z-2862806(59), dated August 29, 1995, which denied American's claim for reimbursement of \$5,082.60 deducted by the Navy for transit loss and damage to the household goods shipment of a service member.⁽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 (DoD).

Background

The administrative report indicates that the Navy hired A&A Transfer & Storage (A&A), through the Direct Procurement Method (DPM),⁽²⁾ to pack the service member's goods at his residence in Jacksonville, Florida on December 13, 1990. Under this method, the Navy separately hired Yellow Freight Systems (Yellow Freight), a general commodity freight carrier, to move the crated household goods to a third firm, Murray Transfer & Storage (Murray), which performed warehouse services. The Navy acquired American's services under the above referenced PPGBL, and on April 9, 1991, American obtained the goods from Murray, along with other goods from the service member's barracks, and it delivered them to the member in New Mexico. American prepared its own descriptive inventory, but the only date appearing on the inventory was June 14, 1991, more than two months after receipt. Murray's representative had not signed the inventory or any exception sheet.

American contends that A&A actually received the shipment from outside of the United States and that the Navy did not provide the original descriptive inventory associated with such transit. The Navy denies that the shipment originated outside the United States and contends that A&A's descriptive inventory reflects the items it received from the service member in Jacksonville. The Navy believes that the descriptive inventory prepared by A&A was available to American at the time American obtained the shipment from Murray.

American also contends that it is not liable because there is a weight discrepancy of about 1,000 pounds between the net

weight of goods that A&A tendered to Yellow Freight and the net weight of the goods that American received from Murray. The Navy admits that it cannot account for about 650 pounds. American adds that one of the crates that Yellow Freight picked up was not tendered to it by Murray, and the Navy admits that one crate was not immediately delivered by Yellow Freight to Murray. The Navy hypothesizes that the crate may have been located and delivered to Murray at a later time. American argues that it followed the requirements of the Tender of Service in preparing its rider, and that the only negligence was on the part of the Navy in losing one of the crates during the DPM process.

Discussion

The issue involved here is American's liability as the last bailee in the movement of these household goods where the Navy admits that a prior bailee did not immediately deliver all of the household goods to a successor bailee. Generally, under federal law, in an action to recover from a carrier for damage to a shipment, the shipper establishes his prima facie case when he shows delivery in good condition, failure to deliver or arrival in damaged condition, and the amount of damages. Thereupon, the burden of proof is upon the carrier to show both that it was free from negligence and that the damage to the cargo was due to one of the excepted causes relieving the carrier of liability. See Missouri Pacific Railroad Company v. Elmore & Stahl, 377 U.S. 134, 138 (1964). When the goods pass through the custody of several bailees it is a presumption of the common law that the loss or damage occurred in the hands of the last carrier or forwarder to act as the custodian of the goods. See McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415, 417 (1978).

The last custodian can avoid liability by showing that the damage or loss did not occur while the item was in its custody. For a carrier removing goods from a storage facility for delivery, that showing is made by preparing an exception sheet--a rider--to the inventory; the rider then can serve to rebut the general common law presumption of the last carrier's liability. See Able Forwarders, Inc., B-252817, Apr. 19, 1993; and A-1 Ace Moving and Storage, Inc., B-243477, June 6, 1991. Item 54m of the Tender of Service⁽³⁾ describes a proper rider. It requires, among other things, that when the carrier prepares its own descriptive inventory, it is to note differences in the condition of individual items, as compared to the nontemporary storage (NTS) inventory. When the opinions of the carrier's and the warehouse's representatives differ, both opinions are to be reflected on the carrier's exception sheet. Both the carrier's and warehouse's representatives must sign the exception sheet. Item 54n of the Tender of Service requires at least a cross reference to the item numbers used on the NTS inventory, and item 54o requires the use of the same inventory prepared at origin to verify delivery at destination.

As the Navy points out, American did not meet the requirements of Item 54 of the Tender of Service. Significantly, Murray's representative did not sign the descriptive inventory prepared by American or otherwise indicate in writing the specific items that it transferred to American and their condition. Moreover, it is not clear when American prepared the inventory, and in this respect, its probative value as a business record is questionable. More than two months transpired between the actual transfer of custody of the property and the only date on the document, June 14, 1991. The claims record also indicates discrepancies in American's descriptive inventory; e.g., various items in the A&A inventory apparently were delivered to the member but were not noted in the American inventory. The fact that 650 or 1,000 pounds of unspecified goods were missing at an earlier point in the chain of custody does not indicate which items were, or were not, transferred to American by Murray. If American had prepared an accurate descriptive inventory, detailing what items it was receiving and their condition, with an exception sheet noting any objections by Murray, then we could have considered clear evidence of what American did receive and its condition. Without this, we will follow the general rule that the last custodian is presumed liable for transit loss.

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 Navy Claim No. PCA-91-1110, and Resource Protection File AAVA 92-9, involving a shipment under Personal Property Government Bill of Lading (PPGBL) RP-684,974.
2. A method of shipment in which the government manages the shipment throughout. Packing, containerization, local drayage, and storage services are obtained from commercial firms under contractual arrangements or by the use of government facilities and personnel. See DoD Regulation 4500.34-R, Department of Defense Personal Property Traffic Management Regulation, October 1991, page xxxiv.
3. The Tender of Service, effective May 31, 1990, is found at Appendix A of DoD Reg. 4500.34-R.