
In Re:

Resource Protection

on behalf of

Cartwright Van Lines

Claimant

DATE: October 2, 1996

Claims Case No. 96070211

CLAIMS APPEALS BOARD DECISION

DIGEST

A carrier is not automatically relieved of common carrier liability for damage to, or loss of, a service member's household goods merely because the goods are not delivered to the service member within the period authorized for storage in transit and the carrier continues to hold them in a non-temporary storage/warehouse capacity.

DECISION

Resource Protection, on behalf of Cartwright Van Lines (Cartwright), appeals the General Accounting Office's (GAO) Settlement Certificate Z-2609168-69-347, dated April 6, 1993, which denied American's claim for reimbursement of \$1,276.58 deducted by the Air Force 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 record indicates that Cartwright picked up the service member's household goods in Laurel, Maryland on August 13, 1986. The goods were transported to Colorado Springs, Colorado and placed into storage in transit (SIT) with Lilly Transfer & Moving Company (Lilly). Lilly acted as Cartwright's agent during the time the goods were in SIT. A DD Form 619-1, Statement of Accessorial Services Performed, shows that SIT terminated at the end of 180 days and that the household goods were delivered out of storage on February 15, 1987. The household goods remained in Lilly's custody until they were physically delivered to the service member on February 23, 1987. Apparently, the service member paid for the storage from February 16, 1987 to February 23, 1987.

The record does not contain a rider indicating that specific household goods were transferred from Cartwright to Lilly and the condition of each item transferred. Moreover, we found nothing which indicates that the government or the service member had entered into a non-temporary storage contract with Lilly independent of Cartwright. In this appeal, Cartwright merely argues that it is not liable as a carrier for the damages to the goods once they were no longer in SIT.

Discussion

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); DOHA Claims Case No. 96070205 (Sept. 5, 1996).

We believe that Cartwright, through its agent, Lilly, was the last custodian. There is nothing in the record to indicate that Lilly formed its own separate and distinct relationship with the government or the service member. Additionally, there is no indication that Lilly and Cartwright jointly conducted an arm's length inventory to identify what items were transferred to Lilly and their condition at the time of transfer. Even though SIT ended prior to delivery, Cartwright, through its agent, continued to hold the household goods. The Comptroller General has held that it is inappropriate to permit a carrier to limit its liability to that of an ordinary warehouseman by relying on its second status as a non-temporary storage contractor where there is no clear showing when or where the loss or damage occurred. See A-1 Ace Moving and Storage, Inc., B-243477, Jun. 6, 1991. Here, it is as likely that the damage occurred during SIT as afterward. Thus, Cartwright is liable for the damages.

Conclusion

We affirm GAO's settlement.

\s\ Christine M. Kopocis

Christine M. Kopocis

Acting Chairman, Claims Appeals Board

\s\ Joyce N. Maguire

Joyce N. Maguire

Member, Claims Appeals Board

\s\ William S. Fields

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1. See Air Force JACC File 9001056, and Resource Protection CVLC File No.199955, involving a shipment under Personal Property Government Bill of Lading (PPGBL) NP-926,804.