DATE: January 6, 1997

In Re:

Andrews Forwarders, Inc.

Claimant

Claims Case No. 96070214

CLAIMS APPEALS BOARD DECISION

DIGESTS

1. A compromise offer submitted to a carrier by an agency to settle a loss and damage claim does not bind the agency unless accepted by the carrier. Upon carrier rejection, the agency may set off from monies otherwise due to the carrier amounts up to the carrier's full contractual liability, whether or not they exceed the amount of the proposed compromise.

2. Carrier has not demonstrated that the Service's method of calculation of depreciation, which conforms with the practice used in loss and damage cases, was unreasonable where the carrier merely asserts a different method of calculation.

DECISION

Andrews Forwarders, Inc., requests review of the U.S. General Accounting Office's (GAO) Claims Settlement Certificate Z-2729037(133) dated March 14, 1996, denying it a refund of $604.37 set off by the Air Force for loss and damage to the household goods of a service member under government bill of lading No. RP-764060.[(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 has delegated this authority to this Office.

Background

Andrews Forwarders, Inc. requests a refund of amounts offset for items lost or damaged in the move. Issues raised in the appeal include the calculation of depreciation on 2 lamp shades, a stereo cabinet, a waffle iron, and a microwave oven; salvage deduction for the 2 lamp shades and a recliner; and the value of 4 Turkish stacking tables. The carrier also argues that the Air Force accepted their payment for some of these items and that set off amounts negotiated with the carrier are not to be set off for the original amounts, rather, for the negotiated amounts.

Discussion

Regarding the carrier's assertion that the negotiated amount should be set off, we note that a compromise offer submitted to a carrier by an agency to settle a loss and damage claim does not bind the agency unless accepted by the carrier. Upon carrier rejection, the agency may set off from monies otherwise due to the carrier amounts up to the carrier's full contractual liability, whether or not they exceed the amount of the proposed compromise. See American World Forwarders, Inc., B-247770, July 17, 1992. Set-offs for the original amounts were proper.

Both the Air Force and the carrier agree to apply 20% depreciation per year for the 2 lamp shades, stereo cabinet, and waffle iron. They also agree that in determining the age of an item for depreciation purposes, the following applies: 0-5 months = no depreciation; 6-17 months = 1 year; 18-29 months = 2 years.[(2)] In contention in this case is the age of the particular items for depreciation purposes. The administrative report indicates that the Air Force determined these items to be 17 months old for depreciation purposes and thus applied 1 year of depreciation. The items were purchased in December 1990 and were picked up by the carrier in June 1992. The carrier asserts that these items are 2 years old for

depreciation purposes, calculating from the purchase date of December 1990 to the delivery date of July 1992, a total of 18 months. In addition, the carrier argues that it is due a refund for 1 year's depreciation for the microwave oven which was 6 months old at the time of delivery.

The Joint Military/Industry Depreciation Guide states that normally the base value of an item is considered to be current replacement cost at owner's destination area of residence. This is consistent with the usual rule of the courts that to determine the "full actual loss" for property damaged in transit by the carrier, reference is made to the standard market value at the time and place of delivery. Compare Olsen v. Railway Express Agency, Inc., 295 F.2d 358, 359 (10 Cir. 1061). Otherwise, it is silent as to the time periods to be used in calculating depreciation. However, Table 11-1 Allowance List-Depreciation Guide, an internal DoD publication, specifies that to compute yearly depreciation on a member's claim against the government, the month of purchase and the month of pick-up are to be disregarded. The Air Force, in conformance with the custom or practice in dealing with such issues, used this time scheme in calculating depreciation for all items in this shipment. The carrier has not demonstrated that the Air Force practice is unreasonable. In addition, the carrier acknowledges in their appeal that the Comptroller General typically used the pick-up date for calculating depreciation, thus acknowledging the custom. The carrier remains liable for the amounts set-off.

Under the Military-Industry Memorandum of Understanding on salvage, a carrier has 30 days from the date of receipt of a claim to contact the claimant to make arrangements for salvage turn in. Failure to make such contact results in a forfeiture of the carrier's right to salvage and the claimant may dispose of the property as he wishes. In the present case, the date of the Air Force's assertion was March 15, 1994. In the carrier's letter dated July 14, 1994, the carrier offered money for repairs to the recliner. No salvage for the recliner or lamp shades was timely claimed by the carrier. The Air Force appropriately did not accept any deductions for salvage in determining the carrier's liability for these items.

The carrier denies liability for the remote control alleging that there has been no proof of its tender to the carrier. The inventory lists Item No. 399 as a portable table model (television). The DD Form 1840R indicates that the remote control for the television, Item No. 399, was missing. We agree with the Air Force that a carrier is not relieved of liability for loss of or damage to household goods simply because the items are not listed on the inventory, particularly when it would not have been unusual for those items to be packed in the specific boxes they were in and the carrier packed the boxes and prepared the inventory. A small item such as a remote control would be shipped with the television associated with it and does not require a separate line on the inventory. See American Van Services, Inc., B-249966, Mar. 4, 1993. In this case, the carrier did create the inventory and did not list small items, rather it used generic terms, such as portable tv, for an item which typically has a remote control. We believe a prima facie case of tender of the remote control to the carrier has been made and no refund is appropriate.

The carrier denies liability for damage to the 4 Turkish stacking tables alleging that there has been no proof of value. In determining the carrier's liability for these tables, the Air Force used the value, $395, that the member claimed. The tables were a gift to the member so no receipts were available. The property owner's valuation, in some circumstances, may be relevant evidence of value. See American Van Services Inc.- Reconsideration, B-249834.2, Sept. 3, 1993. Our Office will not question a Service's calculation of the value of the damages to items in the shipment of a service member's household goods unless the carrier presents clear and convincing evidence that the agency acted unreasonably. See American International Moving, Corp., DOHA Claims Case No. 96070206, Sept. 5, 1996. The tables were available for inspection and salvage by the carrier, even if it did not exercise such rights, and the carrier could have developed its own evidence to impeach the service member's valuation. Therefore, the carrier remains liable for the amount set off for the table.

Conclusion

We affirm the settlement.

\s\ Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

\s\ Christine M. Kopocis

Christine M. Kopocis

Member, Claims Appeals Board

\s\ Joyce N. Maguire

Joyce N. Maguire

Member, Claims Appeals Board

1. Carrier Claim F92-104; Air Force Claim Castle AFB 94-265.

2. While it is not an issue here because the Air Force and the carrier agree to it, we note that neither the Memorandum of Understanding nor the Joint Military/Industry Depreciation Guide specify such a monthly scheme for applying the first and subsequent years of depreciation. This scheme appears within internal DoD guidance for compensating the service member. See, for example, the Army Claims Service's Table 11-1 Allowance List-Depreciation Guide.