DATE: September 26, 1996

In Re:

National Claims Services, Inc.

on behalf of

Blue Water Transport

Claimant

Claims Case No. 96070209

CLAIMS APPEALS BOARD DECISION

DIGEST

Where the carrier loses the marble top in a coffee table which was one of three components (along with two end tables) in a living room furniture set, and the service member cannot obtain marble for the coffee table to match the marble tops in the end tables, the carrier is also liable for replacing the marble in the end tables to return the member to the position he was in before the loss occurred.

DECISION

This responds to National Claims Services' (National) appeal of the U.S. General Accounting Office (GAO) Settlement Certificate Z-2869934, dated March 19, 1996, which disallowed its claim for $589, on behalf of Blue Water Transport (Blue Water). 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

National's claim involved the loss of a piece of marble from the top of a coffee table in the household goods shipment of a service member. Blue Water moved the shipment under Personal Property Government Bill of Lading RP-763,869, between Newport News, Virginia and Offutt Air Force Base, Nebraska in 1992.[(1)] It is undisputed that Blue Water lost the marble top in the coffee table and that the coffee table was part of a three-piece set which also included two end tables, each with marble top pieces. The Air Force calculated damages at $950 ($550 to replace the marble in the coffee table, plus $200 for matching marble in each end table). After applying a 7 percent depreciation rate, the Air Force paid the service member $883.50, and recovered this amount from the carrier. The record indicates that the service member attempted to locate a piece of marble for the coffee table which would have matched the marble pieces in the two end tables, but he was unsuccessful in this effort. The replacement cost for the set, including the non-marble portions, was $1,440.

The carrier contends that it is liable only for one-third of the total depreciated replacement cost of the three pieces ($294.50) as its liability on account of the missing marble in the coffee table. Thus, the Air Force owes it $589 as a refund. The carrier argues that it is not liable for the additional cost of matching the marble in the end tables because they are still useful for their intended purpose.

Discussion

Generally, it was the Comptroller General's practice not to question an agency's calculation of the value of damages unless the carrier presented clear and convincing evidence that the agency acted unreasonably. See Andrews Forwarders, Inc., B-255697, Apr. 22, 1994; and American Van Services, B-249833, Jan. 14, 1993. More specifically,

the Comptroller General and the courts have considered claims in which damages had to be calculated where parts of sets were lost or damaged. The object in such instances is to restore the property owner to his/her condition before the damage or loss. In a comparable matter, in Resource Protection, B-266119, Jan. 25, 1996, the Comptroller General held that where a sofa is damaged and requires reupholstery, but the original fabric is no longer available, the carrier was also liable for reupholstering a matching loveseat and chair to return the member to the position he was in before damage occurred. In our recent decision American International Moving, Corp., DOHA Claims Case No. 96070206, Sept. 5, 1996, we adopted the Comptroller General's position in Resource Protection and also cited a similar position by the court in Gugert v. New Orleans Independent Laundries, Inc., 181 So. 653, 656 (La. App. 1938).

Additionally, we disagree with National's allocation of only one-third of the total depreciated cost as a proper measure of damages for the loss of the marble top in the coffee table. The company's position is conceptually flawed in that it argues, on one hand, that its liability for the loss of the marble in the coffee table should be viewed as the loss of one-third of the marble top in the set, while it argues, on the other hand, that as long as the two end tables match each other, it is not necessary to view the coffee table as part of the set - a separate coffee table of "some sort" can be purchased to complement the two end tables. The firm's position on the measure of damages also is factually unsupportable because the record indicates that the coffee table marble top was more expensive to replace than the marble tops in the end tables. The courts that have considered damage or loss to components of sets have found that it is not unreasonable for a fact finder to conclude that the loss of one of the components depreciates the value of the set as a whole beyond the average value of each component. See Railway Express Agency, Inc. v. Smith, 212 F. 2d 47, 51 (6 Cir. 1954). The fact that "some sort" of coffee table can be found to complement the end tables does not address the problem of restoring the property owner to his condition prior to the loss when he owned a set composed of three matching components. The Air Force's action was reasonable because it recognized that the furniture in all three components still had value while it replaced only those parts necessary to restore the service member to his condition prior to the loss.

Conclusion

We affirm the settlement.

\s\ Micahel 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\ Christine M. Kopocis

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Christine M. Kopocis

Member, Claims Appeals Board

1. This matter involves Air Force Claim File 93-03825 (Offutt AFB File IC/E/SGBP/ 93/ 00173/CR) and carrier's claim X-00501.