DATE: April 8, 1997

In Re:

Stevens Worldwide Van Lines, Inc.

Claimant

Claims Case No. 96081204

CLAIMS APPEALS BOARD DECISION

DIGEST

A carrier is liable for damage to goods occurring during more than 180 days of SIT notwithstanding a regulation providing for the termination of GBL shipments in SIT after 180 days unless it takes certain steps outlined in Fogarty Van Lines, B-235558.7, Dec. 28, 1994. Carrier which completed a rider when placing the goods into SIT remains liable for the damage. A rider would have to have been completed and signed at the end of SIT when liability changed hands (at the end of SIT and the beginning of permanent storage) for the carrier to successfully deny liability.

DECISION

Stevens Worldwide Van Lines, Inc. (Stevens) appeals the U.S. General Accounting Office's (GAO) Claims Settlement Certificate Z-1348910-125, dated June 5, 1996, denying it a refund of $493.15 set off by the Air Force for loss and damage to the household goods 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 has delegated this authority to this Office.

Background

The household goods shipment moved from San Bernardino, California, in July 1993 to Plattsburgh, New York. The shipment was placed in temporary storage in Plattsburgh at which time a rider was completed. The Air Force sent a Temporary Commercial Storage at Government Expense, DD Form 1857, on January 20, 1994, to Stevens' agent and warehouseman, Coolidge overs, Inc., extending Storage In Transit (SIT) . Stevens claims to not have received this form until October 14, 1994. Stevens was paid for SIT from July 14, 1993, until the shipment was delivered on February 17, 1994.

Stevens disputes that a prima facie case of liability exists for four items: Item #88, a turntable; Item #122, a nutcracker; Item #124, a wall clock; and Item #292, a recliner. Stevens argues that custody ceased at midnight of January 1, 1994, the expiration of SIT storage after 180 days. Stevens claims to have informed the Transportation Movement Office (TMO) that the shipment was going into storage at Coolidge Movers, Inc. on July 14, 1993.

The Air Force has denied Stevens claim relying on Fogarty Van Lines, B-235558.7, Dec. 28, 1994, which identifies the following three criteria necessary to hold a carrier liable for damage to goods beyond 180 days of SIT: (1) the carrier does not notify the government that the carrier is placing the shipment in permanent storage, as required by the Government Bill of Lading (GBL); (2) the carrier does not annotate the inventory upon change of custody from the carrier to the permanent storage warehouseman, as required by the Tender of Service; and (3) the carrier bills the government for SIT, not permanent storage.

Stevens argues that Fogarty is not applicable in this case since the government is bound by the Department of Defense (DoD) Personal Property Traffic Management Regulation (PPTMR) which states that the GBL automatically terminates

at midnight of the last day of the authorized SIT period. Stevens claims that it did provide a SIT exception report when the change in custody occurred on July 14, 1993. Stevens argues that the SIT rider, which does not list any of the appealed items, shows that it did not mishandle these items in any way prior to relinquishing custody to Coolidge Movers, Inc. and that the rider serves to rebut the general common law presumption of the last carrier's liability. It also contends that the billing processes have no bearing upon the liability in any regulation, the Tender of Service, case law, or in establishing the case of prima facie liability.

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. SeeMissouri Pacific Railroad Company v. Elmore & Stahl, 377 U.S. 134, 138 (1964).

In Fogarty, supra, the Comptroller General explained that a carrier is liable for damage to goods occurring during more than 180 days of SIT notwithstanding the PPTMR's providing for the termination of GBL shipments in SIT after 180 days when the criteria outlined in the decision are met. We disagree with Stevens' argument that Fogarty does not apply. Fogarty specifically addressed the issue of the relationship between the PPTMR and the GBL. We agree with the reasoning and conclusions of the Fogarty decision and directly apply the reasoning to this case.

Stevens has not met the burden of proof required by Fogarty. The first criteria in Fogartyrequires notification of placement of the shipment in permanent storage. For the first time, in the appeal, Stevens' claims that it notified the TMO that the shipment was going into storage on July 14, 1993; however no documentation to support this fact is provided. Even so, the notification presumably was that the shipment was going into SIT, not permanent storage. The second criteria requires updating the inventory when custody changes. Stevens' provided a copy for the record of the rider dated July 14, 1993. We note that in July 1993, the shipment changed hands from Stevens to Coolidge Movers, Inc.; however, Stevens remained liable for the shipment during SIT. For Stevens to successfully show that it complied with the criteria stated in the Fogartydecision, a rider would have to have been completed and signed at the end of SIT when liability changed hands (at the end of SIT and the beginning of permanent storage). The July 1993 rider serves to protect Stevens by documenting damage which occurred prior to delivery to Coolidge Movers, Inc. The rider does not relieve Stevens from liability for the shipment, nor does it document the state of the shipment when Stevens claims liability changed hands. The intent of Fogarty is that at the end of SIT a shipment is transferred from temporary to non-temporary storage, even if the goods remain in the same physical location, and liability is transferred from the carrier to the warehouseman. It is necessary to complete a rider to the inventory at this time to document the state of the shipment when liability changes hands. Regarding the third criteria, Stevens or its agent controlled, billed, and was paid for services to the shipment from packing and inventory until delivery, including SIT. Stevens' carrier liability for any loss or damage during the entire move remained intact.

Because Stevens remains liable for loss or damage, we look at the facts surrounding each of the 4 items in dispute on appeal. Stevens argues the shipper has not proven tender of the nutcracker. The Descriptive Inventory indicates that Item #122 was a 1.5 container, labeled "books." The nutcracker was noted as broken on the Notice of Loss or Damage, DD Form 1840R. The ilitary-Industry Memorandum of Understanding for Loss and Damage Rules, effective January 1, 1992, provides that when an item is delivered in a damaged condition, and when the damage is noted on the DD Form 1840R, the fact that the carrier delivered the item establishes that the shipper owned and tendered the item. See DOHA Claims Case No. 96070220 (September 5, 1996). Stevens remains liable for the damage.

Stevens' argues that the damage to the recliner was pre-existing damage noted on the Descriptive Inventory and that its' inspector was unable to determine that the damage claimed was move related. The Descriptive Inventory notations indicate the recliner was soiled, faded and badly worn. The Service states it is presumed that these notations are due to normal wear and tear, which would not include damage to the back of the recliner. The DD Form 1840R notes "back stained." The carrier submits no evidence that the back was stained prior to the shipment and thus remains liable for the amount offset.

The carrier makes the same argument regarding the turntable and the wall clock, that the damage noted on the DD Form 1840R is mechanical damage for which the carrier should not be held liable because there was no external damage to the items. Both items were packed by the carrier. The DD Form 1840R indicates that the dust cover of the turntable was broken and that the turntable and the wall clock were not working. Both items were inspected by the Service and by the carrier's inspector. The carrier's inspector's report states that the turntable "did appear to have been damaged by improper packing" and notes that the main spring of the wall clock is either broken or unhooked but that there was no physical damage to the case of the wall clock. The Service's report on the wall clock also noted the same condition with respect to the spring but also reported that the door was uneven. In both instances, the Service held the carrier liable for the mechanical damage because of the visible, external damages noted by their inspector. There is no repair estimate in the file for either item. The carrier's inspector acknowledged that the turntable did appear to be damaged by improper packing; this is sufficient evidence to hold Stevens liable for the turntable. However, with regard to the wall clock, there is no evidence in the file to hold Stevens prima facie liable for the internal damage. There is no repair estimate indicating that the internal damage may be related to the move and no statement from the shipper that the clock worked properly up until the time of tender and particularly describing the circumstances surrounding tender. We have ruled that the Service with the help of the shipper must present evidence that internal damage was at least circumstantially consistent with the external damage to an item. Our Office is provided no evidence whether the wall clock could have been repaired and for what cost. Stevens should be refunded the amount set off for the wall clock. See DOHA Claims Case No. 96100702 (March 13, 1997.)

Conclusion

Except for the wall clock, we affirm the settlement.

/s/

Michael D. Hipple

Chairman, Claims Appeals Board

/s/

Christine M. Kopocis

Member, Claims Appeals Board

/s/

Joyce N. Maguire

Member, Claims Appeals Board

1. Personal Property Government Bill of Lading #VP-077,820; Air Force claim Plattsburgh AFB 94-734; and carrier claim SVLM 93 68296.