DATE: June 6, 1997

In Re:

Andrews Van Lines, Inc.

Claimant

Claims Case No. 96080207

CLAIMS APPEALS BOARD DECISION

DIGEST

1. While depreciation should normally not be assessed for time in nontemporary storage, it is improper to ignore the possibility of depreciation in recovering from the carrier. When the carrier has provided no evidence nor any specific argument regarding why depreciation should be applied during a period of nontemporary storage, we accept the Service's calculation of depreciation which does not include depreciation during storage.

2. Sales taxes from repairs to the shipper's damaged goods are part of the damages for which the carrier is liable.

DECISION

Andrews Van Lines, Inc. (Andrews) requests review of the General Accounting Office's (GAO) Settlement Certificate Z-2729037-139, dated April 25, 1996, which upheld the Air Force's offset of $76.76 for transit damages to a service member's household goods.(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 delegated this authority to this Office.

Background

Andrews seeks an additional refund of $55.32, part of $284.66 which was offset by the Air Force for damage done to a glass table top. The table top, damaged in transit, belonged to a set which had an original cost of $1,100, and was purchased in 1991. The member submitted a claim for $408.10.(2) However, the record indicates that due to the fact that the member was leaving the service, and further action would be difficult, the member agreed to a lesser amount. The member was reimbursed $306.08, $408.10 minus 25 percent for salvage, and was allowed to keep the table. The Air Force presented the claim to the carrier.

The carrier then offered to pay $207.90 for the damage. This figure was arrived at by allowing $385 for the table top, and reducing it by 28 percent depreciation (7 percent for three years) and further reducing it by 25 percent for salvage. The Air Force adjusted the demand and set off $284.66 for the table top. The carrier appealed, and the Air Force reduced the amount of the set off and refunded $21.44 to the carrier. The carrier then requested a refund from GAO, which the Claims Group denied. The carrier appeals GAO's decision and requests a refund of $76.76 ($284.66 set off against the carrier, minus $207.90 the carrier offered) which it claims it is due.(3)

Discussion

The carrier raises two issues in its request for reimbursement. First, the carrier argues that the item was four years old for depreciation purposes. The table was purchased in January 1991, picked up for storage in May 1993, and delivered to the member in August 1994. The Air Force, cited a longstanding general rule, that depreciation normally is not charged against items for time in storage. Thus, the table would have depreciated from January 1991 to May 1993, a period of two years. The carrier argues that there is no basis in the Military-Industry Memorandum of Understanding on Loss and Damage Rules or the Tender of Service for such a rule and that it should not be applied.

Carrier liability for transit loss or damage to household goods is governed by common law principles and contractual documents such as the Joint Military-Industry Depreciation Guide (JMIDG). Numerous factors may be taken into account in determining the value of an item that has been lost or damaged including the nature of the item, the period and conditions of storage, original and replacement costs, age, length of time in use, the extent of wear and tear, and deterioration. Under appropriate circumstances, household goods need not be depreciated for time in nontemporary storage (NTS). Fogarty Van Lines, B-248982, Aug. 16, 1993. Items in storage are not generally subject to the normal wear and tear of daily use. Thus, the Service regulations provide that depreciation should not be applied against the member for the period that the item is in storage. This rule has also long been applied against the carrier; however, the Comptroller General has held, while depreciation should normally not be assessed for time in NTS, it is improper to ignore the possibility of depreciation in recovering from the carrier. American Vanpac Carriers, B-249929, Sept. 3, 1993. The JMIDG indicates that the rates of depreciation therein are predicated primarily on average care and/or usage and may be adjusted up or down when care or usage was greater or less than average.

In this case, the carrier asserted that the table top should have been subject to four years of depreciation. The documents in the file indicate that the Service considered the argument and rejected it, finding that the table top should not be depreciated for the time in nontemporary storage. The carrier has provided no evidence, nor any specific argument, regarding why the depreciation should apply here. It appears that the table top was not subject to unusual circumstances or wear and tear in storage which would require that depreciation apply. Thus we conclude that the Service properly calculated depreciation.

The carrier then argues the shipper has not provided evidence that the repairs were actually made, and thus that it should not be liable for the sales tax which is included as part of the repair cost for damages to the table. It argues that there is no basis for carrier liability for sales tax. The Carmack Amendment, now codified at 49 U.S.C. 11707, provides that the shipper is entitled to recover full actual damages, so long as the item of damage is not so remote that a reasonable person would have considered it unforeseeable. See Caspe v. AAACON Auto Transport, Inc., 658 F 2.d 613, 616-617 (8th cir. 1981), and B-260848, Dec. 11, 1995. Sales tax which is incurred from repair of damages caused by the carrier is a foreseeable part of the actual damages incurred by the shipper. Thus, we conclude that sales tax incurred from such repairs are part of the damages for which the carrier is liable. The Comptroller General has held that since Army regulations provide that sales tax is compensable after incurred, the carrier is liable for such taxes. See Andrews Van Lines, Inc., B-270469, May 29, 1996. With regard to the Air Force, the Comptroller General has upheld payment of sales tax as part of the damages, even absent evidence that the tax had been paid. See American International Moving, Corp., B-247576, Sept. 2, 1992. Therefore, we conclude that the carrier is not due a refund for sales tax.

Conclusion

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. See Air Force Claim No. Grand Forks 94-1042 involving a shipment under Government Bill of Lading VP-730,034, and carrier claim # 94-138.

2. The estimate in the record shows that replacement of the table top would be $385 with $23.10 sales tax, totaling $408.10.

3. The service set off $284.66, then refunded $21.44, making the set off $263.22. The difference between the set off ($263.22) and the carrier's offer ($207.90) is $55.32, and is the actual amount in dispute on appeal.