

DATE: September 5, 1996

In Re:

American Van Services, Inc.

Claimant

Claims Case No. 96070226

CLAIMS APPEALS BOARD DECISION

DIGESTS

1. The burden of establishing fraud rests on the party alleging it and must be proven by evidence sufficient to overcome the presumption in favor of honesty and fair dealing. Carrier's claim is denied where it provides no evidence to substantiate its allegation that the claim was fraudulent.
2. Tender of an item to the carrier is the first element in establishing a prima facie case of carrier liability for loss or damaged household goods; the shipper also must show that the item was not delivered (or was delivered in a more damaged condition) and the value of the item. Carrier's appeal for refund is granted where shipper provides no proof of purchase of the items missing in circumstances where it would be reasonable to require such proof. Carrier's claim for refund is denied where the carrier does not provide clear and convincing evidence that the agency determination of a reasonable relationship between the carton description and the missing items was either wrong or unreasonable.

DECISION

American Van Services, Inc. (American) requests review of the United States General Accounting Office (GAO) Claims Settlement Certificate No. Z-2862118(55), April 17, 1995, denying it a refund of \$1,680.50 set off by the Army for loss and damage to the household goods of a Service member under government bill of lading No. GP-780,271. [\(1\)](#) 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.

Background

The carrier picked up the shipper's household goods in Fayetteville, North Carolina, and delivered them to Savannah, Georgia. At delivery, the shipper and the carrier's delivery agent noted missing and damaged items on the DD Form 1840. After delivery, the shipper discovered additional items were missing and damaged and noted this on the DD Form 1840R.

The shipper filed a claim for \$9,339.00. The field claims office paid a portion of the claim and made a demand on the carrier in the amount of \$3,889.00. American denied all liability and requested that the claim be investigated as potentially fraudulent.

The field claims office investigated and determined that the claim was proper in the amount awarded. Subsequent to the field office investigation, the carrier was informed that its denial was unacceptable and an offset action was pending. The carrier did not reply. The claim was offset in the amount of \$3,889.00.

American appealed this offset to the GAO and sought a refund in the amount of \$1,680.50. Except for \$28.01 allowed by the Army, GAO denied the claim based on its determination that the Army's report revealed no error of fact or law.

On appeal, American argues that the shipper has not established a prima facie case for lost property and questions the shipper's credibility. American also questions whether the lost items could all have fit into the containers as claimed by

the shipper.

Discussion

The burden of establishing fraud rests on the party alleging it and it must be proven by evidence sufficient to overcome the presumption in favor of honesty and fair dealing. We will not infer fraud if the circumstances are as consistent with honesty and fair dealing as with dishonesty. See, Major Joel L. Bennett, U.S. Army (Ret.), B-251159, Mar. 16, 1993. The field office states in the agency report that they were unable to make a full investigation of potential fraud but adjudicated with caution the member's claim because the lost and damaged items were all said to have been purchased by the member, a specialist, within 4 months of the move, for a total of over \$9000. No receipts or other proof of purchase appears in the record. The field office reduced the claim, approving only 41%, as a result of their investigation. American raises doubts about a specialist's ability to buy so much in a short time; however, it provides no evidence to establish that the Service member submitted a fraudulent claim.

Tender of an item to the carrier is the first element in establishing a prima facie case of carrier liability for loss or damaged household goods; the shipper also must show that the item was not delivered (or was delivered in a more damaged condition) and the value of the item. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134, 138 (1964). In a tender dispute where an item is lost, we have inferred tender when the lost item bears a reasonable relationship to the items described on the inventory as the carton's contents. There is no need for an exact match between the description of the lost item and the contents of the carton. That is particularly true when it would not have been unusual to pack the item in the carton, and the carrier did the packing and prepared the inventory list. See American Van Services, Inc., B-249966, Mar. 4, 1993. Initially, however, the shipper must furnish substantive evidence to support his allegation that he tendered to the carrier property that he later claims was lost. See Paul Arpin Van Lines, Inc., B-205084, June 2, 1982, affirmed on reconsideration, B-205084, June 8, 1983.

The member claims that three sets of towels, five queen-size sheet sets, ten bed ruffles and ten pillow shams were missing from two cartons. The record indicates that the five queen sheet sets were packed in a 4.5 cubic-foot carton (Item #195) along with a number of articles of clothing and the carton was described as "clothes." The member did not provide any proof of purchase of these missing items which were purchased within 6 months of the move. More significantly, assuming that all of these linens did fit into the stated carton, we do not understand why the carrier would have described such a large volume of linens as "clothes" when it described a smaller volume of linens as "linens" at Item #157. Based on the record, the member has not met his burden of establishing a prima facie case against the carrier for this lost property. American is due a refund of \$476.73, the amount that was offset for these items.

The member claims that a large number of clothes were missing. These items also were purchased within 5 months of the move and no proof of purchase was provided. There is no doubt from the record that clothing was shipped. The agency considered the amount of the claim and certified the claim for a reduced amount reasoning that the shipper did not substantiate the amounts claimed. We see nothing unreasonable with the agency determination.

Conclusion

We deny the appeal in part and affirm the Settlement Certificate in part.

\\ Christine M. Kopocis

Christine M. Kopocis

Member, Claims Appeals Board

\\ Michael D. Hipple

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Chairman, Claims Appeals Board

\\s\ Joyce N. Maguire

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Member, Claims Appeals Board

1. Army Claim No. 92-241-0354; former File No. 93-261-0736.