

DATE: February 24, 1997

---

In Re:

American Van Services, Inc.

Claimant

Claims Case No. 96091701

## CLAIMS APPEALS BOARD DECISION

### DIGEST

Under the Military-Industry Memorandum of Understanding involving Loss and Damage Rules, a Notice of Loss or Damage (DD Form 1840R) may give the carrier enough information to initiate a prompt and complete investigation of a claim even if the written notice does not include specific item numbers, article descriptions, or the types of loss or damage.

### DECISION

American Van Services, Inc. (American), requests reconsideration of the Claims Appeals Board's decision in DOHA Claims Case No. 96070226 (September 5, 1996) in which, except for \$476.73, we denied the company's claim for reimbursement of money set off by the Army for loss or damage to the household shipment of a service member. We modify our prior decision, denying the request for reconsideration except for an additional \$93 (\$25 for a bar stool and \$68 for a floor lamp), as explained hereafter.

The factual information is the same as in the preceding decision and is not repeated here. We will address each item in the order presented by American.

First, with regard to Descriptive Inventory Item 189 (a 4.5 cubic feet carton), the Army denied American's contention that there was a duplicate claim. The Army found that there were at least two bedrooms at origin and that the carton included two sets of bedroom curtain panels (lines 3 and 17 respectively on the List of Property and Claims Analysis Chart, DD Form 1844). American did not offer evidence rebutting these findings. Thus, the Army reasonably concluded that the service member did not duplicate his claim.

Further on Item 189, the Army found that the curtain panels may appear to be sewing material when folded and stored with a sewing box. American offered no rebuttal evidence. Our review of the Descriptive Inventory indicates that Item 189 was a carrier packed 4.5 cubic feet carton containing a sewing box. This carton is relatively large just to contain a sewing box, and on the inventory, this item is proximately located near items involving bedroom materials. In such circumstances, American's argument that there is a lack of evidence of tender fails.

With respect to Item 167, American contends that there is no evidence that this carton contained two floor lamps, only one. On page 7 of its Administrative Report, the Army found that the carton was eight cubic feet and could have held two lamps. In the DD Form 1840R, the Notice of Loss or Damage, the service member notified the carrier of the loss of one floor lamp and damage to another. Item 167 is carrier packed and the carrier described the item in the singular number: "8.0 CTN Lamp CP." As we reviewed the Descriptive Inventory, we noticed that in the next immediate item in the inventory, Item 168, the carrier indicated 2 speakers where there were two speakers of the same type. Both the speakers and the lamp were relatively large articles. Upon further reflection, we now believe that it would be unusual for a carrier to indicate that there were two articles in Item 168 but not to do so for another relatively large article in the immediately preceding item. American should be refunded an additional \$68.

However, the proximity on the Descriptive Inventory between the shower curtain rod (Item 212) and the shower curtain (Item 213) supports the Army's position with respect to American's argument that it should be refunded \$36 for a

missing shower curtain. The shipper's claim cited Item 212 as the missing shower curtain; he should have cited Item 213. In our view, this mistake is harmless error because the nature of the claim was obvious. See Continental Van Lines, Inc., B-228702, Dec. 16, 1988.

American contends that all of the damage involving Items 126 through 129 was pre-existing, and it ought to be refunded \$225 for this damage. We disagree. The Descriptive Inventory indicates that Items 126 and 127 were worn and soiled, and that Items 128 and 129 had similar pre-existing damage (PED) plus scratched legs. It is uncontested that these items were delivered with some or all of the following additional damages: grease, ripped fabric, and paint scuff marks. American failed to offer evidence indicating how the additional damage could have been repaired, without repairing the PED, at an amount lower than \$225. The fact that some PED may be repaired incidental to the repair of transit damage does not diminish a carrier's liability where the carrier has not demonstrated that the additional cost for doing so is ascertainable. See DOHA Claims Case No. 96070212 (November 27, 1996); American Van Services, Inc., B-256229, Sept. 8, 1994; and Interstate Van Lines, Inc., B-197911.2, Sept. 9, 1988.

In view of the particular circumstances in this claim, we agree with American that the shipper should be limited to recovery for only one bar stool under Item 135. The bar stools involved Items 135, 136 and 137 on the Descriptive Inventory, each described as a "wicker stool." In the DD Form 1840R the service member specifically notified the carrier that there was loose bamboo on a "bar stool," Item 135. Later, in his claim, the service member referred to Item 135 but claimed damage to two stools. American argues that the singular nature of the DD Form 1840R description precludes recovery for two stools. Generally, the purpose of the DD Form 1840R is to rebut the presumption of a clear delivery receipt by alerting the carrier that loss or damage occurred so that it can investigate. In such situations, the Comptroller General has held that the service member is not required to precisely describe the nature of the damage to a particular item on the DD Form 1840R. See Andrews Forwarders, Inc., B-257515, Dec. 1, 1994. In fact, the Comptroller General has held that it is possible to comply with the general requirement for notice under the Military-Industry memorandum of Understanding involving Loss and Damage Rules even if the written notice does not include specific item numbers, article descriptions, or the types of loss or damage as long as the carrier has enough information to initiate a prompt and complete investigation. See Continental Van Lines, Inc., B-215507, Oct. 11, 1984. Here, however, the reference to the number of damaged items is not descriptive, and while the service member did not have to be specific on the number in the DD Form 1840R, he was specific. The language of the notice reasonably suggests that the service member intended to notify the carrier of only one item. Also, for unrelated reasons, the service member had not presented sufficient evidence to justify some aspects of his claim, and in view of this, as well as the language on the DD Form 1840R, we think it is appropriate to limit recovery for one stool.

American contends that a dinette chair (line number 27 on the DD Form 1844) was not tendered because the shipper omitted its inventory number on the DD Form 1840R. The Army responded with a statement from the service member indicating that it was in a spare bedroom. American offered no rebuttal evidence showing that there was no chair in the bedroom, or that the notice was too ambiguous to initiate investigation. Our review of the Descriptive Inventory indicates that there was a wicker chair (Item 177) inventoried proximately to other bedroom items. Moreover, as indicated above, a specific item number does not have to be provided on the DD Form 1840R. <sup>(U)</sup> The Army's position is sustained.

With regard to an unnumbered chair in line number 28 of the DD Form 1844, American contends that all of the damage to the dinette chairs (including this) was pre-existing. We disagree. On the DD Form 1840R, for an unnumbered dinette chair, the noticed damage involved a tear to the backside of the wicker mesh. An examination of the Descriptive Inventory reveals that the carrier noted all kinds of scratches, rubs, soiling, wearing, and chips on the dinette chairs, but none was described at origin as torn on the backside.

Finally, for line numbers 31, 32 and 33 of the DD Form 1844, American contends that the DD Form 1840R must be specific in noting the exact number of broken Christmas ornaments and Christmas statuettes (Item 183), as well as the number of picture hooks and mirror attachments that were missing from Item 113 (DD Form 1844 line number 33). We disagree. While it can be and should be specific, as indicated above, the Comptroller General has held that the DD Form 1840R does not have to be specific. Where, as here, American had the descriptive inventory item number, it cannot argue that it had insufficient information upon which to initiate an investigation.

## Conclusion

Accordingly, we deny the petition for reconsideration except as indicated .

/s/ Michael D. Hipple

---

Michael D. Hipple

Chairman, Claims Appeals Board

/s/ Joyce N. Maguire

---

Joyce N. Maguire

Member, Claims Appeals Board

/s/ Christine M. Kopocis

---

Christine M. Kopocis

Member, Claims Appeals Board

1. American cites Department of the Army Pamphlet (DA Pam) 27-162 as authority that the service member is under a legal duty to the carrier to specifically identify the item number of the lost or damaged property. DA Pam 27-162 is an internal DA publication which does not directly affect the contractual rights of the carrier. Moreover, a fair reading of the publication indicates that it was intended to guide DA personnel and claimants, not to invalidate a DD Form 1840R without specific numbers or damage descriptions.