In Re:

Stevens Forwarders, Inc.

Claimant

DATE: March 13, 1997

Claims Case No. 96100702

CLAIMS APPEALS BOARD DECISION

DIGEST

The government has not established a prima facie case of carrier liability when the damage claimed by the service member for an item of household goods is a type that cannot be observed by the carrier's inspection at tender; the record contains no proof of the good condition of the item at that time; and the record does not indicate that the damage resulted from other damage to the item for which the carrier is liable.

DECISION

Stevens Forwarders, Inc. (Stevens) appeals a settlement of the U.S. General Accounting Office[(1)] which disallowed it's refund claim in the amount of $339.39 which it contends was improperly set off against it by the Navy to collect for transit damages to two items in the shipment of a service member's household goods. 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

Stevens picked up the shipment at Portsmouth, Virginia, on November 10, 1992, and delivered it to the service member in Meridian, Mississippi, on December 1, 1992. On January 20, 1993, the service member dispatched a Notice of Loss or Damage, DD Form 1840R, in which he notified Stevens of loss or damage to several items on the Descriptive Inventory, including a Fisher video cassette recorder (VCR) (Item 197) and a laser disk player (Item 207). As indicated below, Stevens seeks a refund of $140 on Item 197, $166.05 on Item 207, and also seeks a refund of the government's collection for unearned freight on both items ($33.34).

The service member claimed that the VCR was dented, and as a result, it was unworkable and unrepairable. The service member observed that the box was not taped properly, and it appeared to him that something was stored on top of the VCR. The member contended that the tape heads were broken in transit. It is uncontested that, to the extent applicable, the depreciated replacement cost was $280, but the record did not include a repair estimate. Stevens contends that the service member relied on a telephone conversation from a salesperson in which the salesperson allegedly advised the member that the damaged item was not repairable. The Navy does not dispute these facts, and appears to rely on a presumption that a carrier receives a shipment in good working order unless otherwise noted on the Descriptive Inventory. The installation claims officer indicated that Stevens could have tested both electrical appliances in dispute for their "workability." Stevens contends that the failure to submit a repair estimate defeats the service member's prima facie case of liability against the carrier, and the firm requests a refund of $140.

The laser disk player is the other item in dispute on this appeal. The service member claimed that the disk player was "shook up," but there was no external damage reported. According to Stevens, the service member submitted a repair estimate which indicates that a faulty motor needed replacement as a result of written complaints of "no output-makes noises." The Navy does not dispute these facts, and follows the same presumption of good working order unless otherwise noted as it followed for Item 197. Stevens contends that the service member did not present sufficient

evidence for a prima facie case of transit liability and seeks a full refund of $166.05. The firm contends that it is not required to test an appliance to determine whether it works before it takes possession and that the damages are equally consistent with normal wear and tear.

Discussion

To establish a prima facie case of carrier liability, the shipper must show (1) that he tendered the property to the carrier in a certain condition; (2) that the property was not delivered by the carrier or was delivered in a more damaged condition; and (3) the amount of loss or damage. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134, 138 (1964). The burden of proof then shifts to the carrier to show that it was not liable for the loss or damage.

Generally, a carrier accepts a shipment only in apparent good order. See Paul Arpin Van Lines, Inc., B-193182, June 16, 1981, 81-1 C.P.D. 492. Thus, a carrier is not expected to play a record turntable, for example, to determine if pre-existing damage exists in its operation. See Interstate Van Lines, Inc., B-197911.5, June 22, 1989. On the other hand, the Comptroller General has held that when the nature of the internal damage is consistent with its having been mishandled or dropped and the shipper states the item was in working order at the time of tender, the mere lack of external damage is not sufficient proof to rebut the carrier's liability. See Carlyle Van Lines, Inc., B-257844, January 25, 1995; Senate Forwarding, Inc., B-256695, Dec. 8, 1994; and Department of the Army, B-255777.2, May 9, 1994.

There is sufficient evidence to indicate that the VCR sustained transit-related damage; i.e., transit-related external damage. If the service member had presented a detailed repair estimate from a repair facility showing, among other things, that the tape heads were damaged and that such damage was consistent with this external damage, there would appear to be sufficient evidence to hold Stevens prima facie liable for the internal damage as well. Here, for reasons that are not known, the service member and the installation-level claims officer did not obtain an estimate.[(2)] We have no way of determining whether the tape heads were, in fact, damaged, and if so, whether the unit could have been repaired and for what cost. Stevens' claim admits 50 percent of the liability, and denies liability for the other 50 percent, and in so doing reasonably reflects the external damages for which it is liable. Accordingly, the company should receive a refund of $140 for the VCR as it claimed.

The service member did not establish a prima facie case of liability for the disk player. The Comptroller General allowed the government considerable latitude to establish a prima facie case of carrier liability where there was no external damage, but the evidence available here does not meet those standards.[(3)] The service member does not make a statement, or offer other proof, indicating that the disk player operated properly up until the time of tender, and the repair estimate stated, only generally, that the motor had to be replaced. In our view, it is equally plausible that the damage could have resulted from wear and tear, as Stevens suggests.

The former Interstate Commerce Commission's regulation at 49 C.F.R. 1056.15(b)[(4)] provided that if "any portion, but less than all, of a shipment of household goods is lost or destroyed in transit, a motor common carrier of household goods in interstate or foreign commerce shall ... refund that portion of its published freight charges ... corresponding to that portion of the shipment which is lost or destroyed in transit." The Commission explained that "destruction" implies that goods are "beyond repair or renewal, that they no longer exist in the form in which they were tendered to the carrier, or that they are useless for the purpose for which they were intended." See also A Olympic Forwarder, Inc., B-256450, Sept. 16, 1994; and Aalmode Transportation Corp., B-231357.2, Sept. 9, 1992. Because the Navy and service member failed to demonstrate Stevens liability on Item 207, and did not offer sufficient evidence to preclude a finding that Item 197 was repairable, we find that Stevens earned its freight charges for these two items.

Conclusion

Accordingly, we reverse GAO's settlement.

\s\ Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

\s\ Christine M. Kopocis

Christine M. Kopocis

Member, Claims Appeals Board

\s\ Joyce N. Maguire

Joyce N. Maguire

Member, Claims Appeals Board

1. Settlement Certificate Z-1348910(119), February 29, 1996, involved Personal Property Government Bill of Lading VP-200,669; USN Claim No. 068FY93; and Carrier Claim #9273234.

2. We recognize that the focus of the Personnel Claims Act, 31 U.S.C. 3721, is to provide a prompt and fair recompense for property losses experienced by service members and employees, but trained installation-level claims staff should construct a claim record that will facilitate recovery against the carrier.

3. The repair estimate usually indicates that the damage is consistent with mishandling, the member usually makes a statement or offers other evidence that the unit worked properly up until the time of tender, and there is circumstantial evidence indicating that damage occurred during shipment. See, for example, Senate Forwarding, supra.

4. This provision was redesignated as 49 C.F.R. 375.15(b)(4) effective October 21, 1996. See 61 Fed. Reg. 54706, 54707 (1996).