In Re:

American International Moving, Corp.

Claimant

DATE: June 25, 1997

Claims Case No. 97021808

CLAIMS APPEALS BOARD DECISION

DIGEST

1. Consistent with the policy established by the Comptroller General, our Office will not question an agency's calculation of the value of damages to items in a shipment of household goods unless the carrier demonstrates by clear and convincing evidence that the agency's determination was unreasonable.

2. The fact that some pre-existing damage 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.

DECISION

American International Moving Corporation (American), appeals the Settlement[(1)] of the Defense Office of Hearings and Appeals with respect to the firm's claim to recover $676.08 of the $1,779.21 initially offset by the Air Force for transit loss or damage that American caused to the household goods of a service member. The Settlement allowed $295 which the Air Force reconsidered in its administrative report.

Background

The record shows that the shipment was picked up in Pratville, Alabama on June 3, 1992, and it was delivered at Mountain Home, Idaho, on August 10, 1992.[(2)] American still disputes its liability or the amount of liability for each of several items. By Descriptive Inventory number, the following items are still disputed for the reasons indicated:

American disputes the amount of its liability due to the damage it caused to the eagle on top of a flag pole (Item 242). American contends that it was improper to charge it replacement cost ($14.10) for the flag pole because the pole itself still functions without the smashed eagle. It offered $5.

The firm disputes the application of depreciated replacement cost for a silk dress that was damaged in transit (Item 168). The owner purchased the dress in 1979, and claims an undepreciated replacement cost was $128 based on the cost of a similar new dress in a catalog. After depreciating this amount by 75 percent, $32 was offset. American complains that the Air Force did not provide the brand name and model of the dress on the List of Property and Claims Analysis Chart (Air Force Form 180); therefore, damages should be limited to 25 percent ($25) of the original purchase price ($100).

With regard to the five piece set of china, American delivered the large platter in a broken condition. The service member claims depreciated replacement cost of $65. American contends that the depreciated replacement cost should be $50 because neither the Air Force nor the service member provided the manufacturer and model number of the china.

The carrier delivered a lamp with a broken shade (Item 131). Because it was less than six months old, the Air Force did not adjudicate depreciation. The Air Force found that due to the design of the lamp, the shade was not replaceable; therefore, American was charged with the replacement cost of the lamp ($39.99). American contends that neither the Air Force nor the owner demonstrated that the shade was unreplaceable.

American argues that it was not liable for any of the damage on the remaining items in dispute. It contends that the

damages claimed for Items 156, 333, and 250 (an oak butler stand (valet) for $69.99, a desk chair for $25, and wall unit for $65 respectively) were preexisting damages (PED), for which it is not responsible. For the remaining two items, American contends that the damage estimate for a wall unit, Item 219 ($95), was inconsistent with the Notice of Loss or Damage, DD Form 1840R, and that the estimate for a wall unit, Item 247 ($75), involved repairs of PED for which it was not liable.

Discussion

The shipper establishes a prima facie case against a carrier for transit loss or damage by showing that he tendered property to the carrier, that the property was not delivered or was delivered in a more damaged condition, and the amount of damages. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134, 138 (1964); see also DOHA Claims Case 96070203 (September 5, 1996). The burden of proof then shifts to the carrier to rebut the primafacie liability. American denies any liability because certain items were delivered with PED, or it challenges the amount of its liability.

Preliminarily, while many of the carrier's inventory exceptions at origin are illegible, we also note that those which are legible and involve furniture tend to have a similar theme; namely, that the furniture was scratched, rubbed and marred at the top, sides, front, rear, bottom and edges. In other words, PED existed over the whole unit. In contrast, the Air Force inspector noted in his report two years after delivery that the claimant's furniture generally was well-maintained and that with regard to some items on which the carrier had reported PED, which were not part of the claim, the inspector noted no damage in the areas indicated by the carrier. While such evidence, by itself, is not dispositive of the carrier's claim and may be only moderately probative, it does invite close scrutiny of American's PED notations.

With regard to Items 242, 168, 138, and 131, the service member notified the carrier of damage to each item to allow American an opportunity to inspect the damage. See DOHA Claims Case No. 96070212 (November 27, 1996). There is no indication that American did avail itself of the opportunity to inspect the damage. American could have determined relevant facts concerning valuation of these damaged items through inspection by a qualified representative. See DOHA Claims Case No. 97012102 (January 29, 1997). On the other hand, ownership of property qualifies the owner to give his estimate of the loss for purposes of measuring transit damages. See DOHA Claims Case No. 97032111 (June 6, 1997); DOHA Claims Case No. 96081208 (December 20, 1996); and DeSpirito v. Bristol County Water Co., 102 R.I. 50, 227 A. 2d 782, 34 A.L.R. 3d 809 (1967). The Air Force inspector also confirmed the valuation. Thus, a prima facie case against the carrier has been established. American should have provided clear and convincing evidence, e.g., the observations of an expert evaluator supported with well-recognized documentary evidence on value, that: the damage to the flag set was only $5; that the replacement cost of the dress was $100, not $128; that a lamp shade (specifying an equivalent model and price) could have been purchased and fitted on the lamp at a cost less than replacement value; etc. American fails to recognize the well-established legal precedent that it, not this Board nor the Air Force, has the burden of proving by clear and convincing evidence that the calculation of damages was incorrect. See title 4, Code of Federal Regulations, Subsection 31.7. See alsoDOHA Claims Case No. 97012102, supra; and McNamara-Lunz Vans and Warehouses, 57 Comp. Gen. 415, 419 (1978). American's appeal based on mere questioning of the Air Force's valuation is insufficient to overcome its liability.

American also failed to meet its burden of proof on the items for which it has denied any liability. On the Joint Statement of Loss or Damage at Delivery, DD Form 1840, the carrier's representative and the member reported transit damage to Item 186, an oak butler stand (valet). While the item had PED prior to shipment, the carrier's representative admitted that it broke once in shipment and broke in another place when it was delivered. The service member's spouse stated to the Air Force investigator that the carrier's representative had apologized to her at delivery for someone's obvious attempt to hide the transit damage by attempting to glue the item's parts back together. The additional damage supports carrier liability in absence of clear and convincing evidence from American demonstrating that the transit related damage could have been repaired for an ascertainable amount less than $69.99. Otherwise it is irrelevant that some PED may be repaired incidental to the repair of the transit damage. See DOHA Claims Case No. 96070212, supra and decisions cited therein.

The inventory noted that the desk chair, Item 333, was loose all over, but it was delivered with the arms pulled loose. This language indicates additional damage in transit which is confirmed by the Air Force inspector's specific

investigation of this damage. Of the $75 claimed by the service member for repair, the Air Force allowed only $25, which was offset against the carrier. Clearly, the Air Force recognized the existence of PED and supported its position with an investigation. American did not investigate the damages nor offer a specific repair estimate for the transit damage. American has not met the burden of proof described above.

At origin, a wall unit, Item 250, was scratched, rubbed and marred, and the back was off. While the carrier's PED notation is partially illegible, this condition involved the side, front, and doors of the item. The damage noted in the repair estimate was a chip in the bottom left corner and a rubbed, scratched front. The AF Form 180 claimed a scratched top, a chipped left edge and a rubbed right door. It appears that the repairs partially repaired PED (the doors) and partially repaired transit damages (bottom left corner). Thus, in part, different and additional damages resulted from transit. In the absence of clear and convincing evidence from American that the bottom left corner could have been repaired for less than the $65 offset, the offset is proper.

With respect to another wall unit, Item 219, American contends that the damages noted on the estimate are inconsistent with the damage noted on the DD Form 1840R. The damage reported by the service member in the DD Form 1840R is that the top was crushed and rubbed and the door was chipped. The damage in the claim was the same. The repair estimate involved a scratched, rubbed and gouged top, and a dented and rubbed front. Prior decisions recognized that terms like "rub" and "scratch" may mean the same in a particular context to many individuals. See Continental Van Lines, Inc., 63 Comp. Gen. 479, 480 (1984). While most people would not describe something as "crushed" unless the surface was obliterated in some way, it is clear that the service member here was trying to describe the result of something being dropped on or pushed against the wall unit. Similarly, the damage to the front of the unit describes damage to the door. We do not view the damage descriptions as inconsistent with each other.

Finally, American contends that the repair estimate on Item 247, another wall unit, involved fixing PED on the front which was rubbed and scratched and the top which was scratched and gouged. The Descriptive Inventory noted scratches, rubs and chips almost everywhere on the unit: edges, top, sides, front, rear and bottom. The DD Form 1840, completed by the carrier's representative, was more specific: top, left, middle gouged; bottom, left, edge rubbed; and a small dent in the top middle. The DD Form 1840R also noted specific damage: a "T" was deeply cut into top, and that the unit was rubbed. The claim was for the "T" deeply cut into the top. On balance, we believe that the repair estimate may have included some PED, but it is also clear that some specific additional damage resulted from transit. As in other items noted above, in the absence of clear and convincing evidence from American that the new damage could have been repaired for less than the $75 offset, the offset is proper.

Conclusion

Accordingly, we affirm the Settlement.

Signed: Michael D. Hipple

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Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Joyce N. Maguire

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Joyce N. Maguire

Member, Claims Appeals Board

Signed: Christine M. Kopocis

Christine M. Kopocis

Member, Claims Appeals Board

1. Settlement Certificate on DOHA Claim No. 96100204, February 3, 1997.

2. The shipment moved under Personal Property Government Bill of Lading RP-874,934. It pertains to AF Claim No. Mountain Home 94-542.