
In Re:

National Claims Services, Inc.

on behalf of

Blue Water Transport

Claimant

DATE: February 24, 1997

Claims Case No. 96101504

CLAIMS APPEALS BOARD DECISION

DIGEST

To prevail on reconsideration, the carrier must demonstrate an error in fact or law. Neither disagreement with a decision nor restatement of arguments already made establishes that the decision was based on an error of fact or law.

DECISION

The National Claims Services, Inc. (National), on behalf of Blue Water Transport, requests that we reconsider our decision in DOHA Claims Case No. 96070209 (September 26, 1996).

Background

National's claim involved the loss of a piece of marble from the top of a coffee table in the household goods shipment of a service member. We held that when a carrier loses the marble top in a coffee table which was one of three components (along with two end tables) in a living room furniture set, and the service member cannot obtain marble for the coffee table to match the marble tops in the end tables, the carrier is also liable for replacing the marble in the end tables to return the member to the position he was in before the loss occurred.

Basis for Carrier's Petition for Reconsideration

National states that the underlying message from our decision is that a carrier must pay the service member for the entire set whenever one piece is broken. It states that our decision will lead to unnecessary spending by the government and more suffering by the carriers. It says that most service members in these situations "will be happy with only a partial offering, because they realize that the rest of their set is still good." National contends that the "common law/commercial practice" does not include payment for non-damaged components of a set, if they still retain value. It points out that a "consumer-oriented handbook by the Interstate Commerce Commission" states "point blank" that the normal common law practice is to disallow payment for entire sets when the remaining parts of the set retain value.⁽¹⁾ It criticizes our decision because we relied on only one judicial decision to support our position. Finally, it contends that as a result of our decision, service members can retain the remaining parts of the set and be put into a better position than they were prior to the move.

Discussion

To prevail on reconsideration, the carrier must demonstrate an error in fact or law. Neither disagreement with a decision nor restatement of arguments already made establishes that the decision was based on an error of fact or law. See DOHA Claims Case No. 96091601 (November 7, 1996) and DOHA Claims Case No. 96070215, (October 15, 1996). National essentially reargues its prior position here. Moreover, it disagrees with the Board's finding on the applicable law and criticizes the Board's reliance on one judicial precedent, but other than its reference to Public Advisory No. 4, it

does not cite any administrative or judicial authority which support its position in this petition for reconsideration. In the Board's prior decision, in addition to this judicial precedent, the Board also cited two Comptroller General decisions which directly supported its position.

Public Advisory No. 4 did not have the force and effect of regulation, and did not mean what National claims it meant. The ICC described how the industry generally views liability when components of sets of property are lost or damaged. The ICC did not describe an absolute rule applicable in all circumstances, and it never intended to issue a comprehensive statement of the law with respect to the computation of damages when one component of a set is lost or damaged. The industry's general approach would have applied here if marble of the same quality could have been found for the coffee table which reasonably matched the end tables. The ICC never intended to sanction a forfeiture of the property owner's value in his property in favor of a carrier who loses or damages the property in circumstances where the repair or replacement of one component of a set does not reasonable restore the property owner to the situation that he was in prior to the move. A service member who owns a matching marble top coffee table and end tables cannot be forced to accept mismatched marble when he tendered matched marble, or accept lesser quality in the repair of the coffee table than the quality of what he tendered to the carrier.

There is no basis for National's comment with regard to the possibility that a service member may be enriched by keeping the surviving components of a set, while he obtains a new set. Under the Military-Industry Memorandum of Understanding (MIMOU), the industry and the government have agreed that in domestic household goods shipments released at a value of \$1.25 per pound, or higher, the carrier is entitled to all items on which it has paid , or agrees to pay, a claim for the total depreciated value of the item. If the carrier had exercised its salvage rights here in accordance with the MIMOU, it could have obtained the two pieces of marble from the end tables. Our discussion here and in the original discussion clearly indicate that we have not held that a carrier must pay the service member for the entire set whenever one piece is broken. National's remarks concerning the additional cost to the industry caused by our decision, and service members' willingness to be compensated for the damaged component without reference to its value as part of a set, are speculative and address policy matters which are beyond the legal sufficiency of the service member's and government's claim.

Conclusion

We deny National's request for reconsideration, and affirm the prior decision.

/s/ Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

/s/ Joyce N. Maguire

Joyce N. Maguire

Member, Claims Appeals Board

/s/ William S. Fields

William S. Fields

Member, Claims Appeals Board

1. National provided, and we considered, the front page and page 2 of Public Advisory No. 4 on Lost or Damaged Household Goods: Prevention and Recovery issued by the former Interstate Commerce Commission (ICC).