KEYWORD: Transit Damage; last handler rule

DIGEST: In an action to recover from a carrier for damage to a household goods shipment, it is a presumption of the common law that the damage occurred in the hands of the last bailee. Carrier which did not prepare a rider upon pick-up of a household goods shipment from a non-temporary storage warehouse remains liable for loss and damage to the shipment. **This decision was affirmed by the DoD Deputy General Counsel (Fiscal) on December 21, 2001.**

CASENO: 96121605

DATE: 05/22/1997

DATE: May 22, 1997

This decision was affirmed by the DoD Deputy General Counsel (Fiscal) on December 21, 2001.

In Re:

American Van Services, Inc.

Claimant

Claims Case No. 96121605

CLAIMS APPEALS BOARD DECISION

DIGEST

In an action to recover from a carrier for damage to a household goods shipment, it is a presumption of the common law that the damage occurred in the hands of the last bailee. Carrier which did not prepare a rider upon pick-up of a household goods shipment from a non-temporary storage warehouse remains liable for loss and damage to the shipment.

DECISION

American Van Services, Inc. (American) appeals our Settlement Certificate, DOHA Claim No. 96070170, dated December 2, 1996, denying it a refund of $150.50 set off by the Air Force for loss and damage to the household goods of a service member.[(1)] 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 has delegated this authority to this Office.

Background

American picked up the member's household goods shipment from non-temporary storage (NTS) at Paducah, Kentucky, on February 7, 1994, and delivered it to Albany, New York, on February 17, 1994. The service member reported various lost and damaged items on the date of delivery and in the Notice of Loss or Damage, DD Form 1840R. American appealed the Army's set off for three items and our Office affirmed the Army's set off. On appeal, American argues it is not liable for two Pyrex pans, Item #145, because the NTS facility improperly packed the box they were located in,[(2)] and requests a reduced liability for Item #167, a framed picture.

Discussion

Generally, under federal law, in an action to recover from a carrier for damage to a shipment, the shipper establishes his prima facie case when he shows delivery in good condition, failure to deliver or arrival in damaged condition, and the amount of damages. Thereupon, the burden of proof is upon the carrier to show both that it was free from negligence and that the damage to the cargo was due to one of the excepted causes relieving the carrier of liability. See Missouri Pacific Railroad Company v. Elmore & Stahl, 377 U.S. 134, 138 (1964). In addition, when goods pass through the custody of several bailees, it is a presumption of the common law that the damage occurred in the hands of the last one. See cNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415, 418 (1978); and DOHA Claims Case No. 96070205 (September 5, 1996).

The last custodian can avoid liability by showing that the damage or loss did not occur while the item was in its custody. For a carrier removing goods from a storage facility for delivery, that showing is made by preparing an exception sheet--a rider--to the inventory; the rider then can serve to rebut the general common law presumption of the last carrier's liability. See DOHA Claims Case No. 96070210 (September 19, 1996).

American did not prepare a rider nor did it submit other evidence to overcome the presumption of liability. Even if the packing contractor used the incorrect container and packed Pyrex with pots and pans, these facts, by themselves, are not dispositive of the cause of the damage. It is just as likely that the damage occurred as a result of mishandling by American as from improper packing by the NTS facility. American remains liable for the amount set off for the Pyrex.

Regarding Item #167, American argues that it can only be held liable for the item as described on the Notice of Loss and Damage, DD Form 1840R.[(3)] The Army reimbursed the shipper and set off against American $90 based on a repair estimate submitted by the shipper. The estimate indicates that the item repaired was 20" x 30" and the walnut frame was 24" x 34". American argues that the size on the repair estimate and the different wood in the frame proves the estimate is for a different item than that described on the 1840R. The Army's administrative report states that both the dimensions and the wood description on the DD Form 1840R were extremely close to that on the repair estimate. American chose not to inspect the damage to determine the exact size and type of wood, and it has not provided any evidence to

overcome the Army's determination that the repair estimate was a reasonable measure for the damaged item. We will not question an agency's calculation of the value of the damages to items lost or damaged unless the carrier presents clear and convincing evidence that the agency acted unreasonably. See DOHA Claims Case No. 96070206 (September 5, 1996).

Conclusion

We affirm the Settlement.

/s/

Michael D. Hipple

Chairman, Claims Appeals Board

/s/

Christine M. Kopocis

Member, Claims Appeals Board

/s/

Michael H. Leonard

Member, Claims Appeals Board

1. Government Bill of Lading SP-655,801; Army Claim No. 95-402-0022. The amount contested in this appeal is $68.

2. American argues that Pyrex is glass and the NTS facility incorrectly packed glass in a carton smaller than 5.0 and incorrectly packed glass objects with metal objects.

3. The DD Form 1840R indicates damage to a picture, specifically, broken glass and broken cherry oak frame, 39" x 25".