

DATE: May 27, 1997

In Re:

American Van Services, Inc.

Claimant

Claims Case No. 96111802

CLAIMS APPEALS BOARD DECISION

DIGEST

Without detailed documentary evidence or an agreement between the industry and the Services, the Claims Appeals Board is not in a position to conclude what the rate of depreciation should be for any particular type of property. Where the Service applies a 10 percent rate of depreciation against a service member for damage to a camcorder, but allows the carrier only half that rate for recovery purposes, the Service must provide a clear explanation for the difference in treatment.

DECISION

American Van Services, Inc. (American) appeals our Settlement Certificate, DOHA Claim No. 96072502, dated November 7, 1996, denying it a refund of \$744.60 set off by the Air Force for loss and damage to the household goods of a service member. [\(U\)](#) 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

The member's household goods shipment was picked up in Georgia in February 1993 and delivered to Texas in March 1993. Lost or damaged items were reported on the Notice of Loss or Damage, DD Form 1840R. American appealed the Air Force's set off for 3 Items, arguing the amount of damages assessed for each item was unreasonable. American now appeals DOHA's settlement affirming the set off as it concerns the camcorder, Item #327. The Air Force assessed American with the then-current replacement cost for a comparable camcorder (\$1,079), depreciated by 5 percent per year for seven years (\$701.35). The Air Force had reimbursed the shipper, \$323.70, using the 10 percent depreciation rate stated in its Allowance List-Depreciation Guide.

Discussion

Initially, we point out that American's questions concerning why it did not receive a copy of the purchase receipt and other documentation are more appropriately addressed to the Air Force. Further, claimant's mere allegation that neither the service member nor the Air Force proved to the carrier's satisfaction that the camera model claimed as a replacement is equivalent to the damaged camera, is not evidence that it was not equivalent. The carrier must present evidence to support that allegation.

The contractual agreement on depreciation between the government and the industry, the Joint Military/Industry Depreciation Guide (JMIDG), does not address depreciation of camcorders because such items were not generally used when the JMIDG was last amended over twenty years ago. Our review of the record indicates that the Air Force's Allowance List-Depreciation Guide includes a 10 percent rate for camcorders. In this case, the Air Force applied the 10 percent rate in determining the appropriate reimbursement owed the shipper. The Air Force, however, applied a 5 percent rate in determining the carrier's liability, claiming that the closest item on the JMIDG to a camcorder is an expensive camera, which depreciates at a rate of 5 percent.

In the absence of an agreement between the parties on the rate of depreciation, we find that the Air Force's decision to apply 5 percent depreciation, when it applied a rate twice that against the service member, without a clear explanation for the difference in treatment was unreasonable. Previously, this Board addressed the issue of the rate of depreciation for compact discs (CD's), which are not included in the JMIDG, and for which there is no agreement between the industry and the military services parties. In upholding the application of a rate of 10 percent of depreciation for CD's, we affirmed the Air Force's application of the rate of depreciation stated in its Allowance List-Depreciation Guide (ALDG) governing the settlements of claims with members. We did so, not because we made a determination that such a percentage rate was the correct one, nor because the ALDG is the default rate when there is no Service-industry agreement, but because, in that claim, the Air Force provided reasonable support for the amount applied. We held that the carrier failed to provide clear and convincing evidence that the Air Force's determination to apply the rate in its Guide was unreasonable. See DOHA Claims Case No. 96081208 (December 20, 1996).

In this claim, the Air Force provided no explanation for why it depreciated the same video recorder differently for the carrier than for the service member. Without detailed documentary evidence or an agreement between the industry and the Services, the Board is not in a position to conclude what the rate of depreciation should be for any particular type of property. The Air Force's explanation here for the difference in treatment is based on the simple conclusion that the most similar item to a video camera on the JMIDG is an expensive camera, but for some unexplained reason, such an analysis was insufficient in the different context of the service member's claim against the Air Force for the same piece of property. The reasoning which prompted the Services to differentiate video cameras from other cameras on the ALDG, and to depreciate them at 10 percent for ALDG purposes, ought to be explained. If it was based on relevant factors normally accepted as evidence in determining a proper rate of depreciation for a particular type of object, it may apply here in the absence of some specific reason to the contrary. Without such an explanation, however, we are concerned about the appearance of arbitrariness.

As in the CD case, we emphasize that the best solution on issues of depreciation for new technology and equipment would be a new military-industry agreement which would specify the rate of depreciation for future claims. An agreement can also be made to settle current disputes. Until a new agreement is reached, we will continue to consider each claim contesting the rate of depreciation based on the record where the type of property involved is not specified on the JMIDG. We will consider the Service's reasonableness in applying a particular depreciation rate and the carrier's clear and convincing evidence to show the unreasonableness. As we concluded in the CD decision, our ability to decide a proper rate of depreciation in the absence of a specific agreement will depend on the presentation of detailed support from widely-recognized experts and authorities in this field.

Conclusion

We amend the Settlement as it applies to the camcorder. The carrier should be refunded \$377.65.

/s/

Michael D. Hipple

Chairman, Claims Appeals Board

/s/

Christine M. Kopocis

Member, Claims Appeals Board

/s/

Joyce N. Maguire

Member, Claims Appeals Board

1. Government Bill of Lading SP-239,007; USAF Claim No. Randolph 94-289. The amount contested in this appeal is \$701.35.