

DATE: April 28, 1997

In Re:

Andrews Forwarders Inc.

Claimant

Claims Case No. 96081210

CLAIMS APPEALS BOARD DECISION

DIGEST

This Office will not question an agency's calculation of the value of the damage to items in the shipment of a service member's household goods unless the carrier presents clear and convincing evidence that the agency acted unreasonably. Carrier's appeal based on the fact that, until set off, it did not receive a copy of the shipper's estimate stating that the damaged item was unrepairable, does not provide sufficient evidence to overcome its liability for the depreciated replacement cost.

DECISION

Andrews Forwarders Inc. (Andrews) appeals the U.S. General Accounting Office's (GAO) Claims Settlement Certificate Z-2729037-137, dated April 23, 1996, denying it a refund for monies 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

The record indicates that the member's household goods were moved from Arlington, Virginia, to Los Angeles, California in June 1993. The shipper noted on the Joint Statement of Loss or Damage at Delivery, DD Form 1840, that 2 mirrored doors for the entertainment center were broken and 1 entertainment center glass shelf was broken, both involving Item #271.

The shipper claimed the replacement cost for the entire entertainment center, but based on a December 1993 repair estimate by Anco Glass and Mirror Corporation (Anco), the Air Force initially reimbursed her only for the repair of the mirrored doors (\$190) and glass shelf (\$60).⁽²⁾ The shipper appealed the Air Force's determination and submitted a February 1994 statement from Anco that the necessary hinges to replace the mirrored door were unavailable. Apparently, while repairing the item, Anco learned that the entertainment center was made by a foreign company that had gone out of business and identical pieces are no longer available. The shipper also sought to keep the damaged entertainment center to store books, at a salvage value of \$500.

The Air Force reconsidered the claim and paid the shipper at the depreciated replacement cost minus salvage value of 25%. The Air Force then sought reimbursement from the carrier.⁽³⁾ The carrier offered \$152, \$190 less depreciation of 5% for 4 years, based on Anco's repair estimate. The GAO settlement upheld the Air Force's set off.

Upon appeal, the carrier argues that the only repair estimate it received concerning the entertainment center was for \$190. Andrews states that "The damaged item, according to the paperwork submitted to us, can be replaced/repared as listed on Anco's estimate. We had NO EVIDENCE in our file (until we were set off) to indicate that the item could not be repaired/replaced for the \$190 as listed on Anco's estimate -- especially since it was basically just for replacement of the mirrors/glass."

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).

This Office will not question an agency's calculation of the value of the damage to items in the shipment of a service member's household goods unless the carrier presents clear and convincing evidence that the agency acted unreasonably. DOHA Claims Case No. 96070206 (September 5, 1996). In addition, on disputed questions of fact between the claimant and the administrative officers of the government, we accept the statement of fact furnished by the administrative officers in the absence of clear and convincing contrary evidence. See McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415, 417 (1978).

In the present case, the record indicates that Andrews did not inspect the damage to the household goods shipment and offered no evidence to counter the Air Force's factual assertion that the entertainment center could not be repaired. Andrews' appeal based solely on not receiving Anco's February statement of the unavailability of the hinges when set off initially was made cannot be accepted. Andrews had to show by clear and convincing evidence that Item #271 was repairable. Andrews remains liable for the depreciated replacement cost minus salvage value, calculated by the Air Force to be \$916.38.⁽⁴⁾

Conclusion

We affirm the settlement, but remand the case to the Air Force for verification of the proper amount of carrier liability for the entertainment center.

/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-436,767; LA AFB 94-111; Carrier Claim

F93-110.

2. Anco's repair estimate was for \$190 for the repair of both the mirrored doors and the glass shelf. It is unclear from the record why the Air Force reimbursed the shipper and later set off against the carrier an additional \$60 for the glass shelf.

3. The Air Force determined Andrews liability to be \$916.38, calculated as follows: \$1697 replacement estimate less 25% salvage value less 28% (7% x 4 years) depreciation.

4. We note that the Air Force's April 5, 1996, memo to GAO states that the set off amount was \$976.38. It is unclear to

us if this is a typographical error or if Andrews was incorrectly set off an additional \$60 for repair of the glass shelf. The Air Force cannot charge the carrier for the glass shelf if they charged it for the replacement cost of the entire item. The Air Force must address this discrepancy in the record.