In Re:

American Van Services, Inc.

Claimant

DATE: January 8, 1997

Claims Case No. 96081902

CLAIMS APPEALS BOARD DECISION

DIGEST

DOHA will not question an agency's calculation of the value of the damages to items in a service member's household shipment unless the carrier presents clear and convincing evidence that the calculation is unreasonable. The carrier has not met this burden of proof where it does not deny that it caused transit damage, the service member and agency present evidence of the depreciated replacement costs of the items involved, and the carrier's only response is that the damages were so insignificant that a loss of value award was the proper measure of the damages.

DECISION

American Van Services, Inc. (American) appeals the June 19, 1996, settlement of the U.S. General Accounting Office disallowing American's claim for a refund of $146.13 set off by the Air Force for transit damages to the household shipment 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 delegated this authority to this Office.

Background

The record indicates that American picked up the shipment from the service member in California in October 1991 and delivered it to him in Arkansas in December 1991. In this appeal, American disputes its liability, or the amount of its liability, with respect to four items on the Descriptive Inventory: Item 57W, a large model Christmas church; Item 74Y, a crystal picture frame; Item 119Y, a torchier lamp; and Item 278W, a table leaf.

American contends that it is not liable ($50) for the repair of the inlays to the table leaf because the shipper did not obtain a supporting repair estimate. Item 278W is one of two table leafs on which the service member reported inlay damages. The record contained a repair estimate to support $50 of damages to Item 273W, but that estimate referenced only one table leaf. The Air Force believes that because similar damage was reported on Item 278W, it is implied that the cost of repair is the same.

American disputes the amount of its liability on the other three items. In effect, American argues that even if it damaged each one of the items, each was still functional and the damage to each was so minor that while American may be liable for a small loss of value to the service member, it is unreasonable to charge the firm with the depreciated replacement cost of each item. Thus, the service member did not prove the third element of the prima facie case for liability.

American states that the service member did not prove that the model church which was chipped or dented could not be repaired, or that it was no longer useful. This item was purchased in November 1989 for $49.95, and its replacement cost at J.C. Penney was the same amount. The Air Force calculated the depreciated replacement cost, and the carrier's liability, at $37.46. Similarly, American contends that the retainers broken from the picture frame could have been replaced at a cost significantly less than the depreciated replacement cost of $31.45,[(2)] and a small loss of value award, rather than the $35.29 depreciated replacement cost, would have adequately addressed the shipper's loss for the firm's denting of the torchiers in the lamp.[(3)]

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. SeeMissouri Pacific Railroad Company v. Elmore & Stahl, 377 U.S. 134, 138 (1964).

For Items 57W, 74Y and 119Y, the record indicates the existence of specified damages at delivery which were not present when each item was tendered to American. The record also indicates that damages were measured by the depreciated replacement costs, which were derived from prices available at the merchants indicated. Thus, we believe that the service member provided the elements of a prima facie case of liability. Generally, the Comptroller General has held that the carrier's disagreement with a service member's estimate is no basis for discrediting the service member's estimate in the absence of a detailed estimate showing that the service member's estimate was unreasonable in comparison to local market repair costs. See Foremost Forwarders, Inc., B-256666, Dec. 8, 1994, and Interstate International, Inc., B-197911.6, May 25, 1989. Also, our Office, and the Comptroller General before us, has held that we would not question an agency's calculation of the value of the damages to items in a service member's household shipment unless the carrier presents clear and convincing evidence that the calculation is unreasonable. See DOHA Claims Case No. 96070221 (October 7, 1996) and A&A Transfer & Storage, Inc., B-252974, Oct. 22, 1993, respectively.

American argues that as a matter of law, it was unreasonable for the Air Force to apply depreciated replacement cost as a measure of damage. American cites internal regulations which generally provide that the Air Force will pay the service member a reasonable amount to compensate the member for damages incident to service when the damage is so minor that it does not significantly detract from the item's appearance, affect its intended use or does not warrant repairs as extensive as the estimates provide. (4) Assuming arguendo that these internal regulations have some relevance, American's argument that loss of value awards should have applied begs the question concerning whether these damages are insignificant for the three items.

There is no evidence in the record that American inspected the items to determine the extent of the damages. The bending and denting of the torchier, as well as the denting of the model church, appear to detract from their appearance. Moreover, American did not demonstrate how the frame could have been repaired and at what cost. Additionally, American did not cite any judicial or administrative decisions, or other legal authority, which explain how a loss of value measure is calculated and when, as a matter of law, it must apply to the exclusion of depreciated replacement cost as the proper measure of a common law bailee's liability, or more specifically, an interstate carrier's liability. In our view, American has not presented clear and convincing evidence to overcome the prima facie case for liability presented by the service member.

Based on the particular facts in this case, however, we reverse GAO's settlement with respect to Item 278W, and remand this item to the Air Force for further findings. It is not clear to us that the cost of repairing the second leaf is, necessarily, exactly the same as the first. It is possible that the cost of repairing one of two apparently identical items may be less per item when more than one item is presented for repair. Further, in addition to the lack of an explanation on the record for the service member's submission of only one of two damaged items for a repair estimate, the record indicates that the supporting estimate was prepared in April 1993, 16 months after delivery.

Conclusion

We affirm GAO's settlement except with regard to Item 278W. We reverse the settlement with respect to Item 278W, and remand this item to the Air Force to either support the record with further evidence to support the $50 estimate or refund the $50 to American.

\s\Michael D. Hipple

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Michael D. Hipple

Chairman, Claims Appeals Board

\s\ Joyce N. Maguire

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Joyce N. Maguire

Member, Claims Appeals Board

\s\Christine M. Kopocis

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Christine M. Kopocis

Member, Claims Appeals Board

1. Settlement Certificate Z-2862118(79) pertains to Personal Property Government Bill of Lading UP-725,702, and Air Force Claim Little Rock 94-129.

2. Based on a replacement cost of $34.95 at J.C. Penney.

3. Based on a replacement cost of $37.95 at Service Merchandise.

4. See Air Force Instruction 51-502, para. 2.67.3 (July 25, 1994) and Air Force Regulation 112-1, para. 6-26 (Change No. 1, August 31, 1990).