
In Re:

Patriot Forwarders, Inc.

Claimant

DATE: November 19, 1996

Claims Case No. 96070217

CLAIMS APPEALS BOARD DECISION

DIGEST

Failure of the government or service member to complete the Notice of Loss or Damage at Delivery, DD Form 1840R, with the carrier's proper address, as requested by the form, does not invalidate a service member's prima facie claim of liability against a carrier if there is evidence otherwise that timely and adequate notice was sent to alert the carrier of the need to investigate for possible loss/damage in the shipment.

DECISION

Patriot Forwarders, Inc. (Patriot), appeals the General Accounting Office's (GAO) Settlement Certificate Z-1348910 (117), dated August 3, 1995, which denied Patriot's claim for reimbursement of \$1,504 deducted by the Army for transit loss and damage to the household goods shipment of a service member.⁽¹⁾ Pursuant to Public Law No. 104-53, November 19, 1995, effective June 30, 1996, the authority of the GAO to adjudicate carriers' reclaims of amounts deducted by the Services for transit loss/damage was transferred to the Director, Office of Management and Budget who delegated this authority to the Department of Defense (DoD). We affirm GAO's settlement and disallow recovery by Patriot.

Background

The record indicates that Patriot picked up the service member's household goods in Maiden, North Carolina, on July 2, 1993, and delivered them to the service member in Fort Carson, Colorado, on July 30, 1993. The sole issue here is whether Patriot was timely and adequately notified of loss or damage discovered after delivery. In accordance with the Military-Industry Memorandum of Understanding (Loss and Damage Rules), hereafter referred to as the MOU, dispatch of notice within 75 days of delivery shall be accepted by the carrier as overcoming the presumption of the correctness of the delivery receipt.

The MOU contemplates that a Notice of Loss or Damage, DD Form 1840R, will be used to notify the carrier of any loss or damage discovered after delivery. Patriot contends that it did not receive notice of loss or damage to the items listed on the DD Form 1840R until it received the Demand on Carrier, the DD Form 1843, 278 days after delivery.⁽²⁾ As evidence that it did not receive the DD Form 1840R, it points out that neither the Army nor the service member completed Block 3a of the DD Form 1840R with the address of the carrier or contractor, as requested by the form. Patriot suggests that it did not try to mislead the Army because it provided its address to the Army in Block 9 of the Joint Statement of Loss or Damage at Delivery, DD Form 1840. Patriot also challenges the validity of DD Form 1840R unless the address is shown.

The Army Claims Service acknowledges that the address is not contained in Block 3a. But, it points out that Block 3b indicates that it was dispatched within 75 days of delivery (September 10, 1993); that there are only two carriers used by the Army to ship personal property with the word "Patriot" in their names; and that the proper address was available because Patriot provided it in Block 9 of the DD Form 1840, the reverse side of the DD Form 1840R (although the carrier misspelled its own name).

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). Under the MOU, when loss or damage is not reported at delivery, a notice of later discovered loss or damage (usually the DD Form 1840R) dispatched to the carrier not later than 75 days following delivery shall be accepted by the carrier as overcoming the presumption of the correctness of the delivery receipt. The issue here is whether there was timely and adequate notice of loss or damage.

The Army reasonably concluded that its claims office at Fort Carson dispatched the DD Form 1840R to Patriot on September 10, 1993. The claims office clearly indicated it was dispatching the DD Form 1840R to Patriot Forwarders on that day, and Patriot's proper address was contained on the DD Form 1840, the opposite side of the DD Form 1840R. In our view, this is substantial evidence that the claims official did what he certified he was doing, and it is unlikely that he would have dispatched the form to an address other than the one on the reverse side of the notice. Patriot's contention that the failure of the government or service member to complete the DD Form 1840R with the carrier's proper address, as requested by the form, does not invalidate the prima facie case of liability against the carrier.

Conclusion

We affirm GAO's settlement.

\s\ Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

\s\ Joyce N. Maguire

Joyce N. Maguire

Member, Claims Appeals Board

\s\ Christine M. Kopocis

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1. See Army Claim No. 93-061-2408, and carrier file 93-67468, involving a shipment under Personal Property Government Bill of Lading (PPGBL) SP-501,602.

2. The items listed on the DD Form 1840R were Inventory Item Numbers 147, 121, 134, 126, 187 (answering machine, chest set and ceramic fish), 185 and 154.