KEYWORD: Transit Damage; measure of damages

DIGEST: The Defense Office of Hearings and Appeals will not question an agency's calculation of the value of the damages 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. Mere disagreement with the Air Force's determinations does not meet the carrier's burden of proof. **This decision was affirmed by the DoD Deputy General Counsel (Fiscal) on December 21, 2001**.

CASENO: 96070221

DATE: 10/07/1996

DATE: October 7, 1996

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. 96070221

CLAIMS APPEALS BOARD DECISION

DIGEST

The Defense Office of Hearings and Appeals will not question an agency's calculation of the value of the damages 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. Mere disagreement with the Air Force's determinations does not meet the carrier's burden of proof.

DECISION

American Van Services, Inc. (American) appeals the General Accounting Office's (GAO) Settlement Certificate Z-2862118-74, dated March 14, 1996, which denied American's claim for reimbursement of $1177.39, deducted by the Air Force 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).

Background

American requests a refund for $1177.39 which was offset by the Air Force for items lost or damaged in the move. American picked up the goods from Redlands, California, on September 9, 1993, and delivered them to Dover, Delaware, on October 28, 1993. An inventory was prepared at pick up. At delivery, the shipper listed items on the 1840 and later, on the 1840R, as damaged or missing. The Air Force paid the shipper for damage and loss, and set off $2362.91 against the carrier. The carrier requests a refund for $1177.39 as set forth below.

Discussion

A prima facie case of liability is established by showing that the shipper tendered the property to the carrier, that the property was not delivered or was delivered in a more damaged condition and the amount of the damages. Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134 (1964). The burden of proof then shifts to the carrier to rebut the primafacie liability. 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. American International Moving, Corp., DOHA Claims Case No. 96070206 (September 5, 1996).

At issue in this case is the amount of the carrier's liability for loss or damage to a rug, two brooms, a television, television stand, ironing board cover, bookends, message board and a canister set. It is our view that the carrier has not provided clear and convincing evidence that the Air Force acted unreasonably, and thus has not met the burden of proof which would release it from liability for the items mentioned.

The rug, a 4' x 8' beige throw rug (Item # 97), was listed as missing. The Air Force set off $23.99, depreciating it for its age of 2 years. The carrier asserts that the rug was soiled and badly worn, and thus should have been further depreciated. The kitchen broom (Item # 135), which was missing at delivery, was less than 6 months old. The inventory, prepared by the carrier at pick up, lists the broom as badly worn. The carrier asserts that depreciation for the broom should also have been accelerated and thus the carrier is due a refund. The push broom (Item # 319) which is also listed as badly worn, was damaged in transit. The Air Force notes that it arrived at delivery with the bristles crushed, rendering it unusable. Depreciation was applied to the replacement value. The carrier asserts that it should have been further depreciated. The carrier also argues that the shipper did not note damage to this broom at delivery. However, the record shows that the damage is noted on the 1840R, dated November 23, 1993.

With regard to these items, the Air Force notes that the inventory is inherently unreliable, since almost all items have

notations of "worn", "badly worn" or "soiled". The record shows that for some items, described by the carrier as soiled, the shipper made notations on the inventory at the time of pickup, indicating that the items were not soiled, and had been recently steam cleaned. Similarly, items described as scratched, rubbed, dented and soiled by the carrier are described by the shipper on the inventory, as having small scratches, but otherwise in very good condition. In determining the amount of damages, the Air Force did not accelerate depreciation as suggested by the carrier. In settling a member's claim, the carrier does have the right under the Joint Military -Industry Depreciation Guide to consider actual care and usage of an item before applying the depreciation rates in the Guide for average care and usage. The carrier's opinion, however, is not definitive. To defeat recovery by the government at a higher amount, the carrier still has the burden of proving by clear and convincing evidence that the agency's calculation was unreasonable. See, A & A Transfer and Storage, Inc., B-252974, Oct. 22, 1993. We find that the carrier has not provided clear and convincing evidence on appeal that the agency acted unreasonably with regard to these items.

The carrier asserts that an "old rubbed and chipped" television (Item #75) was tendered to it. The Air Force concluded that while there was some pre-existing damage, new damage occurred in transit to the front glass screen and sides. The carrier accepts liability for the chipped screen and rubbed sides. However, the carrier argues that the amount offset for the television, $699.99, is excessive. The shipper obtained a repair estimate of $1078.44. The shipper also obtained a replacement cost estimate of $1399.99 for a 27-inch television. The Air Force noted that SONY no longer makes 25-inch televisions, thus, it would be inappropriate to use the repair cost for purposes of damages. However, the Air Force reduced the replacement cost of $1399.99 to $1349.99 to compensate for the difference in size, and further reduced the replacement cost 50% to compensate for the pre-existing damage. Thus, the total set off for the television, $699.99, less the $25 refund, was $674.99. Other than its assertion, the carrier has not provided evidence that the agency acted unreasonably.

The carrier argues it is liable only for the wrinkle in the bottom edge of the television stand (Item # 76). The Air Force states that the stand is, according to the repair estimate, damaged beyond repair, thus, the carrier's liability which was based on the replacement cost of $179.97 was properly depreciated to $116.99 and no further refund is due. The carrier has not provided an alternate repair estimate or other evidence that the stand is repairable. Nor has it shown that the Air Force acted unreasonably.

The carrier objects to set off of $10.96 for an ironing board cover (Item # 113) which is listed on the inventory as "soiled." The administrative report reflects that the grease or paint found by the shipper after delivery was different from the description on the inventory and the nature of the damage required purchase of a replacement. Since it was less than 6 months old, no depreciation was applied. The Air Force asserts that the replacement cost is appropriate. The carrier has not provided evidence to show that the Air Force's determination was unreasonable.

The carrier claims that the bookends (Item #220) should have been repaired rather than replaced. The Air Force states that the shipper is not required to obtain estimate of repair for items of nominal cost and notes that if the carrier wished to contest whether the item could be repaired, it had merely to have an inspector or repairman review the item and give an estimate of the repair cost. The carrier has not done so, nor has it provided evidence that the agency was unreasonable.

The carrier states that it should not be liable for payment for a message board (#261) from which only the mounting hardware was missing. The Air Force notes that since the board cannot be used without the mounting hardware, replacement is appropriate, and that the carrier has provided no evidence that it can be repaired for less.

Finally, the carrier contends that it is liable for only one canister in a set of canisters (Item # 41) which was chipped in transit. The Air Force notes that two of a set of four canisters were damaged and that it was not unreasonable to replace the entire set. The carrier has not provided evidence to the contrary.

Accordingly, we find that the carrier has not met it's burden of proof. While it disagrees with the determinations made by the Air Force, the carrier provides no evidence, other than its own argument, that the Air Force acted unreasonably.

Conclusion

We affirm the settlement.

Signed: Christine M. Kopocis

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Christine M. Kopocis

Acting Chairman, Claims Appeals Board

Signed: Joyce N. Maguire

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Joyce N. Maguire

Member, Claims Appeals Board

Signed: William S. Fields

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William S. Fields

Member, Claims Appeals Board

1. See Air Force Claim No. Dover 94-215, involving a shipment under Government Bill of Lading VP - 078,360.