

DATE: February 10, 1997

In Re:

Stevens Worldwide Van Lines, Inc.

Claimant

Claims Case No. 96070231

CLAIMS APPEALS BOARD DECISION

DIGEST

In an action to recover from a carrier for damage to a household goods shipment, it is a presumption of the common law that the damage occurred in the hands of the last bailee. The last custodian can avoid liability by showing that the damage or loss did not occur while the item was in its custody. A carrier which did not prepare a rider upon pick up of a household goods shipment from a non-temporary storage warehouse remains liable for loss and/or damage to the shipment.

DECISION

Stevens Worldwide Van Lines, Inc. (Stevens) appeals the U.S. General Accounting Office's (GAO) Claims Settlement Certificate Z-1348910(89), dated May 16, 1995, denying it a refund of 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 Stevens picked up the shipment from a non-temporary storage (NTS) warehouse and delivered the household goods to Laguna Hills, California, in May 1989. While the goods were in the NTS warehouse, a Navy Inspector ensured that 18 of the cartons that showed an obvious need were re-packed and appropriate indication was made on the original inventory. Stevens did not reinventory nor prepare a rider upon pick up from the warehouse.

Stevens appealed the set off arguing that it accepted the inventory as a statement of the contents and condition of the cartons and, that upon their visual inspection at the NTS, only improperly and/or not sealed cartons were opened for inspection by Stevens. Since the shipment occurred prior to November 1, 1989, and the carrier did not receive compensation from the government for accepting the liability of concealed items,⁽²⁾ Stevens argues that the carrier should not be liable for concealed items that are damaged.

The Air Force denied Stevens settlement offer stating that the Tender of Service holds the carrier liable for damage to items in a carton picked up from an NTS warehouse unless the carrier creates a separate inventory or rider, noting damage. Stevens appealed the set off to GAO, which denied the claim.

Upon appeal of the settlement, Stevens restates that it should not be held liable for concealed damage for a shipment handled prior to November 1989. Additionally, Stevens argues

that there is proof that it did not mishandle the goods because only one of the 18 cartons that the Navy repacked at the NTS warehouse sustained damage while the remaining damage occurred to items in cartons not re-packed by the Navy.

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). Once the shipper has established a prima facie case of liability, the burden is on the carrier or other bailee to show either that the damage did not occur while in its custody, or that the damage occurred as a result of one of a number of causes for which the carrier is not liable. Additionally, when goods pass through the custody of several bailees, it is a presumption of the common law that the damage occurred in the hands of the last one. See DOHA Claims Case No. 96080202 (November 21, 1996) and McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415, 418 (1978).

The last custodian can avoid liability by showing that the damage or loss did not occur while the item was in its custody. For a carrier removing goods from a storage facility for delivery, that showing is made by preparing an exception sheet--a rider--to the inventory; the rider then can serve to rebut the general common law presumption of the last carrier's liability. See Able Forwarders, Inc., B-252817, Apr. 19, 1993; and A-1 Ace Moving and Storage, Inc., B-243477, June 6, 1991. Under paragraph 54 of the Tender of Service, ⁽³⁾ a carrier obtaining property from an NTS contractor should carefully check each item in storage that it is receiving against the NTS inventory and note any differences.

As the last custodian of the shipment, Stevens is presumed liable for loss or damage. Stevens' agent did not prepare a rider to the inventory, but accepted the original inventory as a description of the contents of the shipment. The mere argument that it should not be held liable for concealed damage is inadequate to overcome the presumption of liability. While Stevens may not have had a duty to un-pack prepacked items without compensation, this does not mean that it escapes liability as the last custodian of the shipment if loss or damage arises. See McNamara-Lunz Vans and Warehouses, Inc., *supra*, 417-418 and cases cited therein. If Stevens had prepared an accurate descriptive inventory, detailing what items it was receiving and their condition, then we could have considered clear evidence of what Stevens did receive and its condition. Without this, we will follow the general rule that the last custodian is presumed liable for transit loss or damage.

Conclusion

We affirm the settlement.

/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 QP-594,042; AF Claim # 91-00118/CR; Carrier Claim # 89-63784.

2. The carrier makes note that effective November 1, 1989, Paragraph 154 of the Military Traffic anagement Command

Rate Solicitation D1 provides compensation by the government to carriers for accepting liability for concealed packing damage out of non-temporary storage.

3. The Tender of Service is contained in Appendix A to DoD 4500.34-R, the DoD Personal Property Traffic Management Regulation.