

DATE: April 28, 1997

In Re:

American Van Services, Inc.

Claimant

Claims Case No. 96081202

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.

DECISION

American Van Services, Inc. (American) appeals the U.S. General Accounting Office's (GAO) Claims Settlement Certificate Z-2862118(81), dated June 19, 1996, denying it a refund of \$423.30 set off by the Air Force for loss and damage to the household goods of a service member. [\(U\)](#) 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 household goods shipment was picked up at Montgomery, Alabama on June 29, 1993, and delivered to Herndon, Virginia, on August 2, 1993. The Service paid the shipper for damage and loss and set off \$1,202.30 against the carrier. American appealed this offset to the GAO. Except for \$140 allowed by the Service, GAO denied the claim based on its determination that the Service's report revealed no error of fact or law. The carrier seeks a refund of an additional \$423.30 for the following items: Item #113, a file cabinet; Item #119, a desk; Item # 161, a wardrobe; Item #234, a desk; Item #236, a washer; and Item #252, a lawnmower.

The Descriptive Inventory showed that the file cabinet was stained on top and had tape around the drawers. The Joint Statement of Loss or Damage, DD Form 1840, indicated the cabinet was bent on the back and bottom and the Notice of Loss and Damage, DD Form 1840R, indicated that the cabinet was marred by mover-applied tape around the drawers. In its Administrative Report the Service discussed the DD Form 1840 damage stating that it was different than the pre-existing damage noted on the Descriptive Inventory. The cabinet was purchased in April 1993 for \$99 and the replacement cost annotated on the Schedule of Property and Claim Analysis Chart, DD Form 1844, by the Claims Office was \$87. American argues it is unjust to allow full replacement cost for an item with pre-existing damage simply because of the shipper's self-serving statement that the item is beyond use.

The damage claimed on the DD Form 1840R to the desk, Item #119, is paint on the back. Pre-existing damage including scratches, rubs, and chips were noted on the Inventory. The Service claims that the repair cost is reasonable. The Inventory noted scratches and dent on the left side, right side, and front of the wardrobe plus rubs. The DD Form 1840R shows that the side of the wardrobe was dented. The Service apportioned an amount for depreciation and for the pre-existing damage. For Item #234, another desk, the Inventory noted that the legs were scratched. The DD Form 1840R noted that a wood runner was missing. The Service set off \$30 for repair of this desk without requiring an estimate, citing the nominal repair cost as justification and arguing that the carrier had sufficient information to obtain its own estimate to dispute the claimed repair cost.

The Inventory notes that the mechanical condition of the washer was unknown to the carrier and that the washer was rubbed and scratched on top. The DD Form 1840R notes that the "legs/feet crushed; no longer adjust/work." The Service argues that the repair cost for the washer of \$75 is reasonable. The DD Form 1840R notes that bolts and pins were missing from the lawnmower and that it cannot be reassembled. The Service claims that the missing items were of nominal value and that there is no evidence from the carrier that the \$10 set off was unreasonable. American argues that to allow 86% of the washer's value to replace its feet and 25% of the depreciated value of the lawnmower to replace the missing parts is ludicrous.

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).

At issue in this case is the amount of the carrier's liability for loss or damage. Regarding the replacement of the file cabinet, our Office and the courts have held that ownership of property qualifies the owner to give his estimate of what actual loss was for evaluation in assessing the measure of damages to personal property lost or damaged in transit by a carrier. See DOHA Claims Case No. 96081208 (December 20, 1996) and DeSpirito v. Bristol County Water Co., 102 R.I. 50, 227 A.2d 782, 34 A.L.R. 3d 809 (1967).

Other than its assertion, the carrier has not provided a repair estimate or other evidence that the Service acted unreasonably with regard to any of the items. It is apparent from the record that the Service reasonably considered the condition of the items prior to the move by deducting for pre-existing damage, such as for the desk. The replacement cost for the file cabinet and the repair costs for the other items are reasonable. The carrier has not met the burden of proof which would release it from liability.

Conclusion

We affirm the settlement.

/s/

Christine M. Kopocis

Member, Claims Appeals Board

/s/

Michael H. Leonard

Member, Claims Appeals Board

/s/

Joyce N. Maguire

Member, Claims Appeals Board

1. Government Bill of Lading SP-197,508; Air Force Claim Bolling AFB 94-888; Carrier Claim #933010258.