KEYWORD: Transit Damage; last handler rule

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. Where the shipper-supplied estimate indicates that the damage to an item was caused by improper packing and also dropping of the item, the carrier remains liable for the damage. **This decision was affirmed by the DoD Deputy General Counsel (Fiscal) on December 21, 2001.**

CASENO: 97032111

DATE: 06/06/1997

DATE: June 6, 1997

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. 97032111

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. Where the shipper-supplied estimate indicates that the damage to an item was caused by improper packing and also dropping of the item, the carrier remains liable for the damage.

DECISION

American Van Services, Inc. (American) appeals our Settlement Certificate, DOHA Claim No. 97021016, dated March 10, 1997, denying it a refund of $139.39 set off by the Air Force for loss and damage to the household goods of a service member.[(1)]

Background

The record indicates that the shipment was packed and placed into non-temporary storage (NTS) at Redlands, California, in August 1992. American picked it up from NTS in November 1992 and delivered it at Rantoul, Illinois, in December 1992. American was offset $139.39 for loss and damage to the shipment. Our settlement certificate agreed with the set off action of the Air Force.

American appeals the decision as it relates to Item #99, a wicker princess chair, and Item #92, a cassette player. American disputes the government's statement that because the value of the chair was less than $100, there is no requirement that the shipper obtain an estimate of the repair cost. American also argues that the repair estimate, which states that the damage to the cassette player was caused by packing, relieves American of liability.

Discussion

A primafacie case of carrier liability is established by a showing that the shipper tendered property to the carrier, that the property was not delivered or was delivered in a more damaged condition, and the amount of damages. SeeMissouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134 (1964). 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. 96070207 (September 5, 1996); and McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415, 418 (1978). Once the shipper has established a primafacie 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.

The replacement cost of the damaged wicker chair was $45. The Air Force deducted depreciation for the two year old chair and set off $36 against American. On appeal, American questions the fact that no repair estimate was required of the shipper but does not provide any evidence to dispute the agency's calculation of damages. Our Office 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. See DOHA Claims Case No. 96070206 (September 5, 1996). Additionally, 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).

In the administrative report, which American received a copy of, the Air Force refers to an internal policy which states

that there is no requirement that the shipper obtain an estimate of the repair cost if the claimed amount is less than $100. This policy is in effect for payment of the shipper by the Air Force, but there is no equivalent stated policy in handling claims against carriers. However, American has not met its burden of proof that the Air Force's assessment of the measure of damages in this case was unreasonable. The mere questioning of the Air Force's actions is insufficient to rebut the primafacie case. American remains liable for the damage to the wicker chair.

A shipper-supplied repair estimate was provided for the cassette player. The estimate states that the item "was packed badly and dropped case pushed in and separated" and that the "outside metal case [was] bent and deformed". The estimate for a new case was for $55 plus $29.95 labor and tax, for a total of $88.39. The Air Force set off $88.39 against American. American states that the cassette player was packed in a carton that was too small according to the Personal Property Traffic Management Regulation and disputes its liability as last bailee given the statement on the repair estimate of the bad packing and the fact that the NTS packed the shipment. The Air Force's administrative report states that the mere assertion that the wrong carton was used does not provide evidence that the improper packing was the cause of the damage, that the defect was latent or that American was otherwise free of negligence. In fact, the estimate indicates that the poor packing was not the sole cause of the damage, but states that the item was dropped. American has provided no evidence on appeal to overcome the Air Force's determination that American, as last bailee, remains liable for the 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 UP-963,024; AF Claim No. Scott 93-1353. The amount contested in this appeal is $124.89.