
In Re:

American International Moving, Corp.

Claimant

DATE: June 18, 1997

Claims Case No. 97022406

CLAIMS APPEALS BOARD DECISION

DIGEST

When the Joint Statement of Loss or Damage at Delivery (DD Form 1840) notes that the contents of a tool box are missing, the carrier cannot presume the correctness of the delivery receipt, and it has adequate and timely notice that the shipper may file a claim against the carrier for tools shipped in the tool box. The shipper is not required to dispatch a subsequent Notice of Loss or Damage (DD Form 1840R) to the carrier within 75 days of delivery which specifies each tool that was lost.

DECISION

American International Moving, Corporation (American), appeals the February 12, 1997, Settlement of the Defense Office of Hearings and Appeals (DOHA), under DOHA Claim No. 96121603, which disallowed American's claim for \$468.57, an amount offset by the Air Force to recover for the loss in transit of tools belonging to a service member.⁽¹⁾

The record shows that the shipment was picked up at Sunnyvale, California, on July 30, 1993, and it was delivered at Pearland, Texas on August 18, 1993. The claim results from a dispute between the carrier and the Air Force over whether the service member sufficiently demonstrated that he tendered tools with the tool box at Item 5 of the Descriptive Inventory. The carrier's entry on the Descriptive Inventory refers only to the tool box, but not to the existence or non-existence of any tools as its contents. As a secondary issue, American contends that the service member failed to timely and adequately notify the carrier of the loss because he did not specifically itemize each of his missing "tools" in the Joint Statement of Loss or Damage at Delivery (DD Form 1840R), or in a subsequent Notice of Loss or Damage (DD Form 1840R). The DD Form 1840 that was completed by the carrier's representative and the service member at delivery refers specifically to Item 5 and describes the item as "unlocked, tape removed, contents missing."

Other arguments raised by American to defeat liability include the failure of the Settlement Certificate to discuss other items (cartons) which may have contained tools; for example, those labeled "shop stuff," "shop items," and "garage items" 282 through 288, 307 through 311, 358, 367 through 371 and 373. American also points out that the delivery person did not prepare the inventory; that the shipment was a "code 1A" shipment,⁽²⁾ and therefore, the Joint Military Industry Table of Weights (JMITOW) is inapplicable precluding reliance on the statement therein that a tool box is presumed to contain tools unless otherwise stated; and that under paragraphs 2.79.1 and 3.8.1 of Air Force Instruction 51-502 (July 25, 1994), the claimant must list specific loss or damage (with inventory numbers) on the DD Form 1840 or DD Form 1840R.

Discussion

The shipper establishes a prima facie case against a carrier for transit loss or damage by showing that he tendered property to the carrier, that the property was not delivered or was delivered in a more damaged condition, and the amount of damages. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134, 138 (1964); see also DOHA Claims Case 96070203 (September 5, 1996). The burden of proof then shifts to the carrier to rebut the prima facie liability. American denies liability for any contents in Item 5 because the service member did not prove that he delivered specific tools to the carrier at origin.

The Settlement Certificate correctly advised American that a prima facie case of carrier liability for the loss of tools shipped in a service member's tool box is established, even though the inventory does not indicate that the box contained tools, when the carrier refers to a tool box in the Descriptive Inventory. See American Vanpac Carriers, B-247876, Aug. 24, 1992 and Ambassador Van Lines, Inc., B-256546, Sept. 23, 1994.

American attempts to distinguish these Comptroller General decisions from the facts in this claim by pointing out that the shipment in the present claim is a Code 1 shipment, and that the JMITOW is inapplicable to such shipments. We disagree. First, while American Vanpac Carriers involved a domestic shipment that had been placed into nontemporary storage (NTS) prior to the carrier's rendition of services, the Comptroller General's point was to offer an example of why it was reasonable to draw the inference that if a tool box is tendered, tools were tendered with it. The basic principle behind American Vanpac Carriers is that the shipper does not have to specifically list each item on the Descriptive Inventory to prove that he tendered such an item to the carrier; tender of an item is established as an element of a prima facie case of carrier liability where the item allegedly lost or damaged is reasonably related to items shown on the inventory of a carton's contents, particularly where it would not have been unusual to pack the item in that carton, and the carrier did the packing and prepared the Descriptive Inventory. See American Van Lines, Inc., B-257887, Apr. 27, 1995. Normally, tools are contained in tool boxes.

Second, we see nothing on the face of the JMITOW which would prohibit its application to Code 1 shipments. The table does not limit itself to any particular code of service, and applies to "Thru-Government Bill of Lading Shipments," like this one.⁽³⁾ The inference of liability against American here is stronger than the one against American Vanpac Carriers because no NTS is involved and American was directly responsible for all services performed. Paragraph d of the introduction to the JMITOW states that the table will determine maximum carrier liability when such is based on the weight of the item. We recognize that when the JMITOW became effective, domestic household goods shipments typically were released to a maximum carrier liability of \$.60 per pound per article. Today, as a general rule, a typical domestic household goods shipment of DoD is released to maximum carrier liability of \$1.25 times the net weight of the entire shipment. Thus, as a practical matter, the weight of any individual article may be less important, but the JMITOW is still relevant.

We disagree with American's argument that it did not receive timely and adequate notice of the loss of each tool. This Board and the Comptroller General have stated in numerous decisions that the notice only needs to be general in nature. See DOHA Claims Case No. 96121606 (June 6, 1997) and the decisions cited therein. American's argument is frivolous in this case because the loss of the contents of the tool box was reported by the carrier's representative at delivery, and American could not have presumed the correctness of the delivery receipt. American knew, starting from that day, that it was likely to receive a claim for the contents of the tool box, and nothing prevented it from making periodic inquiries about the

identification of specific tools. An updated notice of loss in the form of a DD Form 1840R with more specific detail, was not required.

American's suggestion that it was denied its rights under AFI 51-502 is fallacious because AFI 51-502 did not apply at the time of movement, and American has not demonstrated that this internal service regulation was intended to confer legal rights on carriers. Moreover, we do not interpret paragraph 2.79.1 and 3.8.1 of AFI 51-502 the same way that American does. The requirement for the claimant to list specific loss or damage under paragraph 2.79.1 means that the service member is required, for internal service purposes, to identify the specific Descriptive Inventory item number involved. Beyond that, while it appears to be the policy to achieve as much specific detail as is possible, nothing in the language of the Instruction suggests that the claimant will forfeit his prima facie case against the carrier if he cannot describe in detail every lost article in a container, or the exact damage that is involved, and dispatch a written notice containing such detail within the 75-day period for the DD Form 1840R under the Military-Industry Memorandum of Understanding on Loss and Damage Rules. Neither the DD Form 1840, nor the DD Form 1840R, lends itself to detailed discussion.

Finally, American's purpose in referring to other items that may contain tools was not articulated. Whatever the firm's purpose may have been in this regard, it is too late. Nothing concerning those items was raised in the claim that

American initially filed with the General Accounting Office in this matter, and we cannot consider it on appeal. See DOHA Claims Case 96121606, supra. Similarly, American did not articulate its purpose in drawing a distinction between the person who prepared the Descriptive Inventory and the delivery person, and in view of our comments on the "Through" nature of the government bill of lading involved here, we fail to see the relevance.

Conclusion

Accordingly, we affirm the Settlement.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Joyce N. Maguire

Joyce N. Maguire

Member, Claims Appeals Board

Signed: Christine M. Kopocis

Christine M. Kopocis

Member, Claims Appeals Board

1. The property was transported under Personal Property Government Bill of Lading

SP-411,532. It involves Air Force Claim No. Brooks AFB 95-247.

2. Code 1 service involves the movement of household goods in a motor van from origin residence in CONUS to destination residence in CONUS. See Definition 18a in the Department of Defense (DoD) Personal Property Traffic Management Regulation (PPTMR), DoD 4500.34R, October 1991.

3. There are two types of Through Government Bills of Lading (TGBLs): a domestic TGBL and an international TGBL. A domestic TGBL involves the movement of personal property from one point in CONUS to another point in CONUS by use of a DoD approved common carrier. The carrier is responsible for arranging or performing all required services, from origin to destination including preparation of the inventory, packing, linehaul transportation, storage in transit, delivery and unpacking. See Definition 117 in the PPTMR. American's services here involved a domestic TGBL.