In Re:

Stevens Transportation Co,, Inc.

Claimant

DATE: January 23, 1998

Claims Case No. 97100111

CLAIMS APPEALS BOARD DECISION

DIGEST

Where a carrier stains a sofa which is one of two components of a set of furniture (along with a love seat), and the service member cannot eliminate the stain or reupholster the sofa with a fabric that matches the fabric on the undamaged love seat, an estimate showing that the stain cannot be eliminated coupled with an estimate for reupholstering the set may be sufficient prima facieevidence of damage. This is sufficient where the carrier settles its liability merely by asserting that it is not liable for diminished value of the set but only for damage to the sofa for which it received notice of damage and where the carrier failed to offer clear and convincing contrary evidence that a lesser measure of damages would have restored the service member to the condition he was in prior to shipment with respect to the value of the furniture as a set.

DECISION

This is in response to an appeal of the General Accounting Office's November 1993 Settlement Certificate No. Z-1348910(65).[(1)] The Certificate indicated that the carrier was due a refund of $294 from the offset amount.

Background

The carrier picked up the member's household goods from non-temporary storage in Michigan on August 25, 1988, and delivered them to Mesquite, Texas, on August 29, 1988. At delivery, the service member and the carrier's agent noted a stain on the sofa.[(2)] The Army dispatched a Demand on Carrier (DD Form 1843) on January 13, 1989, noting attached estimates. The Army collected $1,281 from the carrier by offset on October 26, 1990. Of the $1,096 which the Army allowed for reupholstery of the matching sofa and love seat (Descriptive Inventory Items 152 and 151 respectively), the carrier appealed $613. GAO first upheld the Army's offset, but on November 18, 1993, allowed the carrier a refund of $294 of the offset for recalculation of depreciation. It appears that the carrier has not received the $294 from the Army. The record contains a copy of a letter dated September 27, 1996, from the carrier to DOHA appealing GAO's Settlement Certificate, but this Office has no record of receiving this letter.

On appeal, the carrier cites two bases of material error in the Settlement. First, Stevens contends that the depreciation rate that the Army applied to the material used to reupholster the sofa and love seat was 35 percent, but it should have been 70 percent. Second, the record is void of any evidence which supports the contention that the integrity of the set had been diminished, and therefore, the reupholstering cost of the love seat has not been established as a proper prima faciecase of liability.

In its administrative report of September 30, 1997, the Army Claims Service acknowledges that the correct depreciation rate was 10 percent per year, or 70 percent over 7 years, as provided in GAO's revised Settlement Certificate and as Stevens urges. The Army agrees that this would result in a refund of $294 as determined in the revised Settlement Certificate. Thus, we need not address the issue of the depreciation rate.

Discussion

An apparent problem with Stevens' claim is timeliness. Under the theory of laches, the Comptroller General[(3)] has held that requests for review (appeals of settlements) should be received within a reasonable time after settlement. See B-147781, Sept. 21, 1967; B-157883, Dec. 30, 1965; and B-155521, Feb. 23, 1965. Although the appeal in B-157883, supra, involved a different statute than the one involved in the present claim,[(5)] the Comptroller General found that appeals received more than three years after settlement were not received within a reasonable time. The first indication in the record of Stevens appeal was in a December 31, 1996, letter to the Army Claims Service. This was more than 3 years after the revised Settlement. However, laches is an equitable doctrine, and in this case, considering the availability of the record and an appeal shortly after three years, we believe that the interests of justice are best served by addressing timeliness within the context of the substantive issue and available record.

The record indicates that Stevens settled the service member's claim on the basis that the firm did not receive timely notice of damage to the love seat and that there was no legal authority requiring the repair or replacement of anything other than the very item that was damaged.[(6)] However, there is long-standing authority holding that a carrier is liable for reupholstering other undamaged furniture in a set, as well as the damaged piece of furniture requiring reupholstery, when it is necessary to restore the shipper to the condition he was in prior to transit. See B-266119, Jan. 25, 1996; and Paul Arpin Van Lines, Inc., B-213841, Sept. 18, 1984. We have adopted this same holding with respect to other items of furniture. See DOHA Claims Case No. 96070209 (September 26, 1996); aff'd in DOHA Claims Case No. 96101504 (February 24, 1997). Stevens has offered no contrary legal authority.

The record contains a reasonable basis for the Claims Service to have found that repholstery of the set was necessary. The flow of correspondence during Stevens' settlement period, and in the adjudication period shortly thereafter, indicates that the Claims Service had provided estimates and explained its position on Stevens' liability for reupholstering both members of the set. The record contained a sufficient showing of the need to reupholster, and the costs for doing so, no later than ay 22, 1990. But, Stevens did not respond with substantive evidence. For example, it could have shown that the stain on the sofa was repairable without reupholstering; that fabric to match the undamaged love seat was available for the reupholstery of the sofa; or that a reupholstery or replacement of the sofa was reasonably available which would not have diminished the value of the set. Instead, it responded with argument and merely repeated its general denial of any liability for the devaluation of a set. It asserted that it was liable only for the damaged item itself. As in Paul Arpin, supra, Stevens presented no evidence to rebut the government's estimate of damages. Stevens simply assumes that a lesser repair of the sofa was available. Stevens failed to prove the unreliability of the government's estimate by clear and convincing evidence. SeealsoMcNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 416, 419 (1978) cited in Paul Arpin.

Conclusion

We affirm the Settlement. Stevens is entitled to $294 if otherwise appropriate.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Christine M. Kopocis

Christine M. Kopocis

Member, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

1. The Settlement Certificate was first issued on November 3, 1993, but a corrected Certificate was issued on November 18, 1993. The matter involves Personal Property Government Bill of Lading RP-030,716, Army Claim 89-131-0109, and Carrier Claim 88-70070.

2. The Army's September 18, 1992, administrative report noted that it was a large blue stain, but a copy of the DD Form 1840 is no longer legible. A copy of the Descriptive Inventory indicates that the member noted that the sofa was "STAINED" at delivery.

3. We are following the practices and procedures of the Comptroller General[(4)]

4. We are following the practices and procedures of the

5. It involved an overcharge settlement under a predecessor to title 31, United States Code, Section 3726 (31 U.S.C. § 3726), while we review transit loss and damage settlements under 31 U.S.C. § 3702.

6. On February 8, 1989, Stevens requested the Claims Service to provide it a reupholstery estimate and the depreciated replacement cost for the sofa only, denying any liability for the love seat because it did not receive timely notice of damage to it. Stevens had already received a copy of the estimate for reupholstering the sofa and love seat with the DD Form 1843. While the Claims Service was tardy in responding, on October 25, 1989, it forwarded to Stevens copies of all estimates in its file, presumably including the September 19, 1988, Rainbow International Carpet Dyeing and Cleaning estimate which stated that the blue dye stains could not be removed. On November 7, 1989, Stevens denied liability for the love seat based on lack of notice. On May 22, 1990, the Claims Service responded to Stevens' settlement by explaining that the stain was not removable and that no match was available for the existing fabric. On July 5, 1990, Stevens responded by explaining that it was legally liable only for the damaged item but never for reupholstering a set. Stevens repeated this position on September 17, 1990, November 28, 1990, and in its November 27, 1991, claim before the Comptroller General.