
In Re:

Resource Protection

on behalf of

Blue Sky Van Lines

Claimant

DATE: August 27, 1997

Claims Case No. 97050704

CLAIMS APPEALS BOARD DECISION

DIGEST

The burden of establishing fraud rests on the party alleging it and must be proven by evidence sufficient to overcome the presumption in favor of honesty and fair dealing. We will not infer fraud if the circumstances are as consistent with honesty and fair dealing as with dishonesty. A carrier's claim of fraud is denied where it merely shows that its copy of the Joint Statement of Loss or Damage, DD Form 1840, prepared at delivery from the original, is inconsistent with a photocopy of the same that the Service reports as the true and correct copy.

DECISION

Resource Protection, on behalf of Blue Sky Van Lines, appeals the March 21, 1997, Settlement of the Defense Office of Hearings and Appeals (DOHA) in Claim No. 96110403. Resource Protection argues that Blue Sky had received notice of the loss or damage of only two items on the Joint Statement of Loss or Damage at Delivery (DD Form 1840) and that the several additional items appearing on the Army's photocopy of the DD Form 1840 were fraudulently added to it after the 75-day period from delivery in which notice of loss or damage had to be dispatched to the carrier.⁽¹⁾

Background

The record indicates that the carrier picked up the household shipment on June 26, 1995, in Colorado Springs, Colorado, and delivered it to the service member in Wheeling, West Virginia, on July 10, 1995.⁽²⁾ At delivery, Resource Protection acknowledges that the member and the carrier's agent reported the loss and damage on the DD Form 1840 for the two items: a table top with missing screws and a broken picture frame, but no others items were reported lost or damaged. Resource Protection also acknowledges that on August 22, 1995, the claims office dispatched to the carrier a Notice of Loss or Damage (DD Form 1840R)⁽³⁾ reporting a coffee table with missing legs, a missing box of clothing identified as Descriptive Inventory Item 52, and a picture of a black panther with broken glass. The carrier contends that no other Notice of Loss or Damage was dispatched to it within 75 days of delivery.

The Army contends that the original DD Form 1840 had seven items listed on it. In addition to the two items noted above, it also included damages to two small touch lamps under Descriptive Inventory Item 36, damages to another lamp under Item 40, a missing box of desk items under Item 41, and a missing box of clothing under Item 18. In its administrative report, the U.S. Army Claims Service also conceded that the additional five items may have been mistakenly added to the DD Form 1840 side of the DD Forms 1840/1840R set when the DD Form 1840R was dispatched to the carrier. But even if that had happened, the Army believes that its claim was timely because the five items would have appeared on the reverse side of the form it had dispatched indicating additional damages.⁽⁴⁾

Resource Protection states that the Army has refused to provide a pink copy⁽⁵⁾ of the original DD Form 1840, and suggests that the Army did not provide this copy to the carrier with the additional damages listed on the reverse side, the

DD Form 1840R. The carrier alleges that with the copy of the DD Form 1840, the Army has offered a "fraudulent" copy of what had been previously provided to the carrier. In support of its position, Resource Protection did provide this Board with a pink copy of the DD Form 1840 as it existed on the day of delivery, which shows only the first two items of loss and damage.

Discussion

The burden of establishing fraud rests on the party alleging it and must be proven by evidence sufficient to overcome the presumption in favor of honesty and fair dealing. We will not infer fraud if the circumstances are as consistent with honesty and fair dealing as with dishonesty. See DOHA Claims Case No. 96070226 (September 5, 1996). There are substantial differences between the carrier's pink copy of the DD Form 1840 and the photocopy reported by the Army to be a true and authentic copy of the original. Because the carrier's pink copy appears to have been created at the same time as the original DD Form 1840, in our view, this requires the Army Claims Service to make additional efforts to reconcile the differences. But for the reasons suggested by the Army and by our adjudicators, we cannot draw the conclusion that fraud explains the differences. Mistakenly, honest claimants at times have listed additional damages to the DD Form 1840 side of the DD Form 1840/1840R set. Resource Protection has not introduced proof of an intent by anyone to deceive; its allegation of fraud is not proof of it.

Depending on the facts, Resource Protection may have prevailed on appeal without alleging fraud. We note, however, that the pink copy of the DD Form 1840/1840R set that it did submit to this Office apparently was created on the day of delivery. This is the only pink copy in the record before this Board. It did not submit whatever was dispatched to it on August 25, 1995. Resource Protection noted that the carrier is required to provide three pink copies of the original DD Form 1840 to the service member so that the member can dispatch notice of additional loss or damage to the carrier. Resource Protection noted that one of the copies is dispatched to the carrier, one remains in the claims office, and one is returned to the service member.⁽⁶⁾ In reconciling the discrepancies between the DD Form 1840 of the carrier and that of the government, we believe that both parties should account for the remaining pink copies in the government's and carrier's possession.

Conclusion

Accordingly, we deny the claim of fraud but remand this matter to the U.S. Army Claims Service to reconcile the discrepancies noted above.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Michael H. Leonard

Michael H. Leonard

Member, Claims Appeals Board

Signed: Christine M. Kopocis

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