DATE: December 4, 1997

In Re:

Stevens Worldwide Van Lines, Inc.

Claimant

Claims Case No. 97110307

CLAIMS APPEALS BOARD DECISION

DIGEST

In accordance with the Military-Industry Memorandum of Understanding, the military services must use a repair estimate timely submitted by a carrier when it is the lowest estimate and the service has determined that the carrier's firm can and will perform the repairs adequately for the price stated, based on the firm's reputation for timely and satisfactory performance. Even though the service offers a valid reason (repairer qualification) on appeal for not using the estimate submitted by the carrier, we will not accept the service's basis for not using a carrier's estimate when the service failed to provide this reason to the carrier during the adjudicatory process and merely stated that it was not required to use the carrier's estimate.

DECISION

Stevens Worldwide Van Lines, Inc. (Stevens) appeals the October 1, 1997, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 97072411, which disallowed Stevens' claim for a refund of $504 set off by the United States Army Claims Service to recover transit damages in the shipment of a service member's household goods.[(1)]

Background

The shipment was picked up in Radcliff, Kentucky, on December 3, 1992, and delivered to Langley Air Force Base, Virginia, on February 22, 1993. In this appeal, Stevens disputes the amount of its liability with respect to framed artwork and memorabilia, inventory items #120, #122-#125, and #128-#131.

All the inventory items in question were packed by the carrier in mirror containers. On the Notice of Loss or Damage, DD Form 1840R, the shipper noted damages to these items including marred frames, artwork loose in the frame, and felt pads missing off the back of some of the frames. The shipper submitted two estimates from frame shops for repair/replacement of the frames. The Army used the lower of the shipper-supplied estimates (for remounting and replacement frames ranging from $20.33 to $121.97 per item) in adjudicating the claim with the shipper and in making demand against Stevens.

Stevens submitted an estimate from a furniture repair shop which the claims office considered in adjudicating the member's claim, but ultimately rejected. The furniture repair shop estimate was for repair of each frame for a cost of $10 to $30 per item. The claims office concluded that the two frame shops' opinions that it was less expensive to replace the frames than repair them were more reasonable than the furniture repair shop's opinion that the frames could be repaired for a low cost. In addition, the claims office found that Stevens did not show that the shipper's repair estimate was unreasonable. Our Settlement Certificate upheld the Army's actions as reasonable. Over the carrier's protests for not using the carrier-supplied estimate, the Army merely advised Stevens that use of the carrier's estimate was not mandatory.

On appeal, Stevens contends that the Army should have used its lower repair estimate. Stevens states that the Army did not raise the issue of the furniture repair service being a qualified repair firm for wooden picture frames until after

Stevens' appeal was submitted. Stevens argues that the furniture repair shop could adequately repair the wooden picture frames and is willing to do so. Stevens states that the furniture repair shop stands ready and willing to make the repairs to the shipper's frames, although after 4 years the price may be somewhat higher. Stevens states that the shop routinely repairs expensive collector frames, some of which are over 200 years old. In addition, Stevens contends that its repair estimate was timely submitted.

Discussion

Section III(B)(2) of the Military-Industry Memorandum of Understanding on Loss and Damage Rules (MOU), effective February 1, 1992, states that the claims office will use a carrier's estimate received more than 45 calendar days after delivery if the claim has not already been adjudicated and that estimate is the lowest overall, and the repair firm selected by the carrier can and will perform the repairs adequately for the price stated, based on the firm's reputation for timely and satisfactory performance. It further states, if the carrier's estimate is the lowest overall estimate and is not used, the claims office will advise the carrier in writing of the reason the lowest overall estimate was not used in determining the carriers' liability. Stevens' estimate was provided more than 45 days after delivery of the shipment but before the claim was adjudicated by the claims office.

We acknowledge, as the Army Claims Service states, that the MOU does not require use of the carrier's estimate merely because it is lower than the shipper's estimate. If the Army had advised the carrier in writing that the carrier's repairer was not qualified to assess the damages or perform repairs, after considering the carrier's response to the Army's concerns in this regard, we would have found in the Army's favor. As the Army points out, Paragraph III(A) of the MOU does state that the military services will evaluate an itemized repair estimate submitted by a carrier from a qualified and responsible source. But this policy is implemented by the procedures in paragraph III(B) for not using the carrier's estimate; the procedures require the service to advise the carrier in writing concerning its reason for not using the carrier's estimate when it is the lowest overall. Nothing in the language of the two paragraphs suggests that the service does not have to advise the carrier if it is concerned about the carrier repairperson's qualifications. A service's objection to a repairer's qualifications or expertise appears to be one of the primary reasons why the service would provide written notice of non-use. Clearly, the MOU anticipated some dialogue during the adjudicatory stage about non-use of the carrier repairer's estimate when that estimate is the lowest overall. Stevens pursued this issue during the adjudicatory stage, but the Army Claims Service merely repeated its position that use of carrier estimates was not mandatory and that the shipper's estimate was reasonable.[(2)]

Conclusion

We reverse the Settlement Certificate to the extent it accesses carrier liability in excess of the carrier's estimate for items #120, #122-#125, and #128-#131.

/s/

Michael D. Hipple

Chairman, Claims Appeals Board

/s/

Christine M. Kopocis

Member, Claims Appeals Board

/s/

Jean E. Smallin

Member, Claims Appeals Board

1. This matter relates to Personal Property Government Bill of Lading RP-899,432 and Army Claim No. 94-322-0123. The Settlement Certificate also denied Steven's request for a $78 refund for damage to a washer. Stevens does not appeal this denial.

2. See, for example, the exchange of correspondence between June 15, 1994 and September 14, 1994. The Army had a substantial basis for not accepting the carrier's estimate, as explained in the Loss and Damage Claims Examiner's January 25, 1994, memorandum for record, but there is no indication that it communicated this to Stevens during the adjudication of the claim. It appears that the Army was working under the belief that the procedure prior to the 1992 OU still applied.