
In Re:

Resource Protection

on behalf of

American Van Pac Carriers

Claimant

DATE: December 23, 1997

Claims Case No. 97102410

CLAIMS APPEALS BOARD DECISION

DIGEST

Tender of an item to a carrier 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 inventory list. Accordingly, where a shipper claims, for example, that a Battle Dress Uniform (BDU) set is missing from an item merely described by the carrier as a wardrobe packed by the carrier in the master bedroom, there is sufficient evidence of tender for purposes of a prima facie case of liability against the carrier.

DECISION

Resource Protection, on behalf of American Van Pac Carriers, appeals the Army's set off of \$177 of a total set off of \$596, to recover transit loss or damage to an employee's household goods.⁽¹⁾ The carrier contends that the shipper and the Army failed to offer sufficient evidence of tender of certain items missing from or damaged in four cartons to establish a prima facie case of liability with respect to them.

Background

The carrier obtained the shipment at the employee's former residence in College Station, Texas, on December 13, 1990, and delivered it to the new residence in Bel Air, Maryland⁽²⁾, on February 22, 1991. The employee notified the carrier that several items had been lost or damaged. The claim included a missing Battle Dress Uniform (BDU) set from a carrier-packed wardrobe carton, Descriptive Inventory Item 301 (\$34); missing ratchet tools from Item 323, an unlocked tool box (\$32); a hand-made needlepoint picture missing from Item 341, a 3.0 carrier-packed carton containing living room articles (\$90); a broken picture frame in Item 341(\$7); and a 2-gallon desktop aquarium missing from Item 346, an item described in the same manner as Item 341(\$14).

In this appeal, the Resource Protection contends that the Army failed to demonstrate that the employee tendered these missing or damaged items to the carrier for purposes of a prima facie case of carrier liability. The carrier contends that the circumstances here "are identical to the circumstances" that existed in Aalmode Transportation Corp., B-240350, Dec. 18, 1990, where the Comptroller General refunded an offset against a carrier where the shipper's only evidence of tender was an unsupported, self-serving acknowledgment of the penalty for filing a false claim. Resource Protection points out that there was no evidence of tampering with regard to any of the cartons and that tender of a tool box does not necessarily support the tender of tools. Resource Protection also suggests that the current employee's claim is fraudulent: the employee needed some money so "he picked various cartons and alleged certain items to be missing from the cartons."

Discussion

The Army cannot prevail if there is insufficient evidence that the service member tendered the lost or damaged article to the carrier. To establish a prima facie case of liability against the carrier, the shipper must show that he tendered the goods to the carrier, that the carrier failed to deliver the goods or delivered them in a damaged condition, and the amount of the damages. See Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134, 138 (1964). However, the circumstances here are not identical to those in Aalmode, and in this case, the record contains substantially more evidence of proof of tender than the mere assertions in the employee's claim.

In Aalmode, the shipper alleged that his compact disc player was missing from a 4.5 cubic foot carton labeled as "knickknacks." Without further explanation, a reasonable person would question the connection between an electrical appliance and a box of delicate knickknacks. In that claim, some explanation was required. Here, in contrast, the missing or damaged items were packed by the carrier (or available for its inspection in the case of the tools) in a container where such an article was most likely to be.

The carrier's own labeling decisions contributed to its liability here. As the Army's administrative report points out, the articles claimed as lost or damaged were reasonably related to the items shown on the inventory of the cartons' contents, such as it was, and it would not have been unusual to pack them in such containers. The carrier's descriptions were so minimal in nature that they appeared not to be in compliance with the requirements of the Tender of Service. The carrier went no further than to describe each item as a wardrobe or a carton with a specific volume capacity and the source room of the articles that were placed in it. But subparagraph 54c of the Tender of Service also required that the carrier indicate the general contents of any container, and subparagraph 54h required the carrier to list on the inventory the general contents of the dressers or chests or drawers packed by the carrier.⁽³⁾ The carrier's overly broad description of the contents would have easily included the items claimed.

Apart from the overly broad inventory descriptions, not every item has to be listed on the descriptive inventory to establish tender. Tender of an item is established as an element of a prima facie case of carrier liability when the item claimed as lost or damaged is reasonably related to the items shown on the inventory of a container's contents, particularly when it would not have been unusual for those items to be packed in the specific containers they were in and the carrier packed the boxes and prepared the inventory. See DOHA Claims Case No. 97022406 (June 18, 1997); and American Van Lines, Inc., B-257887, Apr. 27, 1995. Here, the missing BDUs were missing from a wardrobe carton packed by the carrier in the master bedroom, and the picture, frame, and aquarium were missing from, or damaged in, cartons of articles gathered from the living room. Our decisions and those of the Comptroller General have especially noted that it is not necessary to itemize each tool in a tool box and have rejected any requirement that the inventory note that a tool box contains tools. See Ambassador Van Lines, Inc., B-256546, Sept. 23, 1994; and American Vanpac Carriers, B-247876, Aug. 24, 1992.

Resource Protection argues that the carrier is not liable for the loss of articles missing from the cartons in issue because there is no evidence of tampering with them. But, the carrier is liable because it failed to deliver what it received or delivered it in a damaged condition. The Comptroller General decided almost two decades ago that a carrier cannot escape liability because the external container appeared to be in good order, even where the carrier was the last handler and had no agency relationship with previous custodians of the property. See McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415, 417-418 (1978). Here, as the Army points out, American Vanpac was the last and only carrier involved. From this standpoint, even if American Vanpac's claim had arisen two decades ago, and before the Comptroller General's published decision, its position would have been far less meritorious than that of McNamara-Lunz.

Finally, Resource Protection argues, without offering any support, that the employee fabricated the claim because he needed money. We direct Resource Protection's attention to our decisions and those of the Comptroller General that held that 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. See, for example, DOHA Claims Case No. 97050704 (Aug. 27, 1997); 96070212 (Nov. 27, 1996); and Captain Roger L. Reasonover, Jr. USN, B-213543, Dec. 7, 1983. An employee's claim that two socket tools were missing from a tool box, or that one set of BDUs was missing from a wardrobe container, is hardly consistent with dishonesty.

Conclusion

We affirm the Settlement.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Michael H. Leonard

Michael H. Leonard

Member, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

1. This matter is related to Personal Property Government Bill of Lading TP-419,861, and Army Claim No. 91-361-0385. The Claims Appeals Board has decided to directly settle this matter for administrative reasons.
2. The consignee block on the PPGBL indicated that the employee was located in nearby Aberdeen Proving Ground, Maryland.
3. The Army's administrative report quotes three specific parts of paragraph 55 of the Tender of Service, which is located at Appendix A to the *Personal Property Traffic Management Regulation*, DoD 4500.34-R. Our research indicates that this material is located in paragraph 54 of the Tender of Service dated May 31, 1990, which appears to be applicable at the time of shipment. The substance of what the Army quoted and what we found is the same.