
In Re:

Resource Protection

on behalf of

Allied Transportation Forwarding, Inc.

Claimant

DATE: February 23, 1998

Claims Case No. 97122314

CLAIMS APPEALS BOARD DECISION

DIGEST

1. The shipper adequately notifies the carrier of damage to the clothing and textiles in his household goods shipment even if the Notice of Loss or Damage (DD Form 1840R) does not include the Descriptive Inventory item number when the shipper advises the carrier in writing that "clothing/textiles" had "water damage/mildew" without specifying the item numbers involved. The carrier has sufficient notice to initiate an investigation of these damages.
2. The dispatch of a copy of a Government Inspection Report (DD Form 1841) may be adequate notice to the carrier that loss or damage has occurred in connection with a household shipment. A certification by the Installation Transportation Officer, or his representative, that a "Notice of Loss or Damage" is or will be "dispatched," coupled with regulations requiring that the carrier be provided a copy of the DD Form 1841, is evidence of dispatch of a copy of the report on the date indicated in the certification block.

DECISION

The United States Army Claims Service appeals our November 24, 1997, Settlement Certificate in Defense Office of Hearings and Appeals (DOHA) Claim No. 97090401 to the extent it allowed Allied Transportation Forwarding, Inc. (Allied) a refund of \$284 which the Army offset for transit damage (mildew) to the contents of a red suitcase in a service member's household good shipment. [\(1\)](#)

Background

Allied delivered the service member's household goods on July 13, 1994, and a number of items were reported as missing or damaged. Among them, the shipper claimed compensation for mildew damage to various articles packed inside a red suitcase, Descriptive Inventory Item 219. [\(2\)](#) The Descriptive Inventory described Item 219 as a "red suitcase" with marred sides and worn in general. Our adjudicators found that Allied was not liable for the damage because the shipper did not dispatch notice of the damage within 75 days of delivery as required by the Joint Military-Industry Memorandum of Understanding on Loss and Damage Rules. It is agreed that the shipper did not specifically mention Item 219 on either the Joint Statement of Loss or Damage at Delivery (DD Form 1840), which listed specific inventory item numbers, or on the Notice of Loss or Damage (DD Form 1840R). The DD Form 1840R dispatched on July 22, 1994, did not list specific inventory item numbers but included the comment that "clothing/textiles" had "water damage/mildew."

Prior to this appeal, the Army Claims Service had argued that the reference to water damage on the DD Form 1840R was sufficient notice even though Item 219 was not specifically mentioned. Our adjudicators found that there was no indication on either the DD Form 1844 or on the Government Inspection Report, DD Form 1841, to indicate that copies of either of these two documents had been dispatched to the carrier within 75 days of delivery. The Army Claims

Service now argues on appeal that the DD Form 1841 was evidence that the government had dispatched notice of loss or damage within 75 days of delivery. The Army Claims Service's appeal package includes a copy of the DD Form 1841 containing a certification under the signature of the official acting for the Installation Transportation Officer which, among other things, indicated that a "Notice of Loss or Damage" was dispatched to "Allied Transportation Forwarding (ATFI)" on August 10, 1994.⁽³⁾

In response to the Army Claims Service's appeal, Resource Protection contends that Allied did not receive its copy of the DD Form 1841 until February 27, 1995, when it was received as an attachment to the Demand on Carrier, DD Form 1843 (part of the claim). The copy of the DD Form 1841 it provided suggests receipt on February 27, 1995. It also points out that there was no certification by the Transportation Officer on Allied's copy.

Discussion

The basic issue is whether a prima facie case of carrier liability has been established. It must be shown that the shipment was delivered to the carrier in good condition and that on arrival there was damage to the shipment. The amount of damages also must be shown. See Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134, 138 (1964). Under the Memorandum of Understanding, when damage is not reported at delivery, a written notice on the Notice of Loss or Damage (DD Form 1840R) dispatched within 75 days of delivery shall be accepted by the carrier as overcoming the presumption of the correctness of the delivery receipt.

The support now offered by the Army Claims Service is untimely. Allied has consistently argued that it did not receive timely notice of damage, and the Army could have presented this evidence sooner. This Office and the Comptroller General have been reluctant to consider carriers' claims where a carrier offers new evidence on material facts for the first time at an appellate level. See DOHA Claims Case No. 96081208 (December 20, 1996); and Riss International, B-226006, B-226006.2, Apr. 27, 1990. Accordingly, it is inappropriate for us to do so here on behalf of the Army. We will disregard the statement from the Transportation Quality Control Officer and the copy of the DD Form 1841 that the Army Claims Service now provides.

The Settlement suggests that our adjudicators would have found for the Army if there had been evidence in the record that the Army dispatched a copy of the DD Form 1841 within 75 days of delivery. Previously, the Comptroller General held that an alternative form of written notice, specifically a DD Form 1841, dispatched within 75 days of delivery, may be adequate notice of loss or damage if it was timely and sufficiently detailed to alert the carrier to the claim for damages. See Lift Forwarders, Inc., B-249479, Oct. 19, 1992. See also Sherwood Van Lines, 67 Comp. Gen. 211 (1988), regarding the DD Forms 1843 and 1844. Notwithstanding the Memorandum of Understanding, the notice does not always have to be in the form of a DD Form 1840 or 1840R. We reviewed the claim file and found the original DD Form 1841 with an original signature in the Installation Transportation Officer certification section as indicated above. Additionally, paragraph 10001d(2)(e) of the Department of Defense *Personal Property Traffic Management Regulation*, DoD 4500.34-R (October 1991) states that one copy of the completed DD Form 1841 is to be furnished to the carrier assigned on the government bill of lading. It appears that our adjudicators had overlooked the original DD Form 1841. There is sufficient evidence of dispatch of notice of loss or damage when the DD Form 1841 indicated that notice of loss or damage is or was "dispatched" and the governing regulation requires that a copy of the DD Form 1841 is to be forwarded to the carrier. The Lift Forwarders decision also noted the practice of sending a copy of the DD Form 1841 to the carrier even though the DD Form 1841 refers to the dispatch of a "Notice of Loss or Damage," which read narrowly refers to the DD Form 1840R.

While a carrier's receipt of the notice may be relevant, the real issue is date of dispatch. The carrier may have received another copy of the DD Form 1841 when the Army filed its claim, but this does not necessarily mean that the Army did not dispatch a copy of the DD Form 1841 in August 1994. In view of the certification of dispatch and the regulation, we believe it is likely that a copy of the DD Form 1841 was dispatched.

Additionally, we believe that the DD Form 1840R was adequate. Normally, the specific inventory item number of the lost or damaged item should be noted on the DD Form 1840R. While the memorandum of Understanding generally provides that the claim is limited to the items indicated in the notice, the shipper here did not limit himself to specific inventory numbers. It appears that the water/mildew damage involved the whole shipment. The Comptroller General has

held that notice is adequate even though an unknown number of items are lost and damaged if it is written, timely (dispatched within 75 days) and sufficient in content to alert the carrier that damage has occurred for which reparation is expected. See Continental Van Lines, Inc., B-215507, Oct. 11, 1984. Here, Allied was notified by the shipper that he intended to hold Allied liable for water and/or mildew damage to an unknown amount of clothing/textiles in household shipment PPGBL VP-953,458, carrier reference number 942692, that Allied delivered on July 13, 1994. Allied's liability on such notice is clearly consistent with the Comptroller General's holding in Continental Van Lines.

Conclusion

We reverse the Settlement for the reasons stated herein. Allied's claim for \$284 is disallowed.

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 shipment related to Personal Property Government Bill of Lading (PPGBL) VP-953,458; Army Claim No. 94-121-1917; and carrier claim 942692.
2. The member did not claim damage to the suitcase, just its contents. Moreover, during our review, we found that the total amount of loss of the contents of the suitcase was \$452, not \$284. It appears that Resource Protection missed line numbers 57 through 64 on the List of Property and Claims Analysis Chart (DD Form 1844).
3. To support its position on appeal, the Army also contacted the official at Fort Bliss who signed the report (the Transportation Quality Control Officer) and who confirmed the procedures in use in 1992. The Army Claims Service also states that the installation claims office actually sent the carrier a copy of the DD Form 1841, not the DD Form 1840R.