DATE: September 8, 1997

In Re:

American Van Services, Inc.

Claimant

Claims Case No. 97032112

CLAIMS APPEALS BOARD DECISION

DIGEST

The Air Force reasonably found that there was sufficient evidence for a prima facie case of liability against a carrier for transit damage to the top of two pieces of furniture when the government conducted an inspection of the damages after delivery and found no evidence of damage on the two items of furniture except for the specific damages claimed, while the carrier did not conduct an after-delivery inspection and relied on its general remarks at origin on the Descriptive Inventory of similar damage to the top and to several other areas of each of the two items.

DECISION

American Van Services, Inc. (American), the carrier, appeals the March 5, 1997, Settlement Certificate issued by the Defense Office of Hearings and Appeals in Claims Case No. 97021015, in which DOHA disallowed American's claim for a refund of $350 that the Air Force had offset to recover for transit damages to the household goods of a service member. (1)

Background

The record shows that American picked up the shipment in Cheltenham, Maryland, on September 30, 1992, and delivered it to the service member in Colorado Springs, Colorado, on November 18, 1992. The Air Force offset $884.90 for transit loss/damages, but refunded $210.90. This appeal involves three of the items (for $350) on the Descriptive Inventory: Item 142 (a coffee table) and Items 143 and 144 (end tables).

The claim against American is that it is liable for an 18-inch scratch across the top of Item 142, 3.5-inch gouges on the top of Item 143 and several long scratches to the top of Item 144.(2) The AF 249 noted that the carrier's pre-existing damages (PED) remarks were unreadable. American received notice of a "scratch across top" of Item 142; "3 Gouges on top" of Item 143; and "scratches on top" for Item 144.(3) The repair estimate indicated that Item 142 was rubbed and scratched on top and that the top had to be refinished. It also indicated that Items 143 and 144 were scratched and dented on top and dented and chipped on top (respectively), and that both had to be refinished at a cost of $110 each.

American did not inspect the damages, but an Air Force inspector conducted an inspection in May 1993. The Air Force inspector was unable to read the carrier's exceptions, and he could not locate any of the alleged PED on Items 142 and 143. The inspector stated that the claimed damage to Item 142 was noticeable, and that there were "three deep scratches" to the top of Item 143. The Air Force inspector indicated that there was some PED on Item 144, but he also verified that the top of this end table was "scratched/dented."

Generally, American contends that it is not liable for any of the damages claimed because they were PED. More specifically, American claims that it did not receive notice of the rubs to Item 142 referenced in the repair estimate; therefore it was not responsible for them. Furthermore, it was not responsible for any rubs or scratches on Item 142 because these were noted as an exception by the carrier at pick-up. American suggests that it is not liable for damages to either Items 143 or 144 because the repair estimate does not indicate which is Item 143 and which is Item 144 and because American was not properly notified of dents and chips for each item. In any event, American contends that it is

not liable for damages to Items 143 and 144 because dents and scratches are noted as PED on the descriptive inventory. American had previously provided the Air Force with a more legible copy of the Descriptive Inventory.

Discussion

A prima facie case of carrier liability is established by a showing that the shipper tendered property to the carrier, that the property was not delivered or was delivered in a more damaged condition, and the amount of damages. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134 (1964). The burden of proof then shifts to the carrier to rebut the prima facie liability. In our view, there is a sufficient basis on this record to conclude that the claimed damages to Items 142 and 143 occurred in transit, but we cannot conclude that the claimed damages to Item 144 occurred in transit.

In Item 142, the claimed damage was an 18-inch scratch to the top of the coffee table. American received notice of a scratch across the top. Accepting American's version of the Descriptive Inventory, it indicates scratches and rubs generally to the top, bottom, front sides, and edges. American chose not to conduct an inspection of the damages after receiving notice. The Air Force conducted an inspection about 8 months after delivery, but the inspector found no evidence of damage other than the claimed 18-inch scratch. Because American offered no evidence to rebut this official report, and because its notations of damage were very general, the Air Force reasonably concluded that the claimed damage must have resulted from transit.

The estimate's additional reference to the top of Item 142 being "rubbed" is irrelevant here. First, the Comptroller General and our Office have recognized that terms like "rub" and "scratch" may mean the same thing to different people in a particular instance. See DOHA Claims Case No. 97021808 (June 25, 1997); and Continental Van Lines, Inc., 63 Comp. Gen. 479, 480 (1984). Moreover, American has not demonstrated by clear and convincing evidence that the rubs could have been repaired for an amount less than the amount it cost to repair the 18-inch scratch. See DOHA Claims Case No. 97021808, supra; and DOHA Claims Case No. 96070212 (September 5, 1996). Furthermore, American's argument that it is not liable for the rubs because it was not specifically advised in the DD Form 1840 that there were "rubs," is spurious. We have advised American previously that the claimant does not have to describe damage specifically in the notice documentation. See DOHA Claims Case No. 96121606 (June 6, 1997).

Similarly, American failed to support its claim for Item 143. The inspector's finding that there was no damage to Item 143 except for "three deep scratches" to the top is reasonably consistent with the claimed 3.5-inch gouges on the top of Item 143 and with the "3 Gouges on top" of Item 143 noted on the DD Form 1840. The inspector's observation that there were three points of damage to the top of the end table is specifically consistent with the service member and carrier representative's similar observation about three points of damage. Again, accepting the authenticity of American's copy of the Descriptive Inventory, and given the carrier's failure to inspect, the carrier cannot prevail with general notations at origin that the top, bottom, front and sides were rubbed and scratched when the government inspector inspected and did not find any damage except for the three points of damage claimed.

American's version of the Descriptive Inventory contained more specific origin exceptions for the top of Item 144. In addition to a general reference that the top was scratched along with the bottom, front, sides, and edges, the carrier also specifically noted at origin that the top was scratched and rubbed. The inspector also confirmed that there was PED, and the service member did not provide any statement or other support to show how the several long scratches to the top of Item 144 differed from the scratches and rubs noted by the carrier at origin.

Conclusion

Accordingly, we affirm the Settlement Certificate's disallowance for Items 142 and 143, but overrule it for Item 144. The amount of $110 should be refunded to American.

Signed: Michael D. Hipple

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Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Michael H. Leonard

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Michael H. Leonard

Member, Claims Appeals Board

Signed: Christine M. Kopocis

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Christine M. Kopocis

Member, Claims Appeals Board

1. This matter involves Personal Property Government Bill of Lading UP-223,660; Air Force Claim #1S/A/TDKA/93/00836/CR; and JACC #9307168.

2. These are noted in the List of Property and Claims Analysis Chart, AF Form 249, which accompanied the claim.

3. See the Joint Statement of Loss and Damage at Delivery, DD Form 1840.