

DATE: July 2, 1997

In Re:

Fogarty Van Lines

Claimant

Claims Case No. 97040813

CLAIMS APPEALS BOARD DECISION

DIGEST

Under the Military-Industry Memorandum of Understanding on Loss and Damage Rules (MOU) the carrier is obligated to pay for damage in transit to household goods that it moved when that damage is brought to its attention in a timely manner. The wording on the carrier's check to the effect that endorsement of the check is a settlement for all claims arising from the shipment does not end or void that obligation. The carrier is still liable for damaged goods not covered by the check, but still reported in a timely manner to the carrier.

DECISION

Fogarty Van Lines (Fogarty) appeals our Settlement Certificate, DOHA Claim No. 97010702, dated March 27, 1997, denying it a refund of \$2,297.23 set off by the Air Force for loss and damage to the household goods of a service member.⁽¹⁾

Background

The household goods moved from Valparaiso, Florida, to McChord AFB, Washington in 1994. The truck carrying the household goods was involved in a highway accident en route, damaging a number of the goods. Damaged goods were reported on the Joint Statement of Loss or Damage at Delivery, DD Form 1840, and on the Notice of Loss or Damage, DD Form 1840R. The member was paid on the portion of his claim that he substantiated and the Air Force filed a claim against Fogarty. On December 29, 1994, the McChord AFB claims office claimed \$3,732.15 based on the damages noted in an accompanying Claim Adjudicator's Summary worksheet. In response, Fogarty offered \$3,701.73, taking exception to the calculation of depreciation for three of the items listed. The McChord AFB claims office accepted Fogarty's offer of settlement. Fogarty's check had the following notice on its back: "Endorsement acknowledges full release from any and all claims." Subsequently, the service member submitted additional evidence concerning items noted on the 1840 and 1840R but not contained in the original settlement. The Air Force paid the member an additional amount and made demand against Fogarty in the amount of \$2,297.23.

Fogarty did not pay, believing that the restrictive endorsement signed by the Air Force ended its liability concerning this shipment. GAO upheld the set off action of the Air Force stating that the items at issue in the second claim were reported in a timely manner on the DD Forms 1840 and 1840R, but they were not covered by the first check.

On appeal, Fogarty states that both the McChord claims office and Fogarty were fully aware that more items were listed on the DD Forms 1840 and 1840R than were listed on the initial demand submitted by the base. However, it remains Fogarty's contention that the initial demand by the base claims office was a final demand for payment. There is no reference in the demand or the AF Form 180A, that items had been deferred or that additional items would be presented at a later date. Fogarty states that at the time the base accepted the check they knew or should have known whether other items were still to be claimed.

Fogarty argues that it was not aware, nor did it have a duty to ask the base claims office why the demand was only a partial demand. Fogarty believes it could not assume the service member meant to claim other items, but the base claims office prevented him from doing so without proper repair estimates and other documentation. It states that it is common knowledge that a claimant quite often will not claim all damage that occurs during a shipment.

Discussion

Under the Military-Industry Memorandum of Understanding on Loss and Damage Rules (MOU) the carrier is obligated to pay for damage in transit to household goods that it moved when that damage is brought to its attention in a timely manner. The Comptroller General has held, and we agree, that the wording on the carrier's check to the effect that endorsement of the check is a settlement for all claims arising from the shipment does not end or void that obligation. The carrier is still liable for damaged goods not covered by the check, but still reported in a timely manner to the carrier. See American Van Services, Inc., B-270725, June 26, 1996.

In its appeal, Fogarty argues that in American Van Services, Inc., the Comptroller General upheld the set off based on the way the release was worded on the check. In reading the decision as a whole, we disagree with Fogarty. The endorsement on the reverse side of the check can reasonably be interpreted to relate to any and all claims based on the items noted in the claims office's December 29, 1994, correspondence and in Fogarty's responding correspondence. There is nothing in either correspondence which indicated that there was a dispute with respect to the remaining items, and both parties knew or had reason to know that the exchange of correspondence did not address a significant number of items timely reported as damaged. As the Comptroller General pointed out, for the endorsement to have been effective, it would have to be considered an accord and satisfaction which is the payment and acceptance, as full settlement, of an amount less than that claimed by the creditor of the whole claim or demand, where it is not liquidated, or is the subject of a dispute between the parties. See 40 Comp. Gen. 261, 264-65. (1960).

In the present case, the damaged items for which the Air Force set off an additional amount were listed on the DD Forms 1840 and 1840R which were received by the carrier in a timely manner. With such notice, a carrier knows or should know that the Service may make a claim on any and all of these items. Although we agree that the base claims office showed poor judgement in endorsing Fogarty's check with the restricted endorsement pre-printed when a claim for other items damaged in the same shipment was outstanding, this does not mitigate Fogarty's contractual liability under the OU.

Conclusion

We affirm the Settlement.

/s/

Michael D. Hipple

Chairman, Claims Appeals Board

/s/

Christine M. Kopocis

Member, Claims Appeals Board

/s/

Joyce N. Maguire

Member, Claims Appeals Board

1. Government Bill of Lading VP-880,712; USAF Claim No. McChord 95-161.