
In Re:

National Claims Service, Inc.

on behalf of

Covan International Forwarding, Inc.

Claimant

DATE: December 11, 1997

Claims Case No. 97112401

CLAIMS APPEALS BOARD DECISION

DIGEST

The shipper provides adequate notice of structural damage to an item of furniture when the member and the carrier's agent noted at delivery only that hardware for the item was missing. The language of the Military-Industry Memorandum of Understanding on Loss and Damage Rules provides that the shipper's claim is not limited to the general description of the damage to the item as noted in the Joint Statement of Loss or Damage at Delivery.

DECISION

National Claims Service, Inc., on behalf of Covan International Forwarding, Inc., appeals the October 27, 1997, Settlement Certificate of the Defense Office of Hearings and Appeals in Claim No. 97090408.⁽¹⁾ The Settlement Certificate disallowed National's claim for a refund of \$75 set off by the Army for transit damages to the service member's German schrank.⁽²⁾

Background

The record shows that the carrier's agent picked up the shipment at Wiesbaden Air Base, Germany, on February 19, 1993, and another agent delivered it to the service member in Fort Huachuca, Arizona, on August 17, 1993. At delivery, the service member noted on the Joint Statement of Loss or Damage at Delivery, DD Form 1840, that hardware was missing from Descriptive Inventory Item 71, one of the components of the schrank. However, in her claim, the service member also included the depreciated replacement cost of the component (\$150) because of damage. Damages included a broken shelf, door, and backing. National contends that the shipper did not provide the carrier adequate and timely notice of this type of loss or damage in accordance with the Military-Industry memorandum of Understanding on Loss and Damage Rules (MOU) because the DD Form 1840 only referred to missing hardware "which was completely and utterly unrelated" to the damage claimed. National argues that to establish a prima facie case of liability against a carrier, the MOU requires the service member to dispatch a notice of additional loss or damage to the carrier within 75 days of delivery.⁽³⁾ After allowing \$75 for the missing hardware, the carrier requests a refund of \$75.

The Army points out, however, that paragraph IV(B) of the MOU provides that the claim for loss and/or damage is not limited to the "general description" of the loss or damage to the item(s) noted on the DD Form 1840/1840R, even if the claim is limited to the items indicated on the DD Form 1840/1840R.

In response, National argues that the MOU also states that damage not reported on the DD Form 1840/1840R shall be determined not to have taken place in the carrier's possession. National reconciles what it believes is "two apparently contradictory statements" by urging us to reject any claim for damage which is "completely different and unrelated" to the damage reported on the DD Form 1840 or DD Form 1840R. National suggests that if the type of severe structural damage claimed had existed at delivery, it would have been noticed by the carrier's agent and the service member at that

time, especially considering that they made the effort at destination to report the missing hardware.

Discussion

We share National's concerns that the claimed damage varies from, or at least adds to, the damage described on the DD Form 1840, and that if the claimed damage had existed at destination, reasonable people probably would have observed it and also reported it on the DD Form 1840. However, paragraph IV(B) is written liberally in the service member's favor, and the carrier could have provided a statement from the destination agent's driver which may have rebutted the existence of the structural damages claimed.

If a service member limits his description of loss or damage on the DD Form 1840 or 1840R to a descriptive inventory item, or several related descriptive inventory items, whether or not the member actually refers to the exact inventory number(s) involved, his claim is limited to those items. Those are the "items indicated on the DD Form 1840 and 1840R." But, the MOU also provides that the claim for damages "not be limited to the general description of the loss or damage to those item(s)..." It is significant that the MOU did not state that the claimed damage is not to be limited to the "specific" description of the loss or damage. If the claimed damage is not limited to the "specific" description of the loss or damage, there may be a reasonable inference that it would be limited to a general description of the loss or damage. In that case, National's argument that it ought to be generally related would have been reasonable. But, where the claimed damage is not even limited by a "general" description of the damage, there is a fair inference that any loss or damage involving the subject item(s) may be claimed. This is consistent with the decisions of this Board and the Comptroller General which hold that a notice of loss or damage is adequate in content when it alerts the carrier that there may be a claim on the item and that it should investigate the facts surrounding the loss or damage. Compare DOHA Claims Case No. 97022406 (June 18, 1997); DOHA Claims Case No. 96121606 (June 6, 1997); 96070212 (November 27, 1996); and American Van Services, Inc., B-249834, Feb. 11, 1993 and the decisions cited therein. Here, the carrier was notified that there was a potential claim on the schrank, and the carrier's destination agent observed the schrank and could have offered a rebuttal statement concerning the service member's claim.

Conclusion

We affirm the Settlement.

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. This matter is related to Personal Property Government Bill of Lading UP-461,904, Army Claim No. 94-051-1137, and NCSI Claim E-0033.
2. A schrank is a type of furniture.
3. This is usually accomplished using the Notice of Loss/Damage (DD Form 1840R), the reverse side of the DD Form 1840.

