October 28, 1997

In Re:

Senate Forwarding, Inc.

Claimant

Claims Case No. 97090818

CLAIMS APPEALS BOARD DECISION

DIGEST

The shipper has presented prima facie evidence of transit damage to an item of furniture even though there were pre-existing scratches and chips to the front of the item where a Service inspector notes a difference in shading between the pre-existing and new damage and notes damage in another area of the item that was not reported as pre-existing in the descriptive inventory.

DECISION

Senate Forwarding, Inc. (Senate), appeals, in part, the U.S. General Accounting Office's (GAO) settlement which found Senate liable for transit damage incident to the shipment of a service member's household goods from Ohio to Florida in 1989, under Personal Property Government Bill of Lading (PPGBL) TP-007,682.[(1)] Pursuant to Section 202(n) of Public Law No. 104-316, 110 Stat. 3826, 3843, approved October 19, 1996, title 31 of the United States Code, Section 3702 now provides that the Secretary of Defense shall settle claims by transportation carriers involving amounts collected from them for loss or damage incurred to property incident to shipment at government expense.[(2)] The Secretary of Defense delegated this authority to this Office.

Background

In this appeal, Senate contests its liability ($125) for damage to one item, Descriptive Inventory Item 38, a mahogany secretary desk, because the damage was pre-existing. The record indicates that the carrier picked up the shipment on July 27, 1989, and delivered it in Florida on July 29, 1989. The pre-existing damage (PED) for Item 38 as noted on the Descriptive Inventory was: the front was chipped, scratched and rubbed; the front edges were chipped and scratched; the sides were scratched and rubbed; and the top was scratched.

The Notice of Loss or Damage at Delivery (DD Form 1840R) stated that the item was "scratched."

In March 1990, an Air Force inspector noted that the front had chips and scratches and that there was a deep gouge on one leg of the desk. The inspector also noted that the PED was stained prior to the move, and the transit damages she identified were lighter in color than the PED. The inspector observed loose wood around the chips.

In October 1989, the carrier's repair firm noted that there were scratches and chips all over the front and the "right back bottom."

The claim against the carrier as described on the List of Property and Claims Analysis Chart (AF Form 180) stated that the item contained scratches and dents on the front and "right back bottom" and that the cost of repair would be $125.

In support of its position, the carrier notes that the Air Force inspector conducted her inspection approximately seven months after delivery; that the shipper may have caused what appeared to be new damages; and that because the DD Form 1840R only referred to scratches, it was not adequately notified of the damages in accordance with the Military-Industry Memorandum of Understanding.[(3)]

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. Thereupon, the burden of proof is upon the carrier to show both that it was free from negligence and that the damage to the cargo was due to one of the excepted causes relieving the carrier of liability. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134 (1964). Senate argues that there is insufficient evidence that Item 38 was delivered in a more damaged condition.

Senate contends that the service member is estopped from claiming more damage to an item than that noted on the DD Form 1840R. The purpose of the DD Form 1840R is notify the carrier that damage occurred to an item so that the carrier may inspect it. The Comptroller General and our Office have held that the service member is not required to precisely describe the nature of the damage to a particular item on the DD Form 1840R. See DOHA Claims Case No. 96070212 (November 27, 1996); Andrews Forwarders, Inc., B-257515, Dec. 1, 1994; and American Van Services, Inc., B-256229, Sept. 8, 1994. Here, the carrier obtained notice of damage within the time required in the MOU. The carrier's repairman inspected the damaged shipment in October 1989, and with regard to Item 38, he described damage similar to the damage that was claimed. The requirement for timely and adequate notice was satisfied.

Next, Senate argues that we ought to disregard the Air Force's inspection. Previously, the Comptroller General noted that the length of time between delivery and an agency's inspection may affect the probative value of the agency's inspection report, but a delay of approximately six months did not invalidate the report. See American Van Services, Inc., B-256229, supra. Thus, we cannot ignore this inspection report.

Considering the time lag between delivery and the Air Force inspector's observations, the evidence of new damage to the front of Item 38 is weak. While the Air Force inspector suggested that the shipper attempted to stain over the PED prior to the move, the carrier's agent at origin saw enough PED on the front of the item to except to it. But, the Air Force inspector discerned a difference in the shading of the damage and saw a distinction between older and newer damages. ore importantly, the damage to the lower portion of item 38 was not mentioned as PED in the Descriptive Inventory. Accordingly, looking at this written record more than eight years after the shipment, we cannot conclude that the Air Force's finding of liability against Senate was unreasonable. Even if some of the damage on Item 38 was pre-existing, the fact that PED may be repaired incidental to the repair of transit damage does not diminish a carrier's liability where the carrier has not demonstrated that the additional cost for doing so is ascertainable. See American Van Services, Inc., B-256229, supra; and Interstate Van Lines, Inc., B-197911.2, Sept. 9, 1988. Senate's suggestion that the service member may have caused the damage after delivery is nothing more than speculation that the Comptroller General has rejected in other claims. Compare Stevens Worldwide Van Lines, Inc., B-251343, Apr. 19, 1993.

Conclusion

We affirm GAO's settlement.

Signed: Michael D. Hipple

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Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin

Member, Claims Appeals Board

Signed: Michael H. Leonard

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Michael H. Leonard

Member, Claims Appeals Board.

1. Senate's appeal is based on its letter to the Comptroller General dated June 23, 1993, which appealed Settlement Certificate Z-2793472-46-347 (May 17, 1993). The GAO had no record of this appeal, but GAO retrieved the Settlement Certificate and associated file. Since this appeal was not pursued with this Office until September 1997, we view Senate's appeal as untimely. However, because there is sufficient information available which would allow us to review the Air Force's setoff, we will consider this appeal.

2. See B-275605, Mar. 17, 1997, for the Comptroller General's explanation of the transfer in function.

3. At the time of shipment, the applicable *Military-Industry Memorandum of Understanding, Loss and Damage Rules*, provided that a prima facie case of liability may be established against the carrier, and the carrier will accept it as overcoming the presumption of the correctness of the delivery receipt, if notice of loss or damage is dispatched to the carrier not later than 75 days after delivery. A copy of this MOU is contained at pages 131-133 of Air Force Regulation 112-1 (October 31, 1989), now superseded.