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In Re:

Fogarty Van Lines

on behalf of

Gulf Forwarding, Inc.

Claimant

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DATE: February 12, 1998

Claims Case No. 98012618

## CLAIMS APPEALS BOARD DECISION

### DIGEST

The military service's failure to provide a carrier with a specific amount of liability for each item of damage in a claim does not invalidate an otherwise prima facie case of liability against the carrier when the military service's written claim contained a specific amount of total liability, referred to the transaction involved, and specified the damage involved for each item. However, the carrier is entitled to an explanation of the basis for the damage claimed on each item, and it cannot be forced to pay the claim until that information is provided.

### DECISION

Fogarty Van Lines (Fogarty), on behalf of Gulf Forwarding, Inc., appeals the January 9, 1998, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in Claim No. 97092206. In the Settlement, this Office affirmed the Air Force's set off of $1,242.36 against Gulf Forwarding for the transit damage to the shipment of a service member's household goods.[(1)]

### Background

The record shows that the bill of lading to transport the service member's household goods from Fort Walton Beach, Florida, to the United States Air Force Academy in Colorado was issued on June 11, 1993, by Gulf Forwarding, Inc. with Fogarty Transportation Company, Inc. specified as its agent. The household goods were delivered on July 16, 1993, and at that time damages were noted on the Joint Statement of Loss or Damage at Delivery (DD Form 1840). The service member reported additional damages in a Notice of Loss or Damage (DD Form 1840R) dispatched to the carrier on August 4, 1993. After allowing part of the service member's claim, the installation claims office dispatched a "Notice of Claim" to Gulf Forwarding by letter dated November 4, 1993, demanding payment of $1,242.39 for payments it made to the service member for loss and/or damage to the member's property. Fogarty acknowledged receipt of a copy of the List of Property and Claims Analysis Chart (AF Form 180A) with 13 line items describing damage to specific items, but no data was contained for any line item under such columns as the amount allowed, adjudicator's remarks, and the amount of carrier liability. Contending that the Air Force received no response, the Air Force Legal Services Agency (AFLSA) dispatched a follow-up letter to Gulf Forwarding on June 29, 1994.[(2)] After still receiving no response, the Air Force offset $1,242.36 from Gulf Forwarding on June 5, 1995.

On August 30, 1995, Fogarty filed its claim for $1,242.36, through AFLSA, with the U.S. General Accounting Office. By letter dated March 27, 1996, AFLSA stated that Fogarty had no interest in this matter because Gulf Forwarding was the only carrier listed on the bill of lading as the liable carrier. However, AFLSA did provide to Fogarty a copy of the computer generated Adjudication Worksheet, which, among other things, contained the remarks and the dollar figures for the amount allowed and amount of carrier liability. AFLSA also provided a copy of its June 29, 1994, letter. After receipt of a copy of a "Special Power of Attorney" granting Fogarty Van Lines' vice president the power to represent

Gulf Forwarding in its claim, our adjudicators found that the Air Force had provided Gulf Forwarding a copy of the Adjudication Worksheet. But, in the March 27th letter, AFLSA also noted that "the base may not have attached the [Adjudication] worksheet to the original claim," even though "at no time did the GBL carrier bring that matter to the attention of either the base claims office or this office."

It is Fogarty's position that the Air Force did receive its correspondence of January 3, 1994, and July 13, 1994, and that the Air Force did not provide the information for each damaged item as it requested for its investigation. It contends that it was entitled to this information under paragraph 26 of the Tender of Service and under its tariff. It provided a copy of Item 19(g) of the Professional overs Commercial Relocation Tariff, STB HGB 400-L (effective May 5, 1996).[(3)] Fogarty argues that because both the installation and the AFLSA failed to provide this information prior to offset, the claim was invalid and the offset was improper. It contends that without the required information on the amount of damages for each article, the government failed to present a prima facie case of liability against it; and therefore, it is not liable for any damages.

**Discussion**

Preliminarily, we agree with Fogarty that under the Carmack amendment[(4)] to the Interstate Commerce Act, as amended, the property owner must show three things to establish a prima faciecase of liability against a carrier for property damage: tender of the item to the carrier, delivery in a damaged condition, and the amount of damages. See Missouri Pacific Railroad Company v. Elmore & Stahl, 377 U.S. 134, 138 (1964). Furthermore, we disagree with the finding of our adjudicators in the Settlement that Gulf Forwarding had received a copy of the AFCIMS Adjudication Worksheet because AFLSA admitted in its March 27, 1996, letter that "the base may not have attached the worksheet to the original claim." Also, the AFLSA administrative report never discussed Fogarty's two letters; that is, it never reported either that it had not received the correspondence, or that it had received Fogarty's two letters but that it had refused to respond on the basis that Fogarty was a stranger to the transaction. Since Fogarty's sister company was clearly noted on the bill of lading as the agent of Gulf Forwarding, we do not believe that the Air Force should have ignored Fogarty's correspondence, if that is what happened.[(5)] Accordingly, for purposes of addressing Fogarty's claim, we will assume, without deciding, that Fogarty's letters reached the Air Force and that the Air Force was aware of the need for the information requested.

We agree that Fogarty, as Gulf Forwarding's agent, was entitled to the information requested, but we do not agree that the Air Force's failure to provide it until March 1996 invalidates the Air Force's prima facie case of liability against the carrier. During the 120-day period in which a Department of Defense domestic personal property carrier has to settle a claim, it may require proof of loss or damage claimed. See Item 5i of the various editions of the *Domestic Personal Property Rate Solicitation* issued by the Military Traffic Management Command (MTMC). Absent more specific contractual provisions, the regulations of the former Interstate Commerce Commission (ICC) shed some light about what information a carrier may request to settle a claim and how the settlement process operates.[(6)]

Section 1005.2(b) of title 49 of the Code of Federal Regulations (49 C.F.R. § 1005.2(b)) provides three minimum requirements for filing a claim with a carrier: the claimant must send the carrier a written communication containing facts sufficient to identify the baggage or shipment of property, assert liability for the loss or damage, and make a claim for a specified or determinable amount of money. On the other hand, part of the language in paragraph 19(g) of the tariff cited is derived from 4 C.F.R. § 1005.4(b), which like paragraph 19(g), involves supporting documentation obtained during the carrier's investigation of the claim. Section 1005.4(b) provides, for example, that the carrier may require the claimant to establish the destination value of the item(s) transported. Fogarty's challenge as to the validity of the claim extends to the supporting documents.

There are numerous Federal court decisions interpreting the elements of a valid claim, and the November 4, 1993, Notice of Claim letter meets those requirements. The Air Force advised Gulf Forwarding that it was liable in the exact amount of $1,242.39, for damage specified in 13 line items in the shipment involved. This is sufficient for a valid claim. See, for example, Davis Acoustical Corp. v. Carolina Freight Carriers Corp., 775 F. Supp. 530, 532-533 (N.D. N.Y. 1991). There is a split among the circuits of the Court of Appeals as to how strictly to apply the minimum filing requirements against shippers. In determining the requirements for a "specified or determinable amount of money," the

Ninth Circuit held that minimum requirements were met when an insurance company advised a carrier in writing that it intended to send a "final claim bill" to it once it paid the insured for transit damage to lenses in "the amount of $100,000 (Estimate)." See Insurance Company of North America v. G.I. Trucking Company, 1 F. 3d 903 (9 Cir. 1993); cert.denied 510 U.S. 1044 (1994). More generally, the Court found that written claims are to be construed liberally and that the standard for determining sufficiency is substantial performance. The Court also noted that written notice of damage, along with a clearly communicated intent to hold the carrier liable and the carrier's investigation, meets minimum requirements. A carrier cannot escape liability by failing to undertake necessary investigation once it has "necessary information" about potential liability. G.I. Trucking, 1 F.3d at 906-907.

The Fifth Circuit has taken a strict view of the minimum filing requirements. While some of the dicta in the recent decision Landess v. North American Van Lines, Inc., 977 F. Supp. 1274 (E.D. Texas 1997) is supportive of Fogarty's position, both the Landess decision and the Court of Appeals decision on which it was largely based, Salzstein v. Bekins Van Lines, Inc., 993 F. 2d 1187 (5th Cir. 1993), involved situations where the claimant failed to claim either a total specific amount or separate amounts for each damaged or lost item. The facts in these two decisions are clearly distinguishable from the facts in this claim. Moreover, Gulf Forwarding had received sufficient information even prior to the Notice of Claim, in the DD Forms 1840/1840R, for it or its agent to initiate a proper investigation of the loss and damages involved, but other than the requested information, it appears that it did not respond with any investigation.

The Air Force's failure to provide the requested information may not be without consequences. If it is determined that the Air Force ignored Fogarty's correspondence, then the government would not have had the right to set off for damages until the Air Force provided the requested information to Gulf Forwarding or its agent Fogarty. The gist of 49 C.F.R. §§ 1005.2 - 1005.4 is that if the carrier is entitled to certain supporting documents or information, it shall not pay the claim until that information is provided. Nevertheless, we would not consider the question of whether Gulf Forwarding is entitled to interest for the period of time between the improper set off and March 1996. The Comptroller General, as our predecessor in adjudicating matters of this nature, generally declined jurisdiction over such issues involving carriers providing services under a government bill of lading. See American International Moving, B-247576.9, Aug. 2, 1995.

**Conclusion**

We affirm the Settlement for the reasons stated herein.

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 involves Personal Property Government Bill of Lading (PPGBL)

RP-948,422; Air Force Claim No. USAFA 94-58; and Carrier Claim 931164.

2. Fogarty contends that it responded to the November 4, 1993, letter with its letter of January 3, 1994, which indicated

that Gulf Forwarding had "waived" the shipment to Fogarty and that it was requesting specific carrier liability amounts for each item. Fogarty also contends that it responded to the June 29, 1994, letter to Gulf Forwarding with its letter to AFLSA dated July 13, 1994, again requesting specific damage amounts for each item. It does not appear that either Fogarty or Gulf Forwarding otherwise investigated the claim.

3. Item 19(g), entitled "Supporting Documents," provides that, among other things, when a necessary part of the carrier's investigation of the loss, each claim must be supported by the basis for the amount claimed for each lost or damaged article; that is, the date that the article was purchased, the original cost, the amount of depreciation, actual cash value at time of loss or damage, and, in the case of damage, a repair estimate.

4. Now codified generally at 49 U.S.C. § 11707.

5. The issue of whether the Air Force had a duty to respond and to question the standing of Fogarty Van Lines and its vice president is different from any issue involving the drafting of a Treasury check which may be payable as a result of an improper offset. To achieve good acquittance, the government probably would have had to draft such a check in the name of Gulf Forwarding.

6. We question the applicability of the tariff cited by Fogarty, not only because it became effective long after this shipment moved, but also because MTMC's Domestic Personal Property Rate Solicitation appears to govern this PPGBL shipment to the exclusion of any carrier tariff. We consider this issue moot in this instance because the regulatory requirements of the former ICC, as explained in the next paragraph, support the carrier's right to know the destination value of each damaged item.