
In Re:

American Van Services, Inc.

Claimant

DATE: April 23, 1998

Claims Case No. 98012701

CLAIMS APPEALS BOARD DECISION

DIGEST

This Office will not question an agency's calculation of the value of damages in a shipment of household goods unless the carrier presents clear and convincing evidence that the agency's calculation was unreasonable.

DECISION

American Van Services, Inc. (American) appeals the January 12, 1998, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 97092207 which allowed \$10 of American's claim for recovery of \$242.30 offset against it for loss and damage to a service member's household goods. [\(1\)](#)

Background

The record shows that American picked up the shipment in Biloxi, Mississippi, on October 13, 1994, and delivered it to the service member in Las Vegas, Nevada, on January 5, 1995. Damaged household goods were reported on the Joint Statement of Loss or Damage at Delivery (DD Form 1840) on January 5, 1995, and additional damage was reported on the Notice of Loss or Damage (DD Form 1840R) dispatched to the carrier on February 13, 1995. The Air Force dispatched its subrogated claim for \$504.98 on March 3, 1995, and collected \$400.20 through offset on March 11, 1996. American claimed a refund of \$242.30 for Descriptive Inventory Items 43, 44 (end tables or plant stands), 165 (a Kenmore chest freezer), 189 (a coffee table), and 239 (a black pole lamp). In relevant part, the top center of the freezer was dented and crushed, the tops of Items 43 and 44 were pulled off, and the front edge and bottom of the coffee table were broken. Item 239 is no longer in issue.

The cost of repairing the freezer would have exceeded the depreciated replacement cost. The repair estimate indicated that the damaged Kenmore model 198-718092 required a new top, door liner, and gasket and that the tub had to be repaired. The freezer was purchased in 1991 for \$55, but the cost of a new comparable Whirlpool model EH 150FX chest freezer was \$425. The Air Force calculated American's liability (49 percent depreciation) at \$216.75. In calculating depreciation, the Air Force assumed that the freezer was a 1987 model depreciated over seven years at seven percent per year in accordance with the rates for average care and usage under the Joint Military/Industry Depreciation Guide.

The cost of repairing Items 43 and 44 was \$44 (\$22 each) based on gluing the tops to the body of the items. The coffee table had a split side, and the repair estimate was \$35 for gluing and touch up.

In its appeal, American contends that the freezer was a 1978 model; therefore, in considering depreciated replacement costs for the damage caused by American, the proper rate of depreciation should have been 75 percent, not 49 percent.

American also contends that it was entitled to accelerate the depreciation on Items 43, 44 and 189 to the maximum of 75 percent to reflect pre-existing damage (PED). The Descriptive Inventory reported that at origin Item 43 was scratched, rubbed, chipped, with a stained top, edges, corners, and legs. At origin, Item 44 was reported as rubbed, scratched, chipped with a stained top, sides, edges, corners and legs. The coffee table, Item 189, was reported at origin as scratched, rubbed, stained and with a soiled top, sides, edges, corners, and legs. Based on 75 percent depreciation,

American contends that its liability for Items 43 and 44 was \$8.75 each and that it should be refunded \$13.25 each. Also, because of extensive PED on the coffee table, American contends that its liability was only \$20; and therefore, it is due a refund of \$15.

Discussion

Concerning the freezer, we contacted Sears' National Parts Center, and they advised us that the model number referenced above was from November 19, 1977. Accordingly, the 75 percent depreciation rate suggested by American is appropriate. American's liability should be \$106.25; therefore, the company should be refunded \$110.50 on account of this item.

We agree with the Air Force concerning the effect of the PED on the other three items. The damage claimed was greater than the pre-existing damage. The mere existence of PED on the inventory is not clear and convincing evidence that maximum depreciation is applicable to the items. The Air Force provided repair estimates for each item, while the carrier offered no empirical evidence concerning the value of the items and their repairs. The carrier could have inspected the items for this purpose, but there is no indication that it did so. Without evidence from the carrier demonstrating that the Air Force's finding was unreasonable, we accept the Air Force's determination of value. See DOHA Claims Case No. 97021808 (June 25, 1997); American Van Services, Inc., B-260394, Aug. 15, 1995; and American International Moving, B-247576.9, Aug. 2, 1995.

Conclusion

We modify the Settlement to allow American an additional \$110.50 for Item 165. The amount allowed in the Settlement Certificate for Item 239 (\$10) is also payable. Therefore, American is entitled to \$120.50. Otherwise, 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

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Member, Claims Appeals Board .

1. This matter is related to Personal Property Government Bill of Lading (PPGBL) VP-853,253; AF Claim No. Nellis AFB 95-530; and American's Ref. No. 22178.