

KEYWORD: Transit Damage; internal damage

DIGEST: A shipper offers sufficient proof of prima facie liability against a carrier for damage to a television when he offers evidence that the television was in good working order prior to tender to the carrier and the nature of the internal damage is consistent with its having been mishandled or dropped, e.g., physical damage to otherwise sturdy components like a broken circuit board or chassis. The mere lack of external damage is not sufficient evidence to rebut the carrier's liability. **This decision was affirmed by the DoD Deputy General Counsel (Fiscal) on December 21, 2001.**

CASENO: 98020215

DATE: 02/10/1998

This decision was affirmed by the DoD Deputy General Counsel (Fiscal) on December 21, 2001.

In Re:

Andrews Van Lines, Inc.

Claimant

DATE: February 10, 1998

Claims Case No. 98020215

CLAIMS APPEALS BOARD DECISION

DIGEST

A shipper offers sufficient proof of prima facie liability against a carrier for damage to a television when he offers evidence that the television was in good working order prior to tender to the carrier and the nature of the internal damage is consistent with its having been mishandled or dropped, e.g., physical damage to otherwise sturdy components like a broken circuit board or chassis. The mere lack of external damage is not sufficient evidence to rebut the carrier's liability.

DECISION

Andrews Van Lines, Inc. (Andrews), appeals Defense Office of Hearings and Appeals (DOHA) Settlement Certificate

97090410, January 26, 1998, in which this Office upheld the Army's set off of \$271 for transit damage to a service member's household goods. [\(1\)](#)

Background

The record shows that the shipment originated at El Paso, Texas, on June 30, 1993, and Andrews delivered it to the service member in Waynesville, Missouri, on July 20, 1993. On a Notice of Loss or Damage (DD Form 1840R) dispatched on August 12, 1993, the service member noted that his 20-inch [\(2\)](#) Hitachi color television was not operable upon receipt, and on the List of Property and Claims Analysis Chart (DD Form 1844) the claimant noted that there was no picture or sound. The repair ticket indicated that part "2434652" needed replacement because it was damaged while moving. The installation claims examiner contacted the repair facility for further explanation. She was informed by the estimator that the main board had been cracked and there were cracks in the chassis. The estimator stated that this type of damage was not normal wear and tear and was consistent with dropping. There was no external damage. The record includes a handwritten statement from the service member stating that he and his wife had watched the television the night before it was shipped. Andrews contends that this damage is internal and that if it had been preexisting, the driver could not have observed it at origin. Andrews refers to Comptroller General decision Interstate Van Lines, Inc., B-197911.5, June 22, 1989, as dispositive authority for escaping liability, especially when there is no external damage.

Discussion

The major issue here is whether the Army presented enough evidence to establish a prima facie case of liability against Andrews. The service member, and the Army in subrogation, must show that Andrews received the television in good condition; that it delivered the television in a damaged condition; and the amount of damages. Thereafter, the burden would shift to Andrews to show that it was free from negligence and that the damage was due to an excepted cause relieving it from liability. See Missouri Pacific Railroad Company v. Elmore & Stahl, 377 U.S. 134, 138 (1964). In effect, Andrews is arguing here that the Army never established a prima facie case of liability against it because there is no proof that the television was delivered with damages it did not have at origin.

As was true with the record turntable in Interstate Van Lines, we agree with Andrews that its driver was not expected to have operated the television to determine its condition at tender. That, however, does not end the matter. The real problem in Interstate Van Lines was that there was no evidence that the turntable was tendered to the carrier in proper working order. See Carlyle Van Lines, Inc., B-257884, January 25, 1995. When the nature of the internal damage to an item is consistent with its having been mishandled or dropped and the shipper states that the item was in working order when he tendered it to the carrier, the mere lack of external damage is not sufficient proof to rebut the carrier's liability. Id. Moreover, in this claim, as in Carlyle Van Lines and in Department of the Army --Reconsideration, B-255777.2, May 9, 1994, the damage involved the physical breaking of normally sturdy internal components (circuit boards). See also Allied Intermodal Forwarding, Inc., B-258665, Apr. 6, 1995.

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 transaction involves Personal Property Government Bill of Lading SP-378,598; Army Claim No. 93-161-0961; and the carrier's claim 93-155.
2. The Descriptive Inventory and the DD Form 1840R indicated that it was a 22-inch television.