
In Re:

AAA Transfer & Storage, Inc.

Claimant

DATE: April 10, 1998

Claims Case No. 98031706

CLAIMS APPEALS BOARD DECISION

DIGEST

Our Office will not question an agency's calculation of the value of damages to items in a shipment of household goods unless the carrier demonstrates by clear and convincing evidence that the agency's determination was unreasonable. While industry guides concerning the value of a used household good may be evidence of an item's value, they are not determinative, and an agency may consider depreciated replacement cost when reasonably determinable.

DECISION

AAA Transfer & Storage, Inc. (AAA), appeals the January 23, 1998, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 97112403 in which DOHA affirmed the Air Force's set off of \$160 against AAA for damage to a color television while transporting a service member's household goods.⁽¹⁾

Background

The record shows that AAA transported the service member's household goods from Fort Walton Beach, Florida, to Mobile, Alabama, on July 30-31, 1996. In a Notice of Loss and Damage (DD Form 1840R) dispatched to the carrier on September 19, 1996, the service member noted that for Descriptive Inventory Item 116, the remote control, as well as the volume and channel controls on the front of the television, were missing. Item 116 was an RCA 20-inch color television, model number X20162GS, which was purchased in 1991 for \$229. The record indicates that the missing buttons were not sold separately and had to be purchased with a complete mass panel. The cost of the new panel and buttons, including shipping, handling, etc. was \$117.79. The total cost of replacing the remote was \$46 (depreciated to \$23). The replacement cost of a new 25-inch RCA color television model # F25104WT with remote included was \$229, and the depreciated replacement cost was 50 percent of that amount, or \$114.50. Since the depreciated replacement cost was lower than repair costs, the Air Force determined damages at \$114.50 (which included the remote).

AAA contends that its liability is limited to \$71. The carrier bases its claim on the amount set forth in the Orion Blue Book for the model of the television involved. AAA contends that the Orion Blue Book is recognized as the "leader" in providing valuation for the various product lines on which it publishes valuations guides, including video and television. The 1996 Orion Blue Book indicates that the cost of a new model X20162GS was \$339 and the retail cost of a used television of that model was \$71. AAA points to paragraph 2.65.1 of Air Force Instruction (AFI) 51-502, *Personnel and Government Recovery Claims*, 25 July 1994, which states that if a regular market exists for used items of a particular type, claims personnel measure the loss or damage by the cost of a similar item of similar age and that prices are available from industry guides.⁽²⁾

Discussion

Our review of the record indicates that the Air Force acted in accordance with established procedures. Generally, when settling a claim for loss or damage, a common carrier by motor vehicle of household goods shall use the replacement costs of the lost or damaged item as a base to apply a depreciation factor to arrive at the current actual value of the lost or damaged item. See 49 C.F.R. 1005.5(b) and DOHA Claims Case No. 97062427 (July 15, 1997). When considering

personnel claims filed against it, the Air Force also generally starts from depreciated current replacement cost. See paragraph 2.65 of AFI 51-502. The Air Force's policy thereafter is to recover from the carrier the least of depreciated replacement cost, repair cost or the carrier's contractual liability. See paragraph 3.12 of Air Force Instruction 51-502. In determining the costs of repair and replacement, the Military-Industry Memorandum of Understanding on Loss and Damage Rules generally contemplates the use of estimates, and paragraph 2.65.1 of AFI 51-502, the authority cited by AAA, also requires the consideration of estimates and appraisals, not just industry guides.⁽³⁾

There are two problems with relying solely on the Orion Blue Book here. First, as DOHA's Settlement indicates, AAA failed to show the existence of a regular market for used televisions in the destination area. Second, the courts have recognized that actual value to the owner of a lost or damaged item (excluding fanciful or sentimental value) is a significant consideration in assessing damages to household goods and other personal property because the used household goods market, to the extent that it exists at all, may not adequately reflect the value of a household or personal item to its owner. See American Van Services, Inc.--Reconsideration, B-249834.2, Sept. 3, 1993, citing DeSpirito v. Bristol County Water Co., 102 R.I. 50, 227 A.2d 782, 34 A.L.R. 3d 809 (1967) and Annotation, *Valuation of Wearing Apparel or Household Goods Kept by Owner for Personal Use, in Action for Loss or Conversion of, or Injury to, Such Property*, 34 A.L.R. 3d 816 (1970).

Here, a depreciation of actual replacement cost, as generally contemplated by existing regulations, yielded a valuation of \$114.50. In the absence of clear and convincing evidence that the Air Force's calculation of damages was unreasonable, we affirm the Settlement. See DOHA Claims Case No. 97021808 (June 25, 1997).⁽⁴⁾

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

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Member, Claims Appeals Board

1. This shipment involved Personal Property Government Bill of Lading XP-077,577; USAF Claim No. Hurlburt Field 96-1879; and AAAE Reference No. BL 3342.
2. The regulation states that estimates and appraisals are also considered.
3. We do not dispute that industry guides could be decisive in some instances, such as where no estimates or other evidence is provided, and the relevancy of the guide is otherwise established.
4. The Air Force concedes that the amount it separately offset for the remote control was erroneous because it was included in the replacement cost. Since that amount is below the \$25 threshold set by the Joint Military-Industry Agreement of May 1, 1987, payment of the refund is not required.