
In Re:

Resource Protection

on behalf of

Cartwright Moving & Storage, Inc.

Claimant

DATE: May 28, 1998

Claims Case No. 98031913

CLAIMS APPEALS BOARD DECISION

DIGEST

The tender of an item is established as an element of a prima facie case of carrier liability when the item claimed as lost or damaged is reasonably related to the items shown on the inventory of a container's contents, particularly when it would not have been unusual for those items to be packed in the specific containers they were in and the carrier packed the boxes and prepared the inventory. Thus, the tender of a backpack used for camping is evidence of tender of camping equipment normally associated with it.

DECISION

Resource Protection, on behalf of Cartwright Moving & Storage, Inc. (Cartwright), appeals the May 17, 1995, Settlement Certificate Z-2609168-113 of the U.S. General Accounting Office (GAO), which upheld the Air Force's set off of \$555.16 against Cartwright to recover the value of a lost backpack and the missing camping gear that was included in it. [\(U\)](#) Pursuant to Public Law No. 104-316, October 19, 1996, title 31 of the United States Code, Section 3702 was amended to provide 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. The Secretary of Defense delegated this authority to this Office.

Background

The record indicates that Cartwright picked up the shipment in Rhode Island on February 1, 1993, and delivered it to the service member in Texas on March 2, 1993. Item 104, characterized as a "Backpack" on the Descriptive Inventory, was reported missing at delivery on a Joint Statement of Loss or Damage at Delivery (DD Form 1840). In the Notice of Loss or Damage (DD Form 1840R), dispatched on April 15, 1993, the service member provided a more specific description of the lost backpack and its contents. The Air Force set off \$681.13 against Cartwright for all loss and damage on June 13, 1994.

In its letter dated March 6, 1998, the Air Force reported to us that it had received a copy of an appeal of the May 17, 1995, GAO Settlement Certificate dated May 29, 1995, but the Air Force also reports that it was unaware of any appeal until Resource Protection's letter of February 6, 1998. The Air Force also reports that it checked with the GAO to determine whether GAO had any record of the appeal, and GAO reported that it had checked its records and did not find any record of appeal. In view of the stale nature of the appeal, we will confine our comments to the narrow issue of whether a carrier may be held liable for loss of the contents of a backpack when the inventory merely describes a "Backpack," viewing all of the facts in the record in the light most favorable to the government.

Discussion

The shipper establishes a prima facie case against a carrier for transit loss or damage by showing that he tendered property to the carrier, that the property was not delivered or was delivered in a more damaged condition, and the amount of damages. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134, 138(1964); see also DOHA Claims Case 96070203 (September 5, 1996). The burden of proof then shifts to the carrier to rebut the prima facie liability. Resource Protection denies liability for any contents in the backpack because the service member did not prove that he delivered the articles therein to the carrier at origin.

The Air Force referred Resource Protection to the Comptroller General decision which found that the tender of a tool box was evidence of tender of the tools in the box. See American Vanpac Carriers, B-247876, Aug. 24, 1992. Resource Protection distinguishes that decision on the basis that the Tender of Service specifically discusses tool boxes and states that the carrier is required to note that the tool box is empty if, in fact, it is empty. However, we have applied the same rationale to toy boxes without any special Tender of Service provisions for toy boxes. See DOHA Claims Case No. 96070206 (September 5, 1996). Moreover, the tender of an item is established as an element of a prima facie case of carrier liability when the item claimed as lost or damaged is reasonably related to the items shown on the inventory of a container's contents, particularly when it would not have been unusual for those items to be packed in the specific containers they were in and the carrier packed the boxes and prepared the inventory. Compare DOHA Claims Case 97102410 (December 23, 1997), which cites DOHA Claims Case No. 97022406 (June 18, 1997) and American Van Lines, Inc., B-257887, Apr. 27, 1995. Here, the backpack is a camping-type of item, and the contents claimed to be in the backpack were also camping-type items. Thus, there is a reasonable basis for the Air Force's finding.

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 claim involves Personal Property Government Bill of Lading (PPGBL) SP-060,590; Air Force Claim Goodfellow AFB 93-628; ALLV Claim No. 976624; and CWMG Claim No. 351863.