
In Re:

Foremost Forwarders, Inc.

Claimant

DATE: April 24, 1998

Claims Case No. 98041507

CLAIMS APPEALS BOARD DECISION

DIGEST

A shipper offers sufficient proof of prima facie liability against a carrier for damage to a CD player when he offers evidence that the CD player 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 circuit board or chassis. The mere lack of external damage is not sufficient evidence to rebut the carrier's liability.

DECISION

Foremost Forwarders, Inc. (Foremost), appeals the March 20, 1998, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 98011515 which disallowed Foremost's claim for a refund of \$119.20 offset against it for loss and damage to a service member's household goods shipment.⁽¹⁾

Background

The record shows that the shipment was picked up at Camp Casey, Korea, on May 31, 1996, and delivered to the service member at Fort Bliss, Texas, on July 8, 1996. The amount of \$126 was offset for loss/damage in early 1997, and Foremost is reclaiming \$119.20 that was offset for Descriptive Inventory Item 10, a Kenwood portable CD player. The service member timely notified Foremost that the CD player did not play when delivered. The repair estimate indicates that a circuit board had broken even though there was no visible damage to the outside of the unit. The service member, a Private First Class, provided a separate handwritten statement in which he observed: "My Kenwood portable CD player was in perfect condition before the carrier picked it up . . . The CD player seems to only have internal damage. . . "

Foremost argues that the Army did not demonstrate that Foremost improperly packed the CD player, and the repairer was not competent to conclude that the damage occurred in transit. Foremost contends that once one can reasonably conclude that the CD player was properly packed, then if damage had occurred in transit, it would be because the CD player was "not manufactured to withstand this type of transportation." Foremost contends that the shipper's observations, without substantiation, concerning the condition of the unit prior to transit is self-serving, addresses only the external condition of the unit, does not describe the operational condition of the unit immediately prior to transit, and does not deserve much creditability.

Discussion

Foremost devotes considerable effort in arguing that there was a presumption of proper packing in its favor, and therefore, a presumption that it acted with due care. However, the relevant issues are whether the service member, and the Army in subrogation, presented proof of tender in good condition and delivery in damaged condition. In other words, the major issue here is whether the Army presented enough evidence to establish a prima facie case of liability against Foremost. The Army must show that Foremost received the CD player in good condition; that it delivered the CD player in a damaged condition; and the amount of damages. Thereafter, the burden would shift to Foremost 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, Foremost is arguing here that the Army never established a prima facie case of liability against it because there is no proof that the CD player was delivered with damages it did not have at origin.

It would have been more probative if the service member's statement described when he last used the CD player and who may have observed him using it. But, in our view, this service member's statement was not limited to a characterization of its external appearance as suggested by Foremost. The statement clearly suggested that it was also functioning normally until tendered to the carrier. Moreover, the member's own observation that the CD player was portable is significant because the nature of the item itself rebuts the carrier's argument that the player may not have been transportable.

Foremost's agent was not expected to have operated the CD player to determine its condition at tender. See Interstate Van Lines, B-197911.5, June 22, 1989. That, however, does not end the matter. Unlike Interstate Van Lines, the service member here did offer evidence that the CD player was tendered to the carrier in proper working order. See Carlyle Van Lines, Inc., B-257884, Jan. 25, 1995. Moreover, 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. 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 DOHA Claims Case No. 98020215 (February 10, 1998); and 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 matter is related to Personal Property Government Bill of Lading (PPGBL) GP-991,985; Army Claim No. 96-121-2371; and Foremost's Claim No.FF960781.