In Re:

Andrews Van Lines, Inc.

Claimant

DATE: March 5, 1998

Claims Case No. 98022313

CLAIMS APPEALS BOARD DECISION

DIGEST

Consistent with the policy established by the Comptroller General, 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, especially where the carrier chose not to physically inspect the damaged item and where it could have developed alternative valuation evidence for our consideration by doing so.

DECISION

Andrews Van Lines, Inc. (Andrews) appeals the February 2, 1998, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claims File 97091604 which upheld the Air Forces set off of $1,012.34 for transit loss and damage while transporting the household goods of a service member.[(1)]

BackgroundAndrews picked up the household goods at Wright Patterson Air Force Base**,** Ohio, on March 17, 1994, and delivered them to the service members residence at Whiteman Air Force Base, Missouri, on May 27, 1994. No loss or damage was noted at delivery, but the service member dispatched a Notice of Loss or Damage (DD Form 1840R) on August 4, 1994.[(2)] The Air Force dispatched its claim against Andrews on October 25, 1995. On November 3, 1995, Andrews responded and requested additional time to exercise its salvage rights. On November 17, 1995, the Air Force gave Andrews until December 30, 1995, to exercise its salvage rights. The next correspondence on this matter was Andrews letter dated October 1, 1996.

Andrews contends that it is not liable, or is not liable in the amounts set off for the following items on the Descriptive Inventory:

Items 102 (lamp), 167 (a chest-dresser), 34 (a stereo cabinet-CD case), 58 (a carton of glassware containing 13 figurines), 101 (china), 221 (a toy plastic car), 143 (lamp shade), 240 (a plastic sandbox), and 243 (wagon side boards).[(3)] Andrews argues that it was not credited with the salvage value of these items and that it should not have been charged with any liability for seven of the 13 figurines in Item 58 because there was no evidence of tender. Andrews explains that it went to the service members home on December 27, 1995, to collect the salvage items, but these items were not provided because the service member could not find them or had disposed of them.

Item 104 (a camera tripod in a carton marked "speakers"). Andrews says that it is not liable for this item ($34.30) because the item was 'not available for Andrews to look at when it went to the service members home on December 27,1995. It also argues that there was no evidence of tender because speakers are unrelated to a tripod.

Item 82 (glass table top). Andrews contends that replacement of the glass top in the amount of $790. 95 was unwarranted for a minor scratch which was not hazardous and did not make the table unusable. It requests a refund of the entire amount, except for perhaps $100 for a loss of value. It also believes that it was not accorded proper salvage for the table top.

Discussion

As in most disputes concerning a carriers liability for loss or damage, we start with the general rule that the shipper must demonstrate three things to establish a prima facie case of liability against the carrier: tender of the item to the carrier, delivery in a damaged condition or non-delivery, and the amount of damages. Thereafter, the burden shifts to the carrier to show that it was not negligent and that the loss or damage was due to an excepted cause. See Missouri Pacific Railroad Company v. Elmore & Stahl, 377 U.S. 134, 138 (1964). The issue here is the extent to which damages have been established, and in two instances, whether the service member had tendered the item to the carrier at origin.

The military services and the industry agreed by contract to procedures for claiming salvage and crediting a carrier with salvage value. This agreement is contained in a Military/Industry emorandum of Understanding (MOU) which became effective on April 1, 1989. In relevant part the agreement states where the carrier has paid, or agrees to pay, a claim for the total depreciated replacement value of an item, the carrier that chooses to exercise salvage rights will take possession of salvage items not later than 30 days after receipt of the governments claim. The 30-day pick up period can be extended by mutual agreement. Where a service member refuses to cooperate with a carrier that is exercising its salvage rights, this problem should he referred to the claims office for prompt resolution. The carrier will not exercise a right to salvage when any single item is less than $50, or when the item is hazardous or dangerous to the health or safety of the members family unless it is an antique, figurine or crystal. For an individual item which has a depreciated replacement value of less than $50, the carrier will receive no credit for salvage.

We cannot grant salvage credit for any item. The MOU clearly indicates that a carrier should notify the claims office promptly if it experiences difficulty salvaging any item to which it was entitled. The record is devoid of any correspondence or other evidence of communication on this subject between the Air Forces letter of November 17, 1995, and Andrews letter of October 1, 1996. It appears that Air Force claims officials were not aware of any lack of cooperation until nine months after Andrews obtained other items on which it claimed salvage. In such circumstances, it is inappropriate to charge the government with salvage value unless the carrier had clearly specified to service officials which items it was claiming salvage to, which ones had not been turned over to it, and the record indicates that service officials had a clear opportunity to compel the service member to turn over such items. Additionally, many of the items were below the $50 threshold.

Another agreement between the industry and the military services establishes a presumption of tender for all of the articles in Item 58 and the tripod. The service member had dispatched timely notice that all of these articles had been delivered in a broken condition. The Military-Industry emorandum of Understanding on Loss and Damage Rules effective on January 1, 1992, provides that if an item is delivered, this is evidence that the service member owned and tendered it to the carrier.[(4)] If Andrews had any doubt concerning whether such an item, in fact, was delivered, and its condition at delivery, it could have inspected the item. The carrier has 45 calendar days from delivery of the shipment, or dispatch of each DD Form 1840R, whichever is later, to inspect the shipment for loss and/or transit damage. There is no indication that it did so here. Even if Andrews had produced evidence that it had asked to inspect these items when it visited the service member on December 27, 1995 (which it did not), its time to generally inspect all damaged items had expired. Moreover, the tripod and each figurine were less than $50 and would not have been available for salvage even if Andrews had pursued its salvage rights.

Andrews arguments with respect to the table top have no factual basis. It states that the scratches are merely cosmetic, but it did not inspect the table top and can offer no proof concerning the proper measure of damages. The measure of damages is a factual issue, and we cannot decide this issue in Andrewss favor without empirical evidence concerning the measure of damage. Merely questioning the Air Forces calculation of damages is not clear and convincing evidence that Air Forces calculation was unreasonable. See DOHA Claims Case No. 97021808 (June 25, 1997); and American International Moving, Corp., B-247576.4, Feb. 14, 1994.

Conclusion

We affirm the Settlement.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeal 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 involves Personal Property Government Bill of Lading (PPGBL)SP-652,678*;* Air Force Claim Whiteman AFB 96-39; and carrier file 94-430.

2. In relevant part, it notified the carrier of the following damages: a dented and bent lamp; the bottom broken off a dresser which was coming apart; a gouged CD case; a broken collection of figurines; two china plates broken; a scratched glass table; a dented lamp shade; a toy car with a broken wheel base; a hole in the corner of the sandbox; a broken wheel base on a toy car; a missing wagon; and a broken tripod.

3. The depreciated replacement costs for each single item within each Descriptive Inventory line was less than $50 except for Items 167 and 243.

4. Some of the decisions that Andrews has cited in its appeal to show the lack of a relationship between a speaker and a tripod would have been more relevant if the tripod had been reported as lost rather than damaged in transit.