In Re:

American Van Services, Inc.

Claimant

DATE: April 14, 1998

Claims Case No. 98032303

CLAIMS APPEALS BOARD DECISION

DIGEST

A conditional endorsement on a carrier's settlement check which purported to settle all liability with respect to a bill of lading transaction does not operate to satisfy the carrier's liability with respect to a second delivery under the single bill of lading transaction where: there were two separate deliveries; it was clear from the record that the government's demand which precipitated the carrier's offer covered only the items delivered in the first delivery; and the government had dispatched to the carrier a separate DD Form 1840 and 1840R with respect to the second delivery.

DECISION

American Van Services, Inc. (American), appeals the March 11, 1998, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 97121903 which dismissed American's December 22, 1997, amended claim for recovery of $1,791.72 offset against it for loss and damage to a service member's household goods.[(1)]

Background

The record indicates that American picked up the service member's household goods at Fairfax, Virginia, on June 2, 1992. Thereafter, they were delivered to the service member at Wright Patterson AFB in two parts. American delivered the first part on October 27, 1992, and it delivered the second part on December 3, 1992. As noted in the Settlement Certificate, the Joint Statement of Loss or Damage at Delivery (DD Form 1840) associated with the first delivery stated that it covered only certain specified Descriptive Inventory items, and the DD Form 1840, along with a supplementary Notice of Loss or Damage (DD Form 1840R) noted damages to only five of those items: 154, 288, 289, 144 and 151. American offered to pay $48.74 of the $320.46 claimed to settle the claim against it, and issued a check in that amount. The October 21, 1993, check contained a conditional endorsement which purported to release American of any further liability under the PPGBL transaction. The Air Force deposited the check and no further action was taken by the Air Force with respect to the damage on the items in the first delivery.

At the time of the second delivery, the service member and American prepared a DD Form 1840 noting loss and damage to the items involved in that delivery. This was supplemented by a DD Form 1840R which was dispatched to American on February 12, 1993, noting loss or damage to several additional items involved in that delivery. On September 27, 1993, the Air Force forwarded its claim for loss and damage related to the second delivery. No response was received until after the Air Force sent American a second notice of its claim in December 1993. The amount of $1,791.72 was deducted on April 18, 1994, and American fully stated the basis for its denial of the $1,791.72 claim on April 29, 1994. American objected to the claim on the basis that the Air Force's acceptance of $48.74 satisfied all of its liability under the PPGBL transaction. American cited no other basis for its claim for a refund until after the Air Force prepared its administrative report to this Office in December 1997.

In its December 22, 1997, amended claim, American suggests that it correctly based its theory of recovery solely on the argument that its payment of $48.74 had satisfied all of its obligation for loss in connection with the PPGBL transaction because it relied on existing precedent under Comptroller General decision B-185295. American contends that the Air

Force's December 16, 1997, administrative report did not discuss all of the exculpatory factors related to American and cites "documents created" in 1996 and 1997. American also now contends, for the first time, that the February 1993 DD Form 1840R was not postmarked until after the period allowed in the ilitary-Industry Memorandum of Understanding concerning notification of additional damage.[(2)] American then lists several items with such pre-existing damage that it would preclude a determination of transit damage or in which the Air Force applied an incorrect rate of depreciation.

Discussion

American's argument that it did not have to specify all of the bases of its claim during the adjudication process, is specious. Essentially, American contends that it should not have been held liable in 1994 for knowing about later decisions of the Comptroller General and of our Office which held that a carrier, in some instances, may not be able to obtain full release of all its liability for loss and damage involving a shipment when the carrier included a restrictive notation on a settlement check which may be so interpreted. See DOHA Claims Case No. 96070201 (September 5, 1996); and American Van Services, Inc., B-270725, June 26, 1996. These post 1994 decisions merely explained and interpreted existing law; they did not change the law. Both decisions cite McDonald v. United States, 13 Cl. Ct. 255 (1987), which summarized the concept of accord and satisfaction as

it was applied to the Federal government by the United States Claims Court and its predecessor up to 1987.

The McDonald Court noted that the operative elements of accord and satisfaction are: a proper subject matter, consideration, and a meeting of the minds of competent parties. Generally, there exists a bona fide dispute and by mutual agreement one pays or performs and the other accepts payment or performance in satisfaction of a claim or demand. For satisfaction of the claim to occur, there must be accompanying expressions sufficient to make the creditor understand that the performance is offered to him as full satisfaction of the claim and not otherwise. McDonald, supra, 260-261. In the present claim, the only matter that was in dispute at the time that American offered the check for $48.74 was the loss and damage involving the items in the first delivery as specified in the first DD Form 1840.

Furthermore, when the Comptroller General considered claims, his Office did not favor piecemeal presentation by claimants. See Riss International, B-226006.5, April 28, 1993. American should have been aware of the other bases of its claim prior to submitting it to DOHA; therefore, we do not believe that this Office should hold this matter open while the claimant's new claim is presented to and considered by the Air Force.

Conclusion

We affirm the settlement and are closing our file in this matter. American may file a new claim with the Air Force if timely.

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 matter is related to Personal Property Government Bill of Lading (PPGBL) UP-215,897; AF Claim No. Wright-Patterson AFB 93-1752; and American's Ref. No.19325.

2. A Notice of Loss or Damage (DD Form 1840R) must be dispatched to the carrier within 75 days of delivery. The date of postmark is not necessarily the date of "dispatch." See National Forwarding Co., Inc.-- Reconsideration B-238982.6, Feb. 11, 1993.