
In Re:

American Van Services, Inc.

Claimant

DATE: May 27, 1998

Claims Case No. 98051108

CLAIMS APPEALS BOARD DECISION

DIGEST

In the absence of an agreement between the military services and the industry, where the Service applies a 10 percent rate of depreciation against a service member to the service member's claim for the loss of a camcorder, but allows only seven percent to the carrier when it recovers for this loss, the Service must provide a clear explanation for the difference in treatment and the basis for the depreciation rate.

DECISION

American Van Services, Inc. (American), appeals the April 29, 1998, Settlement Certificate of the Defense Office of Hearings and Appeals in DOHA Claim No. 98031208, in which this Office disallowed American's claim for a refund of the \$936.09 set off against it for transit loss and damage to the household goods of a service member.⁽¹⁾

Background

An unrelated carrier picked up the shipment at Warner Robins AFB, Georgia, on June 26, 1991, and placed it into nontemporary storage (NTS) in Macon, Georgia. American obtained the shipment from the NTS facility on October 25, 1993, and delivered it to the service member in Aliquippa, Pennsylvania, on November 5, 1993. The matter on appeal involves American's liability for a camcorder, under Descriptive Inventory Item No. 5 described as a carton containing "Camcorder #220130F."

On the List of Property and Claims Analysis Chart (DD Form 1844), the camcorder is described further as a "full size" RCA Camcorder which was purchased in July 1987 for \$1,350. Installation claims office correspondence dated March 20, 1996, cited by American, indicates that the camcorder was shipped in the manufacturer's carton and it arrived full of pictures but not with the camcorder. The record also indicates that the carton displayed the model number and serial number. The member notified American of the loss of the RCA camcorder in a Notice of Loss or Damage (DD Form 1840R) dispatched on January 11, 1994. American did not conduct an inspection of loss or damage. The claim to American was not dispatched until January 1996.

American denies all liability for the camcorder because Item 5 was sealed when American obtained it, and because the carton was packed by a third party. American also contends that the claim is not credible because the owner would not have placed a camcorder into long-term storage, and if he had, he would have used it immediately, not "months after arrival." No exceptions for Item 5 were noted on American's rider. Alternatively, American contends that the camcorder was obsolete, and that the Air Force failed to provide the data that American requested to investigate the claim shortly after the Air Force presented the claim to American. Among other things, American requested a purchase receipt, an affidavit from the member concerning the original cost and purchase date, a statement from RCA concerning whether the camcorder shipped was obsolete and a comparison analysis showing that the replacement model was equivalent to the original. American argues that the camcorder could have been one of three models manufactured in 1987, and using Blue Book values, none is worth much more than \$200.⁽²⁾ Finally, American notes that there were two replacement cost estimates: one for \$1,165.99 from Sears, and the other from Kaufmann's (a Panasonic Model 504) for \$1,091.78, and that the lower replacement cost estimate should have been applied.

Discussion

Generally, under federal law, in an action to recover from a carrier for loss of or damage to an item in a shipment, the shipper establishes his prima facie case when he shows delivery in good condition, failure to deliver or arrival in damaged condition, and the amount of damages. Thereupon, the burden of proof is upon the carrier to show both that it was free from negligence and that the damage to the cargo was due to one of the excepted causes relieving the carrier of liability. See Missouri Pacific Railroad Company v. Elmore & Stahl, 377 U.S. 134, 138 (1964). In addition, when goods pass through the custody of several bailees, it is a presumption of the common law that the damage occurred in the hands of the last one. See McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415, 418 (1978); and DOHA Claims Case No. 96070205 (September 5, 1996).

The record indicates that American received a carton from the NTS facility stating that it contained "Camcorder #220130F." We thoroughly explained the application of the "last handler" rule recently in DOHA Claims Case Nos. 98043009 (May 14, 1998) and 98043010 (May 18, 1998). If American doubted whether the camcorder was in the carton, it had the duty to open and inspect it. As the last handler, American remains liable. The balance of our discussion will address American's concerns about the amount of damages.

American, the Air Force, and the member all share responsibility for the incomplete information about the damages in this claim. On one hand, the service member did not submit his claim to the Air Force until almost two years after delivery. On the other hand, American did not conduct an inspection, and the record indicates that if it had, it would have obtained the model number of the camcorder from the manufacturer's carton. But, American did have the serial number, and it has failed to show that it could not have obtained the model number based on the serial number. Moreover, as the Air Force points out, even if we assume that American is correct in suggesting that there were three possible models involved, it appears that each of the three was similar to each other. The Orion Blue Book indicated the list price new for each model was within \$100 of each other. The purchase price claimed by the service member is corroborated by the fact that it is lower than, and within \$49, of the lowest Orion Blue Book list price new among the three.

Thus, American knew that the camcorder was one of three models. If there were significant differences between the lowest list price model and the Panasonic 504, American could have provided a comparison analysis to support its refund claim. A carrier cannot avoid liability by shifting the burden of providing analyses which are investigative in nature to the service member or the government. See DOHA Claims Case No. 98021009 (March 5, 1998).

We have questioned the application of applying Orion Blue Book valuation when there is no demonstration of a regular market for the product involved. In this claim, American has not demonstrated that such a market existed for used personal camcorders. Moreover, the courts have questioned whether the values of goods in a used household goods market, to the extent it exists, adequately reflects the value of the item to the owner. See DOHA Claims Case No. 98031706 (April 10, 1998). We agree with American that the Kaufmann estimate should apply to the exclusion of the Sears estimate, and our review of the DD Form 1844 indicates that the Air Force did apply the Kaufmann estimate. However, without detailed documentary evidence on the proper rate of depreciation or an agreement between the services and the industry on that rate, it appears unreasonable to credit the carrier with less depreciation than the Air Force applied against the service member in settling his claim under 31 U.S.C. § 3721. See DOHA Claims case No. 96111802 (May 27, 1997). Thus, the liability of American is \$655.07 in lieu of \$786.09.⁽³⁾

Conclusion

We modify the settlement to allow an additional \$131.02. Otherwise, we affirm.

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 involves Personal Property Government Bill of Lading (PPGBL) SP-240,019 and AF Claim No. Bolling AFB 96-182. The Settlement Certificate indicated that in its Administrative Report the Air Force had allowed \$150 on Descriptive Inventory Item 34. The discussion herein involves the balance of the offset.

2. The record indicates that American bases its estimate of 1996 value on the 1996 Orion Blue Book, page 276. While the model number is not known, the Blue Book also indicates that the list prices new for the three possible models were \$1,399, \$1,450 and \$1,499.

3. This amount is calculated by multiplying \$1,029 X 40 percent depreciation=\$617.99, and thereafter adding \$37.08 for sales tax. We did not apply depreciation during the period of NTS because American did not offer evidence of deterioration during storage or suggest other authority to assist us in making this factual finding.