In Re:

American International Moving, Corp.

Claimant

DATE: May 29, 1998

Claims Case No. 98051109

CLAIMS APPEALS BOARD DECISION

DIGEST

Where the record shows the existence of pre-existing damage, and lacks evidence of greater or different damage, the common carrier is not liable for damage in transit.

DECISION

American International Moving, Corp. (American), appeals the May 1, 1998, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 98031210, which disallowed American's claim for a refund of the $190 offset by the Air Force for transit loss and damage to the household goods of a service member.[(1)]

Background

American picked up the shipment from a nontemporary storage (NTS) facility in California in April 1994, and delivered it to the service member in Alabama on August 29, 1994. On appeal, American continues to deny liability ($65) for the repair of a coffee table, Descriptive Inventory Item 10, and for 50 percent ($50 of the $100 total repair cost) of the repair of four doors of a wall unit, Items 44 through 47.

At delivery, the service member and the carrier's representative noted on the Joint Statement of Loss or Damage at Delivery (DD Form 1840) that Descriptive Inventory Item 10, a coffee table, was scratched. The NTS contractor had previously noted that the top, side and edges of the table were gouged and the top and legs were scratched. In the Notice of Loss or Damage (DD Form 1840R), dispatched on October 26, 1994, the shipper noted scratches on the surface.

The shipper and the carrier's representative also noted at delivery that there were deep scratches on the wall unit doors. The Descriptive Inventory for Items 44 through 47, the doors involved, did not note any pre-existing damage to the wall unit doors.

On July 13, 1995, the repairer described the four wall unit doors as dented and marred, and he described the coffee table as "top surface badly scratched and dented."

On August 31, 1995, Air Force inspectors looked at the damaged items. They found a deep scratch on the edge of the coffee table, but they found that the mark was new damage even though the mark appeared to be pre-existing because the member's spouse had attempted to color it to hide it. While the inventory had listed scratches and gouges on top, the inspectors stated that they were unable to find such damage when they inspected it. The inspectors also noted that four doors of the solid oak wall unit were scratched and marred.

American denies liability for the coffee table because the damage was pre-existing damage (PED). American points to the discrepancies in the damage descriptions between the Air Force inspectors and the repairer. American argues that the repairer referred to dents while the inspectors found scratches. American contends that the deep scratch the inspectors found on the edge was the gouged edge that existed when the member tendered the table to the NTS facility. With respect to the wall unit doors, American notes that only scratches were noted at delivery in 1994, but the repairer described the damage in 1995 as dented and marred. American did not conduct its own inspection of the damage.

Discussion

To hold a common carrier liable for transit damage, the shipper has the initial burden of establishing a prima facie case of liability against the carrier. Such a case is established by showing that the shipper delivered the goods in a certain condition, that they were delivered by the carrier in a more damaged condition, and the amount of the damages. See Missouri Pacific R. Co. v. Elmore & Stahl, 377 U.S. 134, 138 (1964).

American does not deny liability for the doors. But, in effect, it suggests that some of the damage was caused after delivery. However, it appears to us that the shipper, inspectors and repairer used different terms to describe the same damage. The Comptroller General noted how different people variously described the same damage as a "scratch," "mar," or "gouge." SeeAmerican Van Services, Inc., B-252975, Sept. 8, 1993; and Continental Van Lines, Inc., 63 Comp. Gen. 479 (1984). Clearly, there was no PED on any of the doors when they were tendered to the NTS facility, but they arrived damaged. There is no evidence that the service member caused additional damage after delivery and how such damage may have affected the cost of repairs. American remains liable for this damage.

The coffee table is a more difficult issue. As explained above, generally we give minor weight to the terminology used to describe the damage, and give substantial weight to a military Service inspector's statement especially when the carrier fails to inspect. However, in view of the specific facts in this claim, we are not convinced that there is a difference between the gouged edges noted by the NTS contractor and the deep scratch on the edge of the coffee table that the member's spouse attempted to repair. The inspectors found no scratches or gouges on the top of the table even though a few weeks earlier the repairer had noted that "top surface [was] badly scratched & dented." Even if we interpret the word "edge" as used by the inspectors to mean top edge, the repairer states that the damage he observed was to the "top surface," and the inspectors themselves had clearly distinguished between the top and the edge. The inspectors' observations vary with both the PED noted on the NTS inventory and with the repairer's statement.

A military service's inspector's timely observations may be necessary to effectively impeach a carrier's over-broad characterization of PED, or explain how the transit damage added to PED of the same type. But it is difficult to accept the inspectors' statement here because it is so inconsistent with other documentation in the record. Acceptance of the inspectors' statement would require us to find that the NTS facility exaggerated the PED and that the observations of the repairer were incorrect. A possible explanation is that the inspectors may have been observing an item that the shipper had attempted to self-repair before the inspectors arrived. Thus, the inspectors' observations may not reflect the condition of the coffee table when delivered. Where the record shows the existence of pre-existing damage, and lacks evidence of greater or different damage, the common carrier is not liable for damage in transit. See Continental Van Lines, Inc., 63 Comp. Gen. 479 supra. Accordingly, for all of these reasons, we find that the evidence is insufficient to conclude that American caused additional, transit-type damage, and that American should be refunded the $65 cost of repair of the coffee table.

Conclusion

We modify the Settlement Certificate to allow American an additional $65; 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-110,895; and Air Force Claim Maxwell AFB 95-1340.