In Re:

AAA Transfer & Storage, Inc.

Claimant

DATE: May 18, 1998

Claims Case No. 98043010

CLAIMS APPEALS BOARD DECISION

DIGEST

A delivering carrier is responsible for the loss of, or damage to, a service member's household goods that were prepacked by a NTS contractor if the service member otherwise presents a prima facie case of liability against the delivering carrier.

DECISION

AAA Transfer & Storage, Inc. (AAA Transfer) appeals the April 10, 1998, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 98020436 which disallowed the carrier's claim for a refund of $170 set off by the Air Force for transit loss and damage to the household goods of a service member.(1)

Background

The shipment was picked up in Tumwater, Washington, on June 14, 1993, and it was placed in nontemporary storage (NTS). AAA Transfer obtained it from NTS on March 7, 1996, and delivered it to the service member in San Antonio, Texas, on March 13, 1996. AAA Transfer did not take exception to the condition of the shipment at the NTS facility, and there is no indication that AAA Transfer inspected the damages after delivery.

AAA Transfer contests its liability for three items: missing hardware from Descriptive Inventory Item 198, described as a dishpack with water bed parts; a glass microwave plate missing from Item 238, which is described as a 6.5 cubic foot carton containing a Panasonic microwave oven; and a bent Christmas tree with broken branches contained in Item 201, a 4.5 cubic foot carton with a tree. AAA Transfer argues that the microwave plate did not appear in the inventory and would not have been packed with "a heavy metal appliance" (the microwave oven). Overall, AAA Transfer contends that it is not liable for the contents of any sealed carton it has received from a NTS facility. More specifically, AAA Transfer states that the contract required that the contractor that disassembled the water bed was required to secure the hardware to the bed, and item 198 was a carton, not a bed. Concerning the tree, AAA Transfer argues that the NTS facility delivered to it a sealed 4.5 cubic foot carton intact; that the carton measures approximately 18" X 18" X 24"(2); and that the tree was 7 feet tall. AAA Transfer suggests that the tree was too large to fit in such a carton, assembled or disassembled.

Discussion

Generally, under federal law, in an action to recover from a carrier for damage to 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. SeeMissouri 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 Comptroller General rejected arguments by carriers that they are not liable for the missing or damaged contents of a sealed and intact carton received from a NTS facility. The Comptroller General explained the last handler rule more specifically in the decision Carlyle Van Lines, B-270114, May 22,1996. In Carlyle, the Comptroller General held that a delivering carrier is responsible for the loss of, or damage to, a service member's household goods that were prepacked by a NTS contractor if the service member otherwise presents a prima facie case of liability against the delivering carrier. The Comptroller General stated that while the carrier is not under a general obligation to open prepacked containers of household goods in apparent good order to examine their contents, the carrier is the last bailee to possess such goods prior to delivery, and, in the absence of evidence that the loss did not occur in its custody, it is presumed that the loss did occur in the carrier's custody. The Comptroller General based his decision on the decision McNamara-Lunz Vans and Warehouses, Inc., supra, and our research indicates that at least two other Comptroller General decisions followed the same rationale: Eastern Forwarding Company, B-248185, Sept. 2, 1992; and Air Land Forwarders, B-247425, June 26, 1992. We adopted the Comptroller General's practices in this regard. See DOHA Claims Case No. 96070205 (September 5, 1996). The courts also appear to follow the Comptroller General's analysis. In support of the decision in McNamara-Lunz, the Comptroller General cited and explained two judicial decisions involving successive transportation custodians of prepacked goods: General Electric Co. v. Pennsylvania R.R., 160 F. Supp. 186, 188 (W.D. Pa. 1958); and Julius Klugman's Sons, Inc. v. Ocean Steam Nav. Co., 42 F.2d 461 (S.D. N.Y. 1930).

Thus, the question presented is whether the shipper and the Air Force in subrogation have otherwise presented sufficient evidence to establish a prima facie case of liability against AAA Transfer. We believe they have. Correspondence in the record indicates that the installation advised the carrier that the tree could have been disassembled. AAA Transfer speculates, but it offered no evidence to demonstrate, that the carton did not have sufficient capacity. We have no basis to conclude that a 7 foot tree could not have been disassembled and placed in the carton.

AAA Transfer was advised that this was the plate for the built-in revolving carousel.[(3)] As the record indicates, microwave ovens generally ship from the manufacturer with a glass plate that is designed to fit in the oven. Properly protected, it would not be unusual to ship such a plate with the microwave oven itself, as the oven manufacturers do, or to ship it in a proper dishpack with other kitchenware. An examination of the descriptive inventory suggests that the plate would not have been separately itemized. There is a sufficient basis for finding that the plate was tendered to the packer at origin. Compare DOHA Claims Case No. 96070214 (January 6, 1997) involving remote controls for televisions.

Finally, notwithstanding the packer's contractual obligations concerning the type of packing material that it should have used for the bed's parts, the inventory entry for Item 198 explicitly states that it was the container that held the parts for the water bed. If AAA Transfer wanted to separately inventory each part it was receiving, it had the opportunity to do so before it assumed control over the shipment at the NTS facility. The Tender of Service states that the carrier has the duty to inspect all prepacked goods and to ascertain the contents and the conditions of the contents.[(4)]

Conclusion

We affirm the Settlement Certificate.

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 involves Personal Property Government Bill of Lading (PPGBL) No. YP-074,239 and Air Force Claim No. Randolph 96-904.

2. The literature available to the Board suggests that such a carton generally measures 18" X 20" X 24."

3. See Memorandum involving this shipment dated September 11, 1996.

4. See Department of Defense *Personal Property Traffic Management Regulation*, Appendix A, paragraph 43a (October 1991).