In Re:

Fogarty Van Lines

Claimant

)

DATE: July 15, 1998

Claims Case No. 98050404

CLAIMS APPEALS BOARD DECISION

DIGEST

Under the Military-Industry Memorandum of Understanding on Loss and Damage Rules (MOU) the carrier is obligated to pay for damage in transit to household goods that it moved when that damage is brought to its attention in a timely manner. The wording on the carrier's check to the effect that endorsement of the check is a settlement for all claims arising from the shipment does not end or void that obligation. The carrier is still liable for damaged goods not covered by the check, but still reported in a timely manner to the carrier.

DECISION

Fogarty Van Lines (Fogarty) appeals the April 17, 1998, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in Claim No. 98020431, in which our Office affirmed the Air Force's set off of $1,004.04 for transit loss and damage to the household goods of a service member.[(1)]

Background

The record indicates that the shipment was picked up at Valdosta, Georgia, on October 10, 1994, and delivered to the service member in Sarasota, Florida, on October 27, 1994. Two of the items in the Descriptive Inventory, Items 55 (a sofa) and 78 (a missing part from a home gym), remain in dispute. Fogarty contends that its payments by checks in the amount of $1,196.60, dated March 6, 1995, and $205, dated March 20, 1995, released it from all further liability. Both checks had stamped on the back "ENDORSEMENT ACKNOWLEDGES FULL RELEASE FROM ANY AND ALL CLAIMS." The Air Force's amended demand of October 31, 1995, for the additional amount of $1,004.04 for Items 55 and 78, came long after these two checks were cashed. In its appeal, Fogarty notes that the Air Force's AFCIMS Worksheet which it received prior to the payment of the two checks had stated that the carrier's liability for these two items was $0 based on "other" non-specific reasons. Fogarty acknowledges that it had also received a copy of the List of Property and Claims Analysis Chart (DD Form 1844). Fogarty states that it had no duty to investigate the basis for the Air Force's original denial of the service member's claim against the Air Force for Items 55 and 78, and Fogarty suggests that it had the right to rely on the amount set forth in the demand against it, $0 for each item. Fogarty also contends that its endorsement is effective in sheltering it from further liability, citing some lower state courts in Virginia and Florida.

On the DD Form 1844, the service member claimed $938 against the Air Force for the repair of the sofa, and $399 for the replacement of the gym set. While the Air Force denied liability in its initial adjudication, it did suggest a potential of carrier liability for the sofa and more specifically, a need for repair information on the gym set. The dispatch to Fogarty of timely and adequate notice of the damage to both items is not in dispute.

Discussion

The Comptroller General's decision in American Van Services, Inc., B-270725, June 26, 1996, is dispositive. As in American Van Services, the service member here had timely and adequately dispatched notice to Fogarty of the loss and

damage of all of the items; the Air Force had initially refused to pay the member for certain items due to lack of support; the Air Force dispatched its subrogated claim against the carrier on account of the items that it paid to the service member; and after the Air Force cashed the carrier's checks with their conditional endorsements denying any further payments, the Air Force approved additional recovery for the service member and revised its subrogated claim against the carrier. The American Van Services decision does not specifically indicate whether the Air Force had provided the carrier with a DD Form 1844 (or an equivalent AF Form 180) indicating that there was $0 carrier liability for the items on which the Air Force later claimed liability and which were contested by the carrier, but this makes little difference in view of the legal principles involved.

As in American Van Services, Fogarty cannot unilaterally alter its responsibilities under the Military-Industry Memorandum of Understanding on Loss and Damage Rules (MOU), including the obligation to pay for damage in transit, when damage that is otherwise payable is brought to its attention in a timely manner. Additionally, as the Comptroller General pointed out in American Van Services, and as we pointed out to Fogarty in DOHA Claims Case No. 97040813 (July 2, 1997), for the conditional endorsement releasing the carrier of further liability to become effective, it would have had to have been an accord and satisfaction. There had to be a payment by the carrier and acceptance by the military service or agency as full settlement of an amount less than that claimed by the service, where the claim was not liquidated, or was the subject of a dispute between the parties. Here, when the Air Force cashed Fogarty's two checks there was not yet a dispute between the Air Force and Fogarty on the issue of Fogarty's liability for the sofa and the gym equipment. Even more clearly, there did not exist a situation in which the Air Force and Fogarty had reached an impasse over liability for these items, and Fogarty offered and the Air Force accepted an amount in settlement of the dispute.

Conclusion

We affirm the Settlement.

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) No. SP-477,704, AF Claim No. MacDill 95-270, and FVLI File: 950095.