In Re:

American Mopac International, Inc.

Claimant

)

DATE: June 16, 1998

Claims Case No. 98060120

CLAIMS APPEALS BOARD DECISION

DIGEST

As the successor to the Comptroller General, the Defense Office of Hearings and Appeals (DOHA) has jurisdiction to entertain claims by carriers related to amounts collected from them by the military services whether those amounts were collected by setoff or through a voluntary refund.

DECISION

American Mopac International (Mopac) appeals the Army's denial of its $108 refund claim for transit damage to a soldier's personal property shipment.[(1)]

Background

Mopac picked up the shipment on January 13, 1995, at Fort Rucker, Alabama, and delivered it to Soul, Korea, on April 6, 1995. A JVC 13-inch color television and a Sansui four- head VCR were delivered with no appearance of external damage, but on April 7, 1995, the service member dispatched a Notice of Loss or Damage (DD Form 1840R) indicating that both items had arrived damaged. The television had no picture and no sound, and there was a rattling sound inside. The service member also indicated that the VCR would play for no more than ten seconds, and he stated that the VCR container was "loosely intact." The repair estimates for both items indicated, among other things, that certain circuit boards were physically broken.

Mopac initially paid the amount claimed by the Army, $108, based on repair costs. Thereafter, Mopac requested a refund because it believes that there is no proof that the two items were operational prior to transit. Mopac also contends that the items were properly handled, that there is no proof that they were packed and crated in an improper manner, and that the shipper/ service member did not provide a statement supporting their pre-tender functionality until after delivery.

In its administrative report, the Army cited Comptroller General decisions which refute Mopac's arguments. However, most of the Army's administrative report is directed to the argument that Mopac is estopped from seeking a refund because it voluntarily paid the $108 in the first instance, and that because of new language in Section 3702 of title 31 of the United States Code (31 U.S.C. § 3702) enacted by Public Law 104-316, the Defense Office of Hearings and Appeals (DOHA) lacks jurisdiction to consider such a claim. Because of the jurisdictional issues raised by the Army, the Claims Appeals Board is directly settling this matter.

Discussion

We disagree with parts of the Army's analysis on the jurisdictional issues. The Army is the lead agency here with respect to debt collection activities, but on the substance of the claim, it is the adjudicating agency and DOHA is the claim settling agency. The Army contends that the statutory language "amounts collected from them" necessarily means [(2)]

amounts set off, not amounts voluntarily refunded. It also contends that there is no pertinent legislative history to explain the Congress' intent with respect to the amended language, and there is no indication that Congress intended to expand the Secretary of Defense's scope of review to include claims by carriers for refunds of voluntary payments.

In our view, by using the word "collected" Congress clearly intended to include collection by either setoff or voluntary refund, and the history of 31 U.S.C. § 3702, and its predecessors and the legislation involving other transportation functions which had been administered by the General Accounting Office,[(3)] support such a conclusion. There is no evidence in the legislative history to indicate that the Congress intended the new Subsection 3702(a)(1)(B) apply only in setoff situations. A survey of Comptroller General decisions clearly indicates that historically the collection of a carrier's debt for transit loss and damage claims and transportation overcharge claims involved one of two distinct collection methods: either the carrier voluntarily paid the claim or a setoff was initiated. Thus, we must assume that the Congress was aware of these two methods when it chose the word "collected" rather than "setoff." Elsewhere within Section 202 of Pub. L. No. 104-316, the Congress specifically addressed "setoff" situations where setoff was relevant. See, e.g., Section 202(p). In Section 101(a)(1) of Pub. L. No. 104-316, Congress stated that whenever another Federal officer, employee, or agency is substituted for the Comptroller General or General Accounting Office, the authority under that provision to perform that function is transferred to the other Federal officer, employee, or agency. Thus, in this instance, to the extent that the Comptroller General had authority to settle a carrier claim related to loss and damage, e.g., a refund claim for an amount set off or voluntarily paid by the carrier, the Secretary of Defense now has such authority, and the Secretary delegated his authority to DOHA.

We recognize that there are some instances where the carrier's payment following an agreement with the military service's or agency's adjudication will estop its appeal to this Office. For example, if otherwise proper, the adjudicating agency and the carrier may compromise a valid dispute, and pursuant to that agreement, the carrier voluntarily pays an amount which, under the circumstances, constitutes a payment and acceptance by the military service as full satisfaction of the unliquidated debt. See DOHA Claims Case Nos. 97040813 (July 2, 1997), 96080215 (March 6, 1997), and 96070214 (January 6, 1997). However, the mere payment by the debtor of the amount demanded by the adjudicating agency may not preclude the debtor from claiming a refund when there is no proper basis for the adjudicating agency's demand. See 67 Comp. Gen. 402 (1988).

On the merits, the Comptroller General and our Office as his successor have now issued various decisions holding that even though the carrier is not expected to observe the operating condition of an appliance before it is tendered for transportation, a prima facie case of carrier liability exists where an otherwise sturdy internal component of the appliance (e.g., a circuit board) is delivered in a physically damaged condition and the service member provides a statement indicating that the appliance worked properly prior to transportation. See DOHA Claims Case No. 98020215 (February 10, 1998) and decisions cited therein. opac properly points to the delay between the delivery and the service member's detailed statement (April 1, 1997) of the pre-transportation condition of the item, but the record indicates that the member promptly transmitted a notice of damage to the carrier; another appliance had similar damage; and the external condition of the packaging of the second damaged appliance indicates that it may have been subject to rough handling. Accordingly, we believe that the Army's finding of liability for both items is reasonable.

Conclusion

We disallow Mopac's claim.

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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1. This shipment involves Personal Property Government Bill of Lading (PPGBL) VP-858,043; Army Claim 95-K02-0736; and carrier reference AM952030.

2. Section 3702(a) was amended, in relevant part, to state, that ". . . . all claims of or against the United States Government shall be settled as follows: (1) The Secretary of Defense shall settle-- . . .(B) claims by transportation carriers involving amounts collected from them for loss or damage incurred to property incident to shipment at Government expense. . . . " See the General Accounting Office Act of 1996, Pub. L. No. 104-316, § 202(n), 110 Stat. 3826, 3843-3844 (1996).

3. While the functions became increasingly distinguishable, for many years the procedures that GAO had exercised with respect to carrier claims under the transportation rate audit program paralleled those applicable to GAO's procedures in the transit property loss and damage area. See, e.g., 39 Comp. Gen. 448 (1959) which indicates that until 1958, the two programs shared the 10-year barring provision now contained in Section 3702 as a six-year provision. Claims following initial voluntary carrier refunds were not unusual in either program, and they were specifically recognized in the legislation associated with the transportation rate audit program, Section 322 of the Transportation Act of 1940, as amended, now codified in 31 U.S.C. § 3726.