DATE: August 10, 1998

In Re:

Resource Protection

on behalf of

Allied Alliance Forwarding, Inc.

Claimant

)

Claims Case No. 98052614

CLAIMS APPEALS BOARD DECISION

DIGEST

The Army offset the amount it had reimbursed the service member for a hand-made crystal chandelier that was missing from his household goods shipment. On appeal the carrier must show that the Army's valuation of the chandelier was unreasonable.

DECISION

Resource Protection, on behalf of Allied Alliance Forwarding, Inc. (Allied), appeals the May 11, 1998, Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Claim No. 98021004, which upheld the Army's set off of $750.00 against Allied to recover the value of a lost chandelier.[(1)]

Background

The record indicates that the member's household goods (HHG) were picked up in Georgia and placed in nontemporary storage (NTS) in October 1986 by Trading Post. In October 1992, Allied's agent picked up the HHG from NTS and delivered them to Pennsylvania. A rider was completed at NTS. Allied's agent unpacked the HHG at the time of delivery. A Joint Statement of Loss or Damage at Delivery (DD Form 1840) was executed and in early November a Notice of Loss or Damage (DD Form 1840R) was dispatched. The DD Form 1840R reported that Item #14, a crystal chandelier, was missing. The List of Property and Claims Analysis Chart (DD Form 1844) stated that the hand-made crystal chandelier was purchased for $500.00 in November 1984. The shipper provided a catalog description of a replacement chandelier at a cost of $3,026.25. The member was reimbursed $750.00, the maximum allowance specified for this type of property in the Allowance List-Depreciation Guide applicable at the time. The Army originally offset $1,258.00 against Allied, then subsequently determined that because there was nothing to establish the original value of the chandelier, Allied's liability should be reduced to $750.00. Our Settlement Certificate upheld the Army's offset stating that the carrier had not shown that $750.00 was unreasonable.

On appeal, Resource Protection argues that the record does not establish tender of a crystal chandelier nor does it support the assessed carrier liability of $750.00.

Discussion

Generally, under federal law, in an action to recover from a carrier for damage or loss to a HHG shipment, the shipper establishes a prima facie case by showing that he tendered property to the carrier, that the property was not delivered or was delivered in a more damaged condition, and the amount of damages. The burden of proof then shifts to 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 Co. v. Elmore & Stahl, 377 U.S. 134, 138 (1964); see also DOHA Claims Case 96070203 (September 5, 1996). Additionally, 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). The last custodian can avoid liability by showing that the damage or loss did not occur while the item was in its custody. For a carrier removing goods from a storage facility for delivery, that showing is made by preparing an exception sheet--a rider--to the inventory; the rider then can serve to rebut the general common law presumption of the last carrier's liability. See Able Forwarders, Inc., B-252817, Apr. 19, 1993.

In the present case, the inventory identifies Item #14 as a 4.5 carton containing a crystal chandelier that was carrier packed. Allied's agent created a rider which identified missing and damaged items when the HHG's were picked up from NTS. Item #14 did not appear on the rider as a missing item.[(2)] The record indicates that the carton for Item #14 was delivered, but the crystal chandelier was missing. As the last bailee, Allied is responsible for the loss and damage to items listed on the inventory that were not identified on the rider. The fact that the inventory written by the carrier specifically identifies the crystal chandelier is evidence that it was tendered. Additionally, the record contains a statement by the shipper that he witnessed the crystal chandelier being packed. The shipper's notice of the chandelier being missing was timely provided on the DD Form 1840R.

We find that, in this case, both the Army and the carrier erred in the handling of the claim. The Army did not provide documentation as to the value of the chandelier.[(3)] On the other hand, during the period it had to investigate this claim, the carrier did not ask for evidence that the member paid $500 when he purchased the hand-made crystal chandelier in 1984. The question for this Board to decide is whether there is any reasonable basis on which the Army could find the replacement value to be $750 based on a record which includes a purchase price of $500.

There is well established legal precedent that the carrier, not this Board nor the Services, has the burden of proving by clear and convincing evidence that the calculation of damages was incorrect. See Title 4 Code of Federal Regulations, Subsection 31.7. See also DOHA 97012102 (January 29, 1997) and cases cited therein. Appeals based on mere questioning of the Army's valuation are insufficient to overcome its liability. Compare DOHA 98021008 (February 27, 1998) in which we modified the amount of the carrier's liability after finding that the service did not respond when the carrier had requested (during its investigation period) information concerning the value of a lost carpet.

Resource Protection provides no evidence on appeal to indicate that $750.00 was an unreasonable amount for the replacement of an eight year old hand-made crystal chandelier. As our Settlement Certificate states, this amount is relatively close to the reported purchase price and is about one-quarter of the claimed replacement cost. We note also that it is within $80 of the adjusted dollar value[(4)] of $670 ($500 x 1.34). We do not see that an $80 difference between the adjusted value and the Army's adjudication is sufficient to disturb the Army's finding.

Conclusion

We affirm the Settlement.

_/s/_____

Michael D. Hipple

Chairman, Claims Appeals Board

_/s/_____

Michael H. Leonard

Member, Claims Appeals Board

_/s/_____

Christine M. Kopocis

Member, Claims Appeals Board

1. This claim involves Personal Property Government Bill of Lading (PPGBL) RP-925,802; Army Claim No. 93-352-0070; and AAFQ Claim No. 943866.

2. The carrier is liable for the contents of a sealed carton unless it has excepted to delivery. If a chandelier were missing from the carton, the light weight of the carton should have been noticed at the NTS facility by the carrier's agent and annotated on the rider.

3. Despite numerous attempts by the Army to obtain documentation from the shipper as to the value, no such documentation was provided. The shipper's failure to adequately respond to the Army's request for specific information was harmful to his claim, but was harmless as to its effect on the carrier's liability.

4. Although the adjusted dollar value method of ascertaining damages is not favored by our Office as a method for determining damages in carrier recoveries, we have recognized the reasonableness of this method for determining depreciated replacement costs in certain circumstances. See DOHA Claims Case No. 97122315 (January 12, 1998). We calculated the adjusted value in this case in determining the reasonableness of the Army's $750 value of the chandelier.