
In Re:

Suddath Van Lines, Inc.

Claimant

)

DATE: August 11, 1998

Claims Case No. 98080323

CLAIMS APPEALS BOARD DECISION

DIGEST

Where a military service rejects a carrier's offer to settle for transit loss and damage, and after setoff the service and carrier settle for an amount in excess of the carrier's initial offer, the carrier is liable for any applicable charges for administrative costs and interest. While the agency generally is required to collect interest, penalties and charges for administrative costs, the Federal Claims Collection Standards (FCCS) grant the service or agency (not our Office) permissive authority to waive, in whole or in part, the collection of interest, penalties and/or administrative costs as permitted under agency regulations when a compromise is effected under Part 103 of the FCCS or when the agency or service determines that collection of these charges would be against equity and good conscience or not be in the best interest of the United States.

DECISION

Suddath Van Lines, Inc. (Suddath) appeals the June 2, 1998, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 98030218 for transit damages to the household goods of a service member.⁽¹⁾ In the Settlement Certificate, this Office disallowed Suddath's claim for \$470.07 except for the \$440.02 the Marine Corps allowed on reconsideration.

Background

The carrier's agent obtained the shipment in South Carolina on January 7, 1997, and another agent delivered it to the service member in Virginia on January 11, 1997. The service member claimed damages for five items: Item 51 (antique bottle, \$400); Item 88 (picture glass \$249.95); Item 49 (a microwave plate, \$19.99); Item 111 (a picture, \$220.50); and Item 58 (an entertainment center with broken wheels, \$35.10). The total of the initial demand on Suddath in May 1997 was \$925.54. On July 21, 1997, Suddath offered \$100 each on Items 51 and 88 because of the lack of evidence of value; \$7.49 for Item 49; \$165.37 for Item 111; and \$20.65 for Item 58. It tendered a check for \$393.51. On August 12, 1997, the Marine Corps returned Suddath's check and reaffirmed its demand for \$400 and \$249.95 for Items 51 and 88. It agreed to Suddath's settlement on Items 49 and 111. It lowered its demand below the amount offered by Suddath on Item 58 to \$10.26. The Marine Corps revised Suddath's liability to \$833.07.

No response was forthcoming, and the Marine Corps set off \$833.07 (plus \$23.22 in interest charges and \$25 administrative fee) in January 1998.

In February 1998, Suddath reclaimed \$470.07. Suddath again offered \$100 as a fair and reasonable settlement for Item 51, but revised its claim from \$149.95 to \$128.10 on Item 88 applying a different theory of recovery. On Item 88, Suddath correctly pointed out that the service member had claimed a repair for Item 88; in fact, the \$249.95 amount was a replacement cost for which it had a right to the salvage plus credit for depreciation. Applying 25 percent for its denied salvage right, plus 35 percent for depreciation to the \$249.95, its liability was \$121.85. The difference between the amount set off (\$249.95) and \$121.85 was \$128.10. Suddath also reclaimed the \$25 administrative cost, plus \$23.22

interest.

In its May 21, 1998 administrative report, the Marine Corps finally agreed with Suddath on Item 51 and agreed with its \$128.10 reclaim on Item 88. However, the Marine Corps objected to any refund of the \$25 administrative fee because Suddath had not responded to its amended rebuttal of August 1997, and found that only part of the interest (\$11.30) should be refunded. The Marine Corps believes that the setoff should have been \$404.97, not \$833.07, and the amount refunded should be \$428.10. The Marine Corps prorated the \$23.22 interest charge and found that Suddath is still liable for \$11.92 in interest. Therefore, the total refund should be \$440.02.

Suddath appeals the \$25 administrative fee and the \$11.92 balance on the interest charge on the basis that both resulted from the fault of the government in not accepting its initial settlement offer. Suddath also points out that it did not know that Item 88 was a replacement and not a repair until after setoff.

Discussion

The dispute here involves the Marine Corps' duty to impose interest and administrative costs under the Federal Claims Collection Act as amended by the Debt Collection Act of 1982, 31 U.S.C. § 3717, and the Federal Claims Collection Standards, 4 C.F.R. ch. II (Parts 101-105). These matters are primarily the responsibility of the Service and not this Office. Generally, the Corps is required by law to collect interest and administrative fees on "delinquent" debts. See 31 U.S.C. § 3717(a)(1), (e); 4 C.F.R. § 102.13(a); and 70 Comp. Gen. 517, 519 (1991). In this instance, Suddath initially offered to settle its liability for \$393.51; the Marine Corps rejected this offer and returned Suddath's check. Suddath finally agreed to settle its liability for \$404.97 (prior to interest and administrative costs). The government realized greater recovery by rejecting Suddath's July 1997 settlement offer and proceeding with collection. The \$25 charge to cover administrative costs was intended to recover the costs associated with processing and handling the debt which became "delinquent," including, presumably, the cost of set off. See 4 C.F.R. § 102.13(d). Thus, there is a reasonable basis for imposing administrative costs and interest on the valid portion of the debt. Accordingly, we affirm the Settlement.

On the other hand, Suddath can reasonably argue that the Marine Corps substantially acceded to its position. In this regard, there appears to be authority under 4 C.F.R. § 102.13(g) which allows the Marine Corps (not our Office) to waive, in whole or in part, the collection of interest, penalties and/or administrative costs assessed under Section 102.13, when a compromise is effected under Part 103, or if the Marine Corps determines under applicable regulations that collection of these charges would be against equity and good conscience or not be in the best interest of the United States. The Marine Corps may review the record as outlined above and exercise its permissive authority under Section 102.13(g) to waive these charges to the extent appropriate.

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: Michael H. Leonard

Michael H. Leonard

Member, Claims Appeals Board .

1. This matter involves Personal Property Government Bill of Lading (PPGBL) VP-897,267; United States Marine Corps Claim No. 22613519564899 (reply 5890, MRP-2, 21 May 98); and carrier claim SML 970146.