

DATE: August 24, 1998

In Re:

National Claims Services, Inc.

on behalf of

Coleman American Moving Services, Inc.

Claimant

)

Claims Case No. 98072215

CLAIMS APPEALS BOARD DECISION

DIGEST

The Service has established a prima facie case for missing Hummel plates that do not appear on the inventory, and were part of one of only two missing Items in a household goods shipment, when it provides evidence of the shipper's ownership, statements from the shipper regarding the proximity of the plates to the object they were presumably packed with, and an estimate of replacement costs.

DECISION

National Claims Services, Inc. (National) appeals the Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA 98042312, dated June 30, 1998, which denied its claim for reimbursement of \$1,619.00 deducted by the Army for transit loss and damage to the household goods shipment of a service member.⁽¹⁾

Background

The record indicates that Coleman American Moving Services, Inc. (Coleman) picked up the member's household goods (HHG) from Georgia and delivered them to North Carolina in August 1994. Item #23 was a carrier-packed 3.0 cubic foot carton labeled "lampshade" on the Descriptive Inventory completed at pick-up. The Joint Statement of Loss or Damage at Delivery, DD Form 1840, reported Item #23 as missing. The Notice of Loss or Damage, DD 1840R, dispatched September 21, 1994, reported that a number of items were damaged and only two Items, Item #23 and Item #125 (a toolbox), were missing. The DD Form 1840R states that Item #23 was missing, including 50 coaster-size plates and five Hummel plates. The plates were not listed on the inventory. The Army paid the member's claim for the missing plates (1989, 1990, 1991, 1992, and 1993 annual Hummel plates) and submitted a liability demand to Coleman for reimbursement, ultimately setting off \$2,577.00 in May 1996. Prior to set off, the Army corresponded with Coleman through Eagle Adjustment Company (Eagle), providing Eagle with the information the Army had received from the shipper concerning the Hummel plates.

Coleman, through National, appealed the set off stating that a prima facie case had not been established for the Hummel plates. National argued that the Hummel plates are not related by nature to lampshades, that Hummel plates would have been listed separately on the inventory, and that there is no statement from the member regarding tender of the Hummel plates. Our Settlement Certificate upheld the set off stating that all elements of a prima facie case were established. Specifically, we stated that original purchase receipts for two of the Hummel plates and photographs showing four of the plates on display in the member's old home were sufficient evidence that the member owned the plates. A statement by the shipper explaining the proximity of the plates to the lampshade prior to packing, plus the DD Forms 1840 and 1840R were evidence of tender. The estimated replacement costs provided by a professional dealer in the merchandise was sufficient evidence of the value of the missing plates. Our Settlement Certificate found that the carrier had not

refuted the prima facie case.

On appeal, National reiterates its argument that tender of the Hummel plates has not been established. National also states that the information the Army used to determine tender, such as the shipper's statement and photos, were never provided to Coleman nor to National and, therefore, cannot be taken into consideration. National also provides a statement from another agency which indicates that the normal practice is to pack lampshades separately from other items. National states that, "It would be negligent of the packer to pack anything other than lampshades with shades, because of the obvious damage it would cause."

Discussion

Initially, we note that the record indicates that in 1995 and again in 1996, the Army did provide to Coleman through its agent, Eagle, copies of: the purchase receipt, the shipper's statement, the shipper's picture, the estimate for the Hummel plates, and the List of Property and Claims Analysis Chart, DD Form 1844. This information was appropriate for consideration in the Settlement Certificate and is appropriate for our consideration in this appeal.

Generally, under federal law, the shipper establishes a prima facie case against a carrier for transit loss or damage 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 is then shifted 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 Company v. Elmore & Stahl, 377 U.S. 134, 138 (1964).

When an item is not listed on the inventory, the shipper must present at least some substantive evidence of his tender of the item to the carrier beyond his claim and the acknowledgment of the penalties for filing a false claim. The member must provide a statement reflecting personal knowledge of the circumstances surrounding the tender of the items to the carrier or other substantive evidence to support the tender. See Allied Freight Forwarding, Inc., B-260695, Sept. 29, 1995; and DOHA Claims Case No. 96070220 (September 5, 1996).

It is our view that the shipper in this case has provided evidence sufficient to establish tender of the Hummel plates. The picture, purchase receipt, statement of the proximity of the plates to the lamp prior to packing, and statement that the shipper checked the house after packing and nothing was left in the house, are sufficient to establish tender of the items. Item #23 was one of only two missing items in the shipment. Under the circumstances in this case, it is not unreasonable to believe that the plates were packed with the lampshade in a 3.0 carton labeled "lampshade". The replacement value of the Hummel plates was reasonably determined from a shipper-supplied estimate from a professional dealer. The Army and our Settlement Certificate correctly determined that a prima facie case was established.

The only evidence National presents to overcome the prima facie case is a statement from another agency to support its statement concerning the normal packing method for lampshades. This statement from an entity that was not a party or observer of this particular shipment is of no consequence in this case. National has not provided evidence sufficient to overcome its burden of proof.

Conclusion

We affirm the Settlement Certificate.

_____/s/_____

Michael D. Hipple

Chairman, Claims Appeals Board

_____/s/_____

Christine M. Kopocis

Member, Claims Appeals Board

 /s/ _____

Jean E. Smallin

Member, Claims Appeals Board

1. This matter involves Personal Property Government Bill of Lading (PPGBL) SP-472,696; Army Claim No. 95-301-0325; and carrier Claim No. E-0098.