

KEYWORD: Transit Damage; prima facie - supporting documentation

DIGEST: The military service or service member sufficiently supports the element of value of the damages in a prima facie case of liability against the carrier by providing an estimate to repair the damage. The carrier cannot overcome such a repair estimate for purposes of a prima facie case of liability against it merely by arguing that the shipper or military service failed to provide the carrier evidence of the replacement cost, purchase price and date of purchase when the carrier did not seek this information during its investigation of the claim and when the carrier did not take advantage of its opportunity to inspect the damage to offer its own evidence of damage. **This decision was affirmed by the DoD Deputy General Counsel (Fiscal) on April 30, 2002.**

CASENO: 98082401

DATE: 09/02/1998

In Re:

Resource Protection

on behalf of

Allied Alliance Forwarding

Claimant

This decision was affirmed by the DoD Deputy General Counsel (Fiscal) on April 30, 2002.

DATE: September 2, 1998

Claims Case No. 98082401

CLAIMS APPEALS BOARD DECISION

DIGEST

The military service or service member sufficiently supports the element of value of the damages in a prima facie case of liability against the carrier by providing an estimate to repair the damage. The carrier cannot overcome such a repair estimate for purposes of a prima facie case of liability against it merely by arguing that the shipper or military service failed to provide the carrier evidence of the replacement cost, purchase price and date of purchase when the carrier did not seek this information during its investigation of the claim and when the carrier did not take advantage of its opportunity to inspect the damage to offer its own evidence of damage.

DECISION

Resource Protection, on behalf of Allied Alliance Forwarding, appeals the Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 98042836, July 30, 1998. In the Settlement Certificate, DOHA affirmed the Army's offset of \$438 for damages to the baffles of a waterbed mattress and to the canvas of an oil painting. ⁽¹⁾

Background

The record indicates that on the day of delivery, October 27, 1994, the service member and carrier's agent noted in a Joint Statement of Loss or Damage at Delivery (DD Form 1840) that the mattress was damaged. In a Notice of Loss and Damage (DD Form 1840) dated November 30, 1994, the member also noted that the canvas of the painting was delivered in a disfigured condition. Both items had been accepted by the carrier without exception. On appeal, Resource Protection argues that a carrier cannot damage the internal baffles of a water bed unless the member, who empties the water from the mattress, fails to drain it properly. Resource Protection also argues that there is no prima facie case of liability against it for damage to the oil painting because the member failed to offer sufficient proof on the amount of damage as required by Item 19(g) of its tariff. The member submitted only a \$280 repair estimate but did not also provide information on the purchase date, the purchase price and a replacement price for the painting.

Discussion

To establish a prima facie case of liability against a carrier for transit damage, the service member, or the military service that succeeded to his claim through subrogation, must establish that he delivered the damaged item to the carrier in good condition, that the carrier delivered it in a damaged condition, and the amount of damages. See Missouri Pacific Railroad Company v. Elmore & Stahl, 377 U.S. 134, 138 (1964).

As the Army noted in its administrative report, the Comptroller General had previously considered and rejected the argument made by Resource Protection on the waterbed mattress. See B-260854, Dec. 20, 1995, involving Cartwright Van Lines, Inc. The Comptroller General pointed out that even if the service member is responsible for draining the water from the mattress, the carrier must show by clear and convincing evidence that the shipper damaged the mattress and that the carrier's origin agents would not have been able to detect such damage by ordinary observation. Resource Protection's argument here is no different than the one it presented in the Cartwright claim; therefore, it is unsupported. See also DOHA Claims Case No. 96070204 (September 5, 1996).

Resource Protection offers no support for its argument that the carrier is not liable for the transit damage to the oil painting because the carrier was not subsequently provided with the purchase date and amount and the replacement cost. In DOHA Claims Case No. 98012618 (February 12, 1998), the decision cited by Resource Protection to support its claim, we found that the member's or government's failure to provide supporting documentation on damage does not invalidate an otherwise prima facie case of carrier liability. ⁽²⁾ In instances like this where the carrier not only failed to inspect the damaged item and offer its own estimate of damages, but also failed to request supporting documentation during the period it had to investigate the claim, a repair estimate is a reasonable basis to support the Army's adjudication of damages for purposes of a prima facie case of liability. Compare DOHA Claims Case No. 98030603 (March 13, 1998); and DOHA Claims Case No. 97122315 (January 12, 1998).

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: Michael H. Leonard

Michael H. Leonard

Member, Claims Appeals Board

1. This matter involves Personal Property Government Bill of Lading SP-619,779; Army Claim 95-051-0479; and carrier file 943073.
2. Resource Protection suggests that our decision in DOHA Claims Case No. 98012618 holds that Item 19g of the commercial tariff "mandates" that the shipper provide proof of value. But, in footnote 6 of that decision, we specifically questioned the applicability of the commercial tariff to Department of Defense personal property shipments. Resource Protection has offered no additional support for its argument here. Moreover, in that decision, we clearly distinguished between the validity of a claim under 49 C.F.R. § 1005.2 and the carrier's right to request supporting documentation under 49 C.F.R. § 1005.4.