DATE: September 30, 1998

In Re:

Resource Protection

on behalf of

Cartwright Van Lines, Inc.

and Allied Van Lines, Inc.

Claimant

)

Claims Case No. 98081904

CLAIMS APPEALS BOARD DECISION

DIGEST

Where the military service determines that the damage noted by the shipper on the Notice of Loss or Damage (DD Form 1840R) is transit-related damage, and the carrier provides no evidence to support its contention that the terms used on the DD Form 1840R describe the same damage noted on the carrier's rider, the carrier remains liable for the damage.

DECISION

Resource Protection, on behalf of Cartwright Van Lines, Inc. (Cartwright) and Allied Van Lines, Inc. (Allied), appeals the Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 98051315, August 6, 1998. In the Settlement Certificate, DOHA affirmed the Army's offset of $1,445 for damages to a German wall schrank.[(1)]

Background

The record indicates that the shipment was picked up and placed into nontemporary storage (NTS) in California in July 1993. The shipment was tendered to Cartwright, which waived the shipment to Allied. Allied completed a rider, picked up the shipment, and delivered it to North Carolina in March 1994. Cartwright was offset $1,770 for loss and damage to the shipment. In dispute on appeal is the carrier's liability for damage to Item #140, a German wall schrank.

The inventory shows Items #138, #139, and #140 as schrank units that were scratched, rubbed, and chipped, with the backs coming off. Items #141 through #147 were listed as schrank parts, doors, shelves, and drawers that were also scratched and rubbed. The rider indicated that the damages to Item #140 included the bottom broken off, chipped bottom corners, cracked hinges on both sides on the bottom, and loose back. On the Notice of Loss or Damage (DD Form 1840R), the shipper indicated that the doors, shelves, and back of Item #140 were broken.

The carrier denied liability on the basis that the rider showed the damage already existed when the carrier picked up the shipment from NTS. The Army's administrative report determined that the damage identified by the shipper was more extensive damage than that listed on the rider. The Army relied on the estimate which stated that the schrank was unrepairable. The Army found that the carrier had not provided evidence that the pre-existing damage noted on the rider was the sole cause of the damage claimed by the shipper. Our Settlement Certificate held that a prima facie case of liability was established by the Army and was not rebutted by the carrier.

On appeal, Resource Protection argues that the shipper-supplied estimate is useless because it makes no reference to

damage and only states that the schrank was not repairable. Resource Protection denies liability, contending that the damage claimed by the shipper existed prior to tender. Resource Protection equates the terms used by the shipper with the damage listed on the rider, specifically: the cracked hinges are consistent with broken doors in that the doors could not be affixed to the unit until the cracked hinges were repaired, broken back is the same damage as loose back, and broken shelves are consistent with a broken bottom which controls the shelves.

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).

Resource Protection provides no evidence to support its contention that the terms used in the DD Form 1840R describe the same damage as that listed on the rider. This Board does not conduct investigations or adversary hearings in adjudicating claims, but relies on the written record presented by the parties. See 4 C.F.R. 31.7; Major Joel L. Bennett, U.S. Army (Ret), B-251159, Mar. 16, 1993. Based on the documents before us, we find that damage to shelves and doors was not mentioned in the inventory or rider, but was claimed by the shipper. In total, there is a reasonable basis for the Army's factual finding of transit-related damage. Compare Andrews Van Lines, Inc., B-270469, May 29, 1996. Having determined that the shipper noted additional damage, it was reasonable for the Army to apply the shipper-supplied estimate as a measure of the replacement costs of the schrank. Resource Protection now questions the adequacy of the estimate and the measure of damages. For example, it critiques the estimate's failure to explain the basis for the conclusion that the schrank was not repairable, but it failed to offer its own evidence of value. The Army noted in its administrative report that more than three years elapsed between the time of the carrier's last correspondence on this matter and the time that Resource Protection raised specific objections. The carrier or its representative should have raised these concerns with the Army long ago. A proper adjudication of factual issues such as this requires a full discovery of the facts and discussion of the issues at a point in time close to the damage. We will not question the Army's use of replacement costs in circumstances such as this where the carrier failed to request support during its claim settlement period and failed to inspect and offer clear and convincing evidence that the Army's application of replacement costs was unreasonable.[(2)] Compare DOHA Claims Case No. 98021008 (February 27, 1998).

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 VP-769,740; Army Claim No. 94-301-1890; Cartwright No. 981319; and Allied No. 359594.

2. We are critical of the carrier's failure to inspect the damages, but we do not suggest that the Army adjudicated this claim in an ideal manner. When substantial damages are involved to items like the one involved here, it would appear to be in the government's best interest to send an inspector to quickly and specifically document the damage. Neither party inspected and documented the condition of the schrank, and for the most part, both sides were content to debate terminonology.