
In Re:

Stevens Worldwide Van Lines, Inc.

Claimant

)

DATE: August 14, 1998

Claims Case No. 98072714

CLAIMS APPEALS BOARD DECISION

DIGEST

A provision in the Joint Memorandum of Understanding on Salvage (MOU) effective April 1, 1989, states that where the carrier has a right to salvage, and it chooses to exercise that right, it "will take possession of salvage items . . . not later than 30 days after receipt of the Government's claims against the carrier." The MOU also specifically mentions a "30-day pick up period." Thus, the plain meaning of the language indicates that the carrier has 30 days to obtain the salvage, and where the Navy fails to offer any legal basis for limiting the pick up time to less than 30 days after the carrier has requested salvage, we must allow the carrier's claim for 25 percent of the depreciated replacement value as provided in the OU. The service member's need to make an immediate second move does not justify a limitation on the 30-day pick up period.

DECISION

Stevens Worldwide Van Lines, Inc. (Stevens), appeals the March 20, 1998, Settlement Certificate of the Defense Office of Hearings and Appeals in DOHA Claim No. 98012017, in which this Office disallowed Stevens' claim for \$1,061.26 representing the salvage value of various household goods that were damaged in transit by Stevens.⁽¹⁾

Background

The record shows that the shipment was picked up at Great Lakes, Illinois, on February 12, 1996, and delivered to Dahlgren, Virginia, on February 23, 1996. The Navy's administrative report states that on February 16, 1996, the moving van carrying the service member's household goods overturned in an accident after the driver fell asleep. The amount of \$5,162.49 was offset for loss and damage to the shipment in November 1997. Stevens is reclaiming \$1,061.26 (25 percent) of the amount offset for Descriptive Inventory Items 10, 12, 13, 14, 16, 17, 18, 20, 21, 22, 26, 28, 34, 253, 269, and 296, on the basis that it was denied its salvage rights under the Joint Military-Industry Memorandum of Understanding (MOU) on Salvage effective April 1, 1989.⁽²⁾

In its appeal, Stevens states that it does not agree with the record provided to this Office. Stevens says that it did not receive a written demand from the Navy (the Navy's claim) until July 23, 1996, and the Navy states that on July 19, 1996, the Navy asserted a subrogated demand against Stevens in the amount of \$5,186.49. The Navy contends that on July 19, 1996, the Navy's Claims Office "also sent an eight page fax to Stevens" concerning this claim, but Stevens does not indicate whether it received any fax from the Navy on July 19, 1996.⁽³⁾ Stevens merely states that the document that it considers to be the "written demand" (29 pages in length) was not received until July 23, 1996.

Stevens contends that it requested salvage on these items on July 26, 1996, and that it did not receive a response from the service member until August 6, 1996. The Navy states that the service member did not receive Stevens' salvage request until August 6, 1996, and that the service member advised Stevens that he had permanent change of station orders and "was packing out" on August 14, 1996, with a departure from Dahlgren on August 16, 1996. Stevens contends that the member's spouse advised the firm that the salvage items were all available but that they had to be

picked up before August 14th.

The Navy relates that Stevens called the Claims Office on August 12, 1996, seeking assistance in obtaining the salvage, because Stevens' agent was unable to pick up the salvage that week due to the agent's busy summer moving schedule. The Navy also states that Stevens wanted the service member to either store the damaged items or transport them to his next duty station. The Navy advised Stevens that the service member was moving and had no place to store the damaged items and that the carrier conducting the next move had refused to transport any of them due to their damaged condition. The Navy contacted Stevens on August 14, 1996, to determine whether it was able to obtain another carrier to pick up the salvage, but Stevens advised that it was unable to do so. Stevens informed the Navy that it had prepared a written offer, which in effect, would waive its salvage rights for a 25 percent reduction in the claim.⁽⁴⁾ The Navy advised Stevens that this was unacceptable. [In its August 12, 1996, letter, Stevens enclosed a check for \$4,101.23 (75 percent of the amount claimed) as final settlement.] During a second conversation on August 14th, the Navy contends that Stevens advised Naval officials that the firm would waive some of its salvage rights because it had pictures depicting the amount of destruction to the salvage items. The Navy directs our attention to the report of Stevens' repair firm in which it had recommended that Stevens "cash out" all of the items on which Stevens had requested salvage because each was broken or crushed beyond salvage.

Stevens contends that a Naval official refused its request to hold the salvage items until August 20th, and that the official offered to find another company that would move the items for Stevens. The Navy did not comment on these items in its administrative report except to note that it offered to make arrangements for the salvage. However, Stevens contends that it is not required by the MOU to "use extraordinary methods to procure salvage which may be costly to the carrier." Stevens suggests that it tried to accommodate claims officials, but it has the unqualified right to have at least 30 days to pick up the salvage. Stevens also contends that its repairer was not asked to determine salvage value, only "repairability."

Discussion

Despite each party's differing emphasis on certain facts, the relevant facts are not difficult to ascertain. The record indicates that Stevens was not given 30 days from its receipt of notification of the claim (whether that date is July 19th or July 23d) to remove the salvage. The Navy wanted the salvage picked up before or by August 14th. The language in the OU states that a carrier which exercises its salvage rights "will take possession of salvage items . . . not later than 30 days after receipt of the government's claim."

Perhaps Stevens sought to take advantage of the situation in which the Navy found itself in order to obtain a 25 percent reduction in its liability. The record clearly indicates that Stevens was at fault in the damage of the goods and that its liability was substantial. The record also indicates that if Stevens had obtained the goods and sold them, it is likely that it would not have realized an amount equal to or greater than 25 percent of the depreciated replacement costs. As indicated above, Stevens' settlement offer was nothing more than an offer to pay the amount it properly owed, minus the percentage specified in the MOU for situations in which a member refuses to turn over the salvage. On the other hand, the MOU generally contemplates that the carrier has up to 30 days to obtain the salvage; it specifically mentions a "30-day pick up period."⁽⁵⁾ Also, as mentioned above, the MOU prescribes liquidated damages of "25 percent of the item's (items') depreciated replacement value" when the carrier's salvage request is not honored. The Navy has not offered any legal basis for denying Stevens 30 days, and the service member's need to make an immediate second move does not justify a limitation on the 30-day pick up period. Accordingly, we find no legal basis to support the Settlement Certificate and allow Stevens' claim for 25 percent of the depreciated replacement value.

Conclusion

We reverse the Settlement Certificate and allow Stevens \$1,061.26 as claimed.

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. The matter involves Personal Property Government Bill of Lading YP-178,381; Navy Claim 643; and Carrier Claim 96-61023.

2. A copy of the MOU is set forth in *Claims Procedures*, Department of the Army Pamphlet 27-162, p. 401 (April 1, 1998).

3. The record did not include a copy of an eight page fax which was sent to Stevens on July 19, 1996.

4. This was not an offer in the nature of a proposal to compromise a *bona fide* dispute between the parties with accord and satisfaction. Under the paragraph (d)(2) of the MOU, "salvage value credited to the carrier will be 25 percent of the item's (items') depreciated replacement value based upon the Joint Military/Industry Depreciation Guide." if the member disposes of the item without giving the carrier its salvage rights.

5. We do not believe that the carrier has absolute discretion over the conditions of the transfer within the 30 days. A carrier's request for the salvage must include reasonable conditions for the transfer of the property (e.g., the time of the turnover is during normal business hours or at a mutually agreeable time).