
In Re:

Resource Protection

on behalf of

American Vanpac

Claimant

)
DATE: September 16, 1998

Claims Case No. 98082503

CLAIMS APPEALS BOARD DECISION

DIGEST

A descriptive inventory noted that a brown German schrank belonging to a service member was composed of "parts" involving 18 pieces. Upon receipt from a non-temporary storage facility, the carrier's representative noted in a rider that a "part" was broken and cracked. After delivery, the member observed that the schrank's "parts" had "several pieces broken and parts are missing to assemble." Without more specific factual evidence from the carrier concerning the condition of the schrank when it received the schrank from the NTS facility, the carrier's rider notation, by itself, does not relieve it from all liability because the rider may reasonably be interpreted to refer only to one broken and cracked part of the schrank.

DECISION

Resource Protection, on behalf of American Vanpac (Vanpac) appeals the August 7, 1998, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 98052001, which, among other things, affirmed the Army's setoff of \$1,300 to recover for transit damage to a brown oak German schrank (Descriptive Inventory Item 63).⁽¹⁾ Resource Protection contends that Vanpac is not liable for any of the damage to the schrank because Vanpac excepted by a rider to the condition of the schrank when it received the schrank from a non-temporary storage (NTS) facility. Resource Protection contends that the Army misinterpreted the wording of Vanpac's rider which, it contends, fully noted all of the damage claimed by the service member.

Background

The sole issue here involves the wording of Vanpac's rider. When the service member gave the schrank to the NTS facility in 1989, the inventory noted: "brown Schrank parts 18 pc CH-7-4 8 5."⁽²⁾ When Item 63 was tendered to Vanpac in October 1992, Vanpac's rider stated: "SCHRUNK PART ON 18 pc-BRO-Z."⁽³⁾ The schrank was delivered on October 24, 1992, and in the Notice of Loss or Damage (DD Form 1840R) dispatched on November 19, 1992, the shipper noted that the "Brown Schrank parts" had "several pieces broken and parts are missing to assemble."

The Army interpreted the broken and cracked part of the schrank referenced in the rider as involving one part, and it allocated liability between the carrier and NTS facility accordingly. Resource Protection argues that the Army had no basis for concluding that the rider referred to only one piece, and argues that in preparing the rider, the driver merely listed the item in the same way as the NTS facility did.

Discussion

The inventory referred to schrank "parts," but the rider referred to a "part." A recognized rule of contract interpretation is that words are to be given their plain and ordinary meaning. See Alaska Airlines, Inc., et al., B-231659.4, Sept. 23, 1991, affirming 69 Comp. Gen. 691 (1990). We cannot ignore the plain meaning of the driver's use of the singular word "part" when the inventory referred to the plural form "parts." Any ambiguity in the driver's notation that cannot be resolved in some other way must be interpreted against the drafter. See Canupp Trucking, Inc., B-261127, Feb. 15, 1996, 96-1 C.P.D. ¶ 137, citing Southern Pac. Transp. Co. v. United States, 596 F.2d 461, 464-465 (Ct.Cl.1979). Vanpac's reliance on the wording of the rider is insufficient, by itself, to relieve it of all liability.

As the Army pointed out in its administrative report, other things in the record support Vanpac's liability. The DD Form 1840R referred to missing parts, not just to broken and cracked ones. It appears that the schrank had to be replaced, at least in part, because the service member was unable to assemble it. The Army reports that Vanpac did not inspect the damaged schrank; therefore, Vanpac missed a valuable opportunity to obtain factual evidence of the condition of the schrank shortly after delivery and to compare that condition against that which the driver observed when he arrived at the NTS facility. In total, there is a reasonable basis for the Army's factual finding that Vanpac's rider pertained to only part of the damage and that there is evidence of additional damage beyond that noted in the rider. Compare Andrews Van Lines, Inc., B-270469, May 29, 1996.

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: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

1. This matter involves Personal Property Government Bill of Lading RP-919,368; Army Claim No. 93-371-0281; and carrier's file 95-0036.
2. "CH" is the code on the Descriptive Inventory for chipped; "7" is rear; "4" is front; "8" is right; and "5" is left.
3. Following the codes on the Descriptive Inventory, "BRO" is broken and "Z" is cracked.