DATE: October 7, 1998

In Re:

Resource Protection

on behalf of

Allied Relocation Services, Inc.

Claimant

)

Claims Case No. 98082504

CLAIMS APPEALS BOARD DECISION

DIGEST

A shipper offered sufficient proof of *prima facie* liability against a carrier for damage to a television when he noted on the DD Form 1840R that the television was not working, and he offers a repair estimate which describes external and internal damage with a conclusion that the cause of damage was excessive external force. The carrier's argument alone that the external damage noted on the repair estimate does not indicate rough handling does not overcome its liability for the damage to the television.

DECISION

Resource Protection, on behalf of Allied Relocation Services, Inc. (Allied), appeals the Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 98061001, August 18, 1998. In the Settlement Certificate, DOHA affirmed the Army's offset of $150 for damages to a 19" television.[(1)]

Background

The record indicates that the shipment was picked up from nontemporary (NTS) storage in Virginia in January 1996 and delivered to Washington in February 1996. The inventory noted that Item #195 was a 19" Gold Star color television, mechanical condition unknown. On the Notice of Loss or Damage (DD Form 1840R) the shipper's notation for Item # 195 indicates "picture on screen does not show just a line". The shipper-supplied repair estimate notes that the television set is beyond economical repair. The estimate states that there was external damage in the form of "scuffs on the cabinet shadow mask in the picture tube". The repairperson concluded that the cause of damage was excessive external force and that there was evidence of shipping damage because the shadow mask in the picture tube received a physical shock.

The Army's administrative report dismissed the carrier's claim that because there was no statement from the service member that the television was working prior to shipment the carrier could not be held liable. The Settlement Certificate affirmed the Army's determination that a *prima facie* case has been established by the shipper and the carrier has not met its burden to show that it was not liable for the damage. The Settlement Certificate noted that the service member is not required to precisely describe the nature of the damage to a particular item on the DD Form 1840R.

On appeal, Resource Protection contends that: the notification on the DD Form 1840R of only internal damage does not invite inspection by the carrier; the term "scuffs", used in the estimate, does not indicate rough handling as determined by the Army, nor were scuffs listed on the List of Property and Claims Analysis Chart (DD Form 1844); the carrier should not be held liable for internal damage, citing our prior decision in DOHA Claims Case No. 96070220 (September 5, 1996).

Discussion

The issue in this case is whether the Army presented enough evidence to establish a *prima facie* case of liability against Allied. 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).

Concerning the contention that a shipper's notation of only internal damage to a television does not invite inspection by the carrier, we note that the *Military-Industry Memorandum of Understanding on Loss and Damage Rules* states that the carrier shall have 45 days from date of delivery or dispatch of the DD 1840R to inspect the shipment for loss and/or transit damage. A carrier's right to inspect is contractual, and in this case, the service member notified the carrier that the television did not work after delivery. This notice of damage was sufficient to alert Allied that the service member intended to make a claim against it and that the carrier should investigate the facts surrounding the loss or damage to the particular item. The notice was legally sufficient. *See* DOHA Claims Case No. 96121606 (June 6, 1997) and cases cited therein. A carrier that chooses not to inspect once notice of loss or damage is provided by the shipper, risks losing an opportunity to gather evidence in its favor.

While we agree that notice on the DD Form 1840R of external damage to the television could have provided more specific information to the carrier, such notice was not legally necessary. The repair estimate indicates that the external damage, "scuffs" on the console, was readily apparent by the repairperson. The Army reasonably determined that the repairperson linked the internal damage to mishandling of the television because of the description of the damage noted on the estimate. The Army's administrative report correctly states that upon receipt of the television from the NTS facility, Allied could have determined by visual inspection whether there was external damage to the cabinet and noted any damage on the inventory or a rider. Such a notation could shift liability from Allied to the warehouse. There is no indication on the inventory of such damage. Resource Protection's argument about the lack of severity of the external damage described on the repair estimate is insufficient alone to overcome a *prima facie* case of liability.

The repair estimate also establishes the fact that the internal damage is consistent with the television having been mishandled. *See Andrews Forwarders, Inc.*, B-257515, Dec. 1, 1994. We find that the Army and the Settlement Certificate correctly found sufficient evidence to establish a *prima facie* case of carrier liability and the carrier has not rebutted that evidence.

The prior decision cited by Resource Protection deals with a different factual situation than is presented in this case. In DOHA Claims Case No. 96070220, there was only internal damage to the shipper's electronic equipment; there was no evidence of external damage. In such cases, we have consistently held that a statement from the shipper as to the item's being in working order when the item was tendered to the carrier combined with a repair estimate describing specific damage and that such damage is consistent with the item having been dropped establish a *prima facie* case of carrier liability. *See Department of the Army - Reconsideration*, B-255777.2, May 9, 1994; DOHA Claims Case No. 98020215 (February 10, 1998). Where there is evidence of transit-related external damage, a statement concerning the working condition of an item prior to tender is not necessary. *See* DOHA Claims Case No. 96100702 (March 13, 1997).

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 VQ-055,663; Army Claim No. 96-011-1126; and carrier file no. 948859.