In Re:

Resource Protection

on behalf of

Allied Freight Forwarding, Inc.

Claimant

)

DATE: October 6, 1998

Claims Case No. 98091417

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 Freight Forwarding, Inc. (Allied), appeals the August 21, 1998, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) with respect to DOHA Claim No. 98062403. DOHA's Settlement Certificate disallowed Allied's claim for a refund of $827.40, affirming the Army's set off for transit loss and damage to the household goods of a service member.(1)

Background

The record shows that the service member tendered his household goods for non-temporary storage (NTS) in Lafayette, Louisiana on December 17, 1986. Allied received them from the NTS facility on July 28, 1992, and delivered them to the service member in Killeen, Texas, on September 2, 1992. On November 12, 1992, the service member dispatched a Notice of Loss or Damage (DD Form 1840R) involving several lost and damaged items, including the two involved in this appeal.

Descriptive Inventory Item 15 was a traditional, rolled-arm blue sofa with carved wood trim which the member stated that he received as a gift in March 1984; and Item 16 was a love seat with wood trim and green upholstery which he received as a gift after purchase at an antique furniture store in August 1985. A November 3, 1992, repair estimate indicated that the fabric on the sofa had dry rot and was un-repairable. The love seat also had to be re-upholstered because of large holes chewed in the fabric and foam on the seat. The cost to re-upholster the sofa was $610, and the cost to re-upholster the love seat was $350. The Army's May 24, 1993, inspection report states that the upholstery on both items was damaged, and the inspector believed that both items had been chewed by rats (rat feces were evident). The Army adjudicated Allied's liability for the sofa at $400, but it later refunded $33.75, reducing Allied's total liability to $366.25. The Army adjudicated Allied's liability for the love seat at $265, but later refunded $46.25, resulting in a liability of $218.75. The corrected liability reflected a 75 percent depreciation rate for the cost of the new fabric.(2) The member provided color photographs of the items which depicted extensive damage (holes) to the fabric. The claim was

dispatched to Allied in November 1994, and there appears to be no substantial response by Allied to the Army's claim until 1997. While the Army inspected the damage, there is no indication that Allied did so. In its administrative report, the Army states that it looked at a 1998 J C Penny catalogue which indicated that a new sofa was $600, and after all depreciation, the depreciated replacement cost would be $408.

Resource Protection argues that the Army failed to establish a *prima facie* case of liability against Allied.[(3)] In its initial appeal to DOHA, Resource Protection pointed out that "the shipper purchased used furniture in 1984," and the List of Property and Claims Analysis Chart (DD Form 1844) does not contain the date of purchase, purchase amount, age of the two items or replacement costs. Resource Protection suggests that the depreciated replacement costs of the two items may be less than the repair costs assessed against Allied, and it suggests that there cannot be a *prima facie* case of liability unless the record contains evidence of the value of the item. Resource Protection did not offer any evidence concerning the value of the damages. In the appeal, Resource Protection protests the use of the J C Penny catalogue because the member did not provide the catalogue, the adjudicator did not see the sofa, and the member failed to describe the sofa in sufficient detail to allow the adjudicator to make a meaningful comparison. In the appeal, Resource Protection also cites our decision in DOHA Claims Case No. 98012618 (February 12, 1998) for the proposition that a member must provide sufficient information that would allow the carrier to adjudicate the claim, and when the member fails to do so, the carrier has no liability even though it does not otherwise dispute that it damaged the item in transit.

Discussion

As Resource Protection suggests, there are three elements on which a property owner must present evidence to establish a *prima facie* case of liability on the part of the carrier: tender of the item to the carrier, delivery in a damaged condition, and the amount of damages. *See Missouri Pacific Railroad Company v. Elmore & Stahl*, 377 U.S. 134, 138 (1964). However, the service member's repair estimate is sufficient in this case concerning the amount of damages.[(4)] Resource Protection has misinterpreted our decision in 98012618. In 98012618, the Air Force claimed a total amount for loss or damage to several descriptive inventory item numbers, but it did not provide specific dollar amounts for each of the lost or damaged items. The fact situation involved an appropriate request by the carrier during the carrier's claim settlement period for supporting information, *i.e.*, for the dollar amounts on each individual line number. The Air Force set off for the damages without providing this supporting information. Several months later, after the carrier initiated an appeal to our predecessor, the Air Force finally provided the support requested. Nevertheless, we still held that the Air Force's failure to provide the requested information did not invalidate an otherwise *prima facie* case of liability against the carrier, although the Air Force's failure to provide supporting documentation prior to offset may have exposed it to a claim for interest by the carrier. The Director of DOHA upheld our decision on reconsideration. *See* DOHA Claims Case No. 98030604 (June 19, 1998).

In 98012618, we specifically distinguished between the failure of a claimant to file a proper claim under 49 C.F.R. § 1005.2 and the failure to provide supporting information under 49 C.F.R. § 1005.4. The Air Force's failure to provide specific dollar amounts on each line number was a failure to provide supporting documentation, not something which invalidated an otherwise valid claim. Under the Code of Federal Regulations, the carrier is not required to pay a claim until it receives the supporting documentation to which it is entitled. This decision did not hold or suggest that a carrier or its agent may invalidate an otherwise *prima facie* case of carrier liability merely by raising questions, approximately 2 years after the carrier's claim settlement period ended, concerning whether the carrier had sufficient support to settle the claim.

In the present claim, there was a specific dollar amount claimed for each of the two damaged items. Also, there was a repair estimate which supported those dollar amounts. Photographic evidence depicting the damages was supplied. The record indicated that the two items were gifts, and this explains why the member may have been unaware of the purchase price. Facially, there is a reasonable basis for the damages. On the other side, Resource Protection wants us to hold that before a *prima facie* case of liability can exist, the claimant must produce a complete damage analysis showing depreciated replacement cost, repair cost, and some form of a depreciation of the original purchase price, in order to prove with exactitude that the least of these values was adjudicated against the carrier. In our view, developing such comparisons was the responsibility of the carrier during its inspection and/or claim investigation. As explained above, during the carrier's claim settlement period, it may seek supporting information from the claimant concerning the value of a damaged item. Allied failed to exercise its right to inspect the damages, and later when it had the duty to investigate

the claim, it failed to request support on valuation. Resource Protection now wants the Army Claims Service and this Office to ignore its client's mistakes and just focus on the Army's perceived mistakes. But we have advised Resource Protection previously that the carrier cannot overcome a repair estimate for purposes of establishing a *prima facie* case of liability 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. *See* DOHA Claims Case No. 98082401 (September 2, 1998) and decisions cited therein.

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 mater involves Personal Property Government Bill of Lading (PPGBL) RP-958,195; Army Claim No. 93-131-2244; and ALFW File No. 814646.

2. See the Army Claims Service's September 12, 1997, letter to Resource Protection.

3. Although the damages to the two items possibly could have taken place in NTS, it appears that Resource Protection was unable to provide a legible copy of the rider that Allied created when it received the shipment.

4. We will not address the Army Claims Service's attempt to determine replacement costs for the sofa because we do not need to consider it to reach a decision here.