
In Re:

American Van Services, Inc.

Claimant

)

DATE: November 17, 1998

Claims Case No. 98092829

CLAIMS APPEALS BOARD DECISION

DIGESTS

1. This Office will not question an agency's calculation of the value of the damages to items in the shipment of a service member's household goods unless the carrier presents clear and convincing evidence that the agency acted unreasonably. The Navy's acceleration of depreciation of two lamps to reflect the preexisting damage (PED) noted by the carrier on the descriptive inventory is not unreasonable unless the carrier provides additional evidence demonstrating that the applied depreciation was clearly unreasonable. The inventory description, by itself, does not justify the 75 percent (maximum) depreciation rate advocated by the carrier.

2. A carrier is not liable for internal damage to a stereo receiver when there is no evidence of external damage to the receiver or the carton containing it and the member fails to provide a statement specifically describing that it was in proper working order prior to tender to the carrier.

DECISION

American Van Services, Inc. (American), appeals the May 5, 1998, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claims Case No. 98030221, which affirmed the Navy's set off of \$618.66 for transit loss and damage (including \$45.60 for unearned freight) to the household shipment of a service member. [\(U\)](#)

Background

The record indicates that the shipment was picked up in Alameda, California, on March 22-23, 1994, and delivered in Wisconsin on April 6, 1994. On the day of delivery, the carrier's representative and the service member reported in the Joint Statement of Loss and Damage at Delivery (DD Form 1840) that an axe was missing and that some cartons were crushed. The DD Form 1840R, dispatched on April 28, 1994, listed additional missing and damaged items, including those in dispute here.

American disputes the 14 percent depreciation rate that the Navy had assigned to two lamps (Descriptive Inventory Items G-27 and O-12) which were purchased in December 1993 for a total of \$159.98. They were tendered in a scratched, rubbed, chipped, and loose condition, and Item O-12 had a missing top. According to the List of Property and Claims Analysis Chart (DD Form 1844), the Navy applied a rate of depreciation 10 percent above the rate usually applied for normal wear and tear to reflect this pre-existing damage (PED). American contends that the proper rate of depreciation is the maximum rate of depreciation, *i.e.*, 75 percent.

American also contends that it is not liable for the broken figurine claimed to have been packed in the fish tank (Item G-74) because there is no evidence of tender.

The carrier also contends that it is not liable for the broken Technique SA 150 stereo receiver (Item G-73) because the model was last manufactured in 1987; it was not shown to have been in proper working order prior to tender; and there was no evidence of external damage to either the receiver itself or to the carton which contained it. The record contains

an estimate acknowledging that there was no external damage, but that the unit was found with components that were physically broken in a manner that would not have been caused by normal operation. The member did not provide a statement specifically describing the working condition of the stereo receiver prior to tender, but the DD Form 1844 indicates that the receiver "started smoking when plugged in."

American denies liability of \$408.30 for replacement of the right-hand gas tank with a broken mounting bracket and a broken brake light and supporting brackets on a motorcycle (O-174) because new brackets could have been welded on the tank for about \$50.

Finally, American disputes its liability for any unearned freight because the weights of missing or destroyed items were not provided on the DD Form 1844. American points out that the figurine could not have weighed 60 pounds and that the wood cassette tape holder (Item G-71) could not have weighed 35 pounds.

Discussion

To establish a *prima facie* case of liability for transit loss or damage, the service member, or the military service that succeeded to the member's claim through subrogation, must establish that he delivered the item to the carrier in good condition, that it was not delivered or it was delivered in a damaged condition, and the amount of damages. *See Missouri Pacific Railroad Co. v. Elmore & Stahl*, 377 U.S. 134, 138 (1964).

American did not offer any evidence supporting its position that the two lamps should have been fully depreciated because they had PED. The Navy did reflect the PED in its adjudication of the claim. The Defense Office of Hearings and Appeals will not question an agency's calculation of the value of the damages to items in the shipment of a service member's household goods unless the carrier presents clear and convincing evidence that the agency acted unreasonably. Mere disagreement with the Navy's determination does not meet the carrier's burden of proof. *See* DOHA Claims Case No. 96070221 (October 7, 1996); and 96070206 (September 5, 1996). Similarly, in the absence of a carrier-prepared repair estimate, we will not accept speculation by American that the member's damages to the motorcycle could have been repaired by \$50 worth of spot welding.

The delivery of the broken figurine is evidence that the claimant owned and tendered a figurine to the carrier. *See Military-Industry Memorandum of Understanding on Loss and Damage Rules*, Note 1. American remains liable for the damage to this item.

Generally, a carrier accepts a shipment only in apparent good order. *See Paul Arpin Van Lines, Inc.*, B-193182, June 16, 1981, 81-1 C.P.D. 492. Thus, a carrier is not expected to test an appliance to determine if pre-existing damage exists in its operation. *See* DOHA Claims Case No. 96100702 (March 13, 1997); and *Interstate Van Lines, Inc.*, B-197911.5, June 22, 1989. On the other hand, the Comptroller General has held that when the nature of the internal damage is consistent with its having been mishandled or dropped and the shipper states the item was in proper working order at the time of tender, the mere lack of external damage is not sufficient proof to rebut the carrier's liability. *See Senate Forwarding, Inc.*, B-256695, Dec. 8, 1994; and *Department of the Army*, B-255777.2, May 9, 1994. Even when there is no visible external damage, we have held a carrier liable when the member provides a written statement specifically describing that the appliance functioned normally up to the time of tender and the claimant also submits a repair estimate which describes some damage to an internal component which is consistent with mishandling, *e.g.*, physical damage to an otherwise sturdy component like a circuit board or chassis. While this type of damage is involved here, the member did not provide a written statement which described the good working order of the stereo receiver prior to tender. Accordingly, because this record still does not include such a statement by the member, we find for American on this item. *See* DOHA Claims Case Nos. 98082504 (October 7, 1998); 98041507 (April 24, 1998); and 96070220 (September 5, 1996).

In response to our request for additional development, the Navy revised its weight estimates for the missing and destroyed items. The Navy found that the unearned freight charges should be assessed for 38 pounds, resulting in a revised liability of \$12.37 in lieu of \$45.60, for a refund of \$33.44 (Including \$0.21 for Item G-71).⁽²⁾ These weight estimates appear reasonable, and we will not review this issue further.

Conclusion

We modify the Settlement to allow American an additional \$33.44 for unearned freight and \$100 for the stereo receiver; otherwise 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

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Member, Claims Appeals Board

1. This matter involves Personal Property Government Bill of Lading (PPGBL) SP-416,653; Navy Claim No. DB-94-415 (Naval Legal Services Office North Central Detachment).
2. The Navy calculated the combined weight of both floor lamps at 26 pounds; the figurine and tape holder at one pound each; and the axe and weight bar at 5 pounds each.