
In Re:

Resource Protection

on behalf of

Aalco Forwarding, Inc.

Claimant

)

DATE: October 19, 1998

Claims Case No. 98090308

CLAIMS APPEALS BOARD DECISION

DIGEST

A government inspector's opinion in a Government Inspection Report (DD Form 1841) concerning the cause of loss and damage to a household goods shipment may be considered to the extent that it is trustworthy and probative. The opinion of a government inspector that all loss and damage had taken place during non-temporary storage (NTS) cannot prevail against an otherwise *prima facie* case of liability against the carrier when the inspector was not present at the transfer of the shipment from the NTS facility to the carrier, it is equally possible that the loss or damage may have been incurred either in NTS or in the carrier's possession, and the carrier failed to take exception in its rider to the condition of specific items.

DECISION

Resource Protection, on behalf of Aalco Forwarding, Inc. (Aalco), appeals the August 17, 1998, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA), which affirmed, with some modifications, the Navy's set off of \$8,163.05 for transit loss and damage (plus an additional \$443.42 for unearned freight) to the household shipment of a service member. [\(1\)](#)

Background

The record indicates that the shipment was picked up in Virginia on April 23, 1992, and placed into non-temporary storage (NTS). On September 18, 1992, Aalco picked up the shipment from the NTS facility in Virginia, and delivered it to the service member in Arizona on September 24, 1992. When Aalco obtained the shipment at the NTS facility, it excepted to the condition of several items in the Descriptive Inventory, noting missing or damaged property or open cartons. At delivery, the member and Aalco's agent prepared a Joint Statement of Loss or Damage at Delivery (DD Form 1840) and on October 19, 1992, the Navy dispatched a Notice of Loss or Damage (DD Form 1840R) of six pages noting additional damage.

Generally, Aalco was charged with the loss or damage to those items on which it failed to make adequate exceptions by its rider. But Resource Protection argues that Aalco is not liable for any of the lost or damaged items because the government inspector's official report overall overcame an otherwise *prima facie* case of liability against the carrier on any individual item. On the day of delivery, a government inspector from Luke Air Force Base inspected the member's shipment for purposes of quality assurance under the Military Traffic Management command's personal property program. In the Government Inspection Report (DD Form 1841), the inspector noted that six specified items were missing and five specified cartons had been opened. For 31 other unspecified items, the inspector found that they had been damaged prior to loading. The inspector indicated that two sofas and one love seat were dirty; one sofa had missing legs; a hose reel handle was broken; a china hutch light was broken; and the legs of an end table were broken.

He also stated:

"stero [sic] cartons arrived without the item's shipped in them. Missing items were missing at the warehouse and were noted on the drivers rider. . . noted prior to truck being loaded. The OS furniture was dirty and walked on from what is apparent here the items that are missing and damaged were lost or damaged [sic] between the members [sic] previous residence and loading on the truck for the direct delivery . . ."

The inspector also noted that the overstuffed furniture was not wrapped in the warehouse; that adequate care was not taken to prevent damage to other furniture; and that care was not taken to prevent loss of items.

In its administrative report, the Naval Legal Services Office Southwest argues that the carrier failed to document the inspector's qualifications, and that the inspector's comments cannot outweigh the rider. The Navy contends that only the loss and damage noted on the rider is attributable to the NTS facility. The Navy believes that the inspector's comments should be confined to the damages noted on the date of delivery and not to additional loss and damage later noted on the DD Form 1840R. The Navy notes that because the inspector was not present at the NTS facility and cannot validate existing conditions when Aalco obtained the shipment, his comments concerning the lack of wrapping and care at the warehouse are not valid. The Navy points out that the rider did not address any damage to the upholstered furniture at the time of pick-up at the NTS facility; therefore, this is proof that the claimed damage did not exist at that time. The carrier's failure to note damage to such furniture on the rider is contrary to the inspector's assumptions. The Navy argues that it is possible that the wrappings on the furniture could have been removed during the 13 days that Aalco had possession of the shipment just as much as it is possible that the NTS facility removed them.⁽²⁾

Discussion

It is not clear whether the carrier is arguing that the inspector's report invalidates an otherwise *prima facie* case of liability or that the inspector's report overcomes a *prima facie* case. As a practical matter, we do not believe it makes any difference. There is sufficient evidence on the record to establish a *prima facie* case of liability against Aalco. 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). Moreover, when goods pass through the custody of several bailees it is a presumption of the common law that the loss or damage occurred in the hands of the last bailee. *See McNamara-Lunz Vans and Warehouses, Inc.*, 57 Comp. Gen. 415, 417-418 (1978). Thus, for example, Aalco was held liable for the loss of items like Item 143, a Harrison chime wall clock (\$103.20 liability), even though the clock was packed in a carton which externally appeared undisturbed and which was not listed on the rider.

We turn next to the issue of Resource Protection's use of the inspector's report. There is existing authority concerning the role of the Government Inspection Report (DD Form 1841) and the inspector. Paragraph 10001d of the Department of Defense *Personal Property Traffic Management Regulation*, DoD 4500.34-R (October 1991) generally provides that upon receipt of a report of damage to a personal property shipment, the Personal Property Shipping Office (PPSO) "shall conduct an inspection of the property and prepare a DD Form 1841." The report "shall describe the nature and extent of the damage and present the PPSO's explanation of the probable cause of the damage." The Federal courts have noted the significance of the report as an exception to the hearsay rule. In *Air Land Forwarders, Inc. v. United States*, 38 Fed. Cl. 547, 555 (1997), the Court noted that Government Inspection Reports involved in that case conformed to Rule 803(8)(c) of the Federal Rules of Evidence because they were final, written by Army or Air Force personnel, were based on first-hand inspections of articles and packing containers following shipment, and were authorized by regulation. The Court found that the reports were trustworthy because the inspectors certified to their accuracy, included photographs to support the findings or were timely prepared. To the extent that one report was not timely, the Court concluded that this affected the weight and not admissibility of the report. The Court also noted that conclusions and opinion are admissible with other portions of the report, provided that the report is based on a factual investigation and is trustworthy. The Comptroller General, as our predecessor in settling claims of this type, also placed significant weight on such inspections. *See Paul Arpin Van Lines, Inc.*, B-193182, March 18, 1981; and *McNamara-Lunz, supra*.

In view of these authorities, the Navy incorrectly concluded that the carrier must first demonstrate the qualification of

the government's inspector before the carrier can offer the DD Form 1841 into evidence. The Navy could have offered evidence demonstrating the inspector's lack of expertise, and we may have considered such evidence in deciding the weight to be given to the report. The Navy did not present such evidence here. However, there is merit to other aspects of the Navy's argument concerning the weight to be given to the report, and that weight should be considered in the context of specific items of loss or damage.

The items of overstuffed furniture (Item 209, a love seat and Item 212, a sofa) are illustrative of the problem. Aalco's rider failed to mention these items. There were dirt and grease marks on the love seat fabric prior to NTS and the fabric of the sofa was reported as dirty. Aalco delivered both items in a significantly worse condition. The DD Form 1840R noted that the love seat had "holes in fabric, dirty/greasy, water damage and wrong legs" while the sofa was "dirty/greasy with greasy footprints on fabric and water damage." The Navy assessed \$722.50 against Aalco for re-upholstering the sofa and \$75 to re-upholster a matching love seat. Aalco examined the shipment to such an extent that it noted 41 items on its rider, and there is no reasonable explanation for its failure to notice the additional damages to the love seat and sofa, particularly if the two items had not been wrapped for warehouse storage. The inspector did not observe the transfer of the shipment from the NTS facility to Aalco, and in light of Aalco's self-interest in creating the rider, we believe that the absence of a notation about these two items is more probative in this case than the inspector's opinion on where the damage occurred. The inspector did not explain why he believed that the loss and damage occurred at the NTS facility, rather than during the carrier's possession. It is equally possible that the damage to the love seat and sofa may have occurred either at the NTS facility or in the carrier's possession.

Other missing items, like the Toshiba color television, likewise invite a comparison between the lack of a rider entry involving the missing item and the opinion of an inspector who was not present when the goods were transferred between the NTS facility and Aalco.

Therefore, we cannot agree that the inspector's overall opinion negates Aalco's liability for any specific item.

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 (PPGBL) VP-198,854; Navy Claim No. PCA 93-0382 (Naval Legal Services Office Southwest); and carrier file 349646.

2. The DD Form 1844 indicates that pick-up at NTS was on September 11, 1992, but the rider indicates that pick-up at NTS was on September 18, 1992.