
In Re:

National Claims Services, Inc.

on behalf of

Corsair Forwarding Company, Inc.

Claimant

)

DATE: February 23, 1999

Claims Case No. 99010414

CLAIMS APPEALS BOARD DECISION

DIGEST

The Military-Industry Memorandum of Understanding on Loss and Damage Rules (MOU) effective January 1, 1992, provides that for loss or transit damage not reported at delivery, "the carrier shall accept written documentation on the DD Form 1840R, dispatched within 75 calendar days of delivery to the address listed in block 9 on the DD Form 1840, as overcoming the presumption of correctness of the delivery receipt." When the military service admits that it did not dispatch the *Notice of Loss or Damage*, DD Form 1840R, to the address listed in block 9 of the DD Form 1840, the service has not complied with contractual requirements for adequate notice.

DECISION

National Claims Services, Inc. (NCSI), on behalf of Corsair Forwarding Company, Inc. (Corsair), appeals the December 9, 1998, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 98110218, which affirmed the Air Force's set-off of \$1,011.89 initiated in September 1997 for transit loss and damage to the household shipment of a service member.⁽¹⁾

Background

The record indicates that Corsair's agent Selective Moving & Storage picked up the shipment in Virginia on June 28, 1994, and that another agent, Gilmore Moving & Storage, delivered it in Florida on August 12, 1994. NCSI raises only one issue in this appeal; namely, whether the *Notice of Loss or Damage* (DD Form 1840R) dispatched to Gilmore on October 11, 1994, was timely and adequate under the terms of the *Military-Industry Memorandum of Understanding on Loss and Damage Rules* (MOU), effective January 1, 1992. The MOU states that for loss or transit damage not reported at delivery, "the carrier shall accept written documentation on the DD Form 1840R, dispatched within 75 calendar days of delivery to the address listed in block 9 on the DD Form 1840, as overcoming the presumption of correctness of the delivery receipt." The Air Force admits that the DD Form 1840R was forwarded inadvertently to Gilmore, and not to the addressee in block 9 of the DD Form 1840.⁽²⁾ While the Air Force dispatched a notice within 75 days, NCSI contends that this was inadequate because it was not dispatched to the address required in the MOU, which is part of the contractual relationship between the government and the industry. The Air Force insists that nothing in the MOU states that the DD Form 1840R must be dispatched only to the address in block 9, and because the agent acts for the carrier, the Air Force suggests that once the agent has knowledge of the additional loss or damage, it is as if the carrier has the same knowledge.

Discussion

Under the MOU, when the loss or damage is not reported at delivery, a notice of later discovered loss or damage (usually the DD Form 1840R) dispatched to the carrier not later than 75 days following delivery will be accepted by the carrier as overcoming the presumption of the correctness of the delivery receipt. *See* DOHA Claims Case No. 96070217 (November 19, 1996). Both this Office and the Comptroller General, our predecessor in settling claims of this nature, have allowed the claimant and the agency reasonable flexibility in meeting the MOU requirements.

In one line of decisions, we found that the government and service member substantially complied with contractual requirements, and notice was deemed to be adequate, even though the agency dispatched the incorrect form or a different form than the DD Form 1840R. Additional loss or damage reported on the *Joint Statement of Loss or Damage at Delivery* (DD Form 1840), instead of the DD Form 1840R, is adequate. *See, for example,* DOHA Claims Case No. 96070216 (November 5, 1996). The Comptroller General made a similar finding. *See American International Moving, Corp.*, B-247576, Sept. 2, 1992. The Comptroller General also found that notice dispatched within 75 days using a *Government Inspection Report* (DD Form 1841), the *Demand on Carrier or Contractor* (DD Form 1843) or a *List of Property and Claims Analysis Chart* (DD Form 1844) was adequate. *See Lift Forwarders, Inc.*, B-249479, Oct. 19, 1992; and *Sherwood Van Lines*, 67 Comp. Gen. 211 (1988). In this series of decisions, even though an incorrect form was used, the notice was still sufficient to timely alert the carrier that the claimant would hold the carrier liable for some damage and that the carrier should investigate. *See* DOHA Claims Case No. 97122314 (February 23, 1998).

In a second line of decisions, we have had to decide whether there was evidence of agency compliance with the MOU. For example, we have held that a clear failure to postmark the envelope containing the DD Form 1840R until after the 75th day does not defeat notice in view of other evidence of "dispatch" from the control of claim officials by the 75th day. *See* DOHA Claims Case No. 96070208 (January 27, 1997). Also, we have held that the DD Form 1840R was dispatched to the carrier even though the carrier address block (block 3) of the DD Form 1840R was blank when there was evidence on the face of the form (dispatch date) that it was dispatched. *See* DOHA Claims Case No. 96070217 (November 19, 1996).

The facts in the current claim are distinguishable. It is not disputed that the notice here was dispatched to an address other than the one in block 9 of the DD Form 1840. It is reasonable to conclude that the form of the notice is immaterial; if we required the use of the DD Form 1840R in all cases, it would amount to form over substance. But it is not reasonable to draw such a conclusion with respect to the address. Whatever form is used, dispatching it to an address contemplated by the carrier is interrelated with the timeliness of the notice. A form dispatched to other than the address provided by the carrier could cause a delay such that the notice would be untimely. It is therefore apparent that timely notice depends on the form being dispatched to the address provided by the carrier in block 9.

More importantly, as NCSI points out, the history of this provision in the MOU indicates an intentional change in the language between the current version and the wording in the preceding 1984 version. The 1984 version was silent with respect to the address to which the agency would dispatch the DD Form 1840-1 (the predecessor to the DD Form 1840R). On the other hand, the 1992 version specifically qualified carrier acceptance of written documentation on the DD Form 1840R to overcome presumption of correctness of the delivery receipt to that "dispatched within 75 calendar days of delivery to the address listed in block 9 on the DD Form 1840."⁽³⁾ The Air Force insists that nothing in the MOU states that the DD Form 1840R must be dispatched only to the address in block 9. We appreciate the Air Force's prompt responses to our requests for supplementary administrative reports, but despite our specific requests for such information, the Air Force offers no explanation for the change in the language between the 1984 and 1992 versions of the MOU and the reason for it. A reasonable interpretation of the change in the MOU's language supports NCSI's position.

Conclusion

We reverse 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-953,956; Air Force Claim No. Herlburt Field AFB 95-306; and NCSI Claim X-3971.

2. The DD Form 1840R addressee block is almost unintelligible, but it appears to be Gilmore's post office box in Fort Walton Beach. However, the address in block 9 of the DD Form 1840 was: "1225 Gardner Rd., Broadview, ILL 60153," which is also NCSI's address.

3. NCSI's representative also contends that he participated in the negotiations leading to the 1992 MOU. In support of his argument that the address is just as material as the 75 day time limit for dispatch, he explained that the industry had proposed a "postmarked" notice to the home office of the carrier within a shorter period of time, but he says that the military service representatives rejected that proposal and offered the current language which, among other things, places the burden of obtaining correct addresses on the carrier. An Air Force representative who also states he participated in the negotiations contends that the MOU does not have the meaning claimed by NCSI.