In Re:

Stevens Forwarders, Inc.

Claimant

)

DATE: July 23, 1999

Claims Case No. 99061001

CLAIMS APPEALS BOARD DECISION

DIGEST

A carrier cannot limit its liability for all high value personal property in a shipment of a service member's household goods moving under the provisions of the Military Traffic Management Command's (MTMC) Domestic Personal Property Rate Solicitation D-2 to an amount lower than that provided in the Solicitation merely by obtaining an agreement from the member that the member's failure to declare an item exceeding a certain value will limit the member's recovery to a certain amount for that item.

DECISION

On June 7, 1999, the Air Force Legal Services Agency (AFLSA) appealed the May 5, 1998, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 98020435. In the Settlement Certificate, DOHA limited the liability of Stevens Forwarders, Inc. (Stevens) for damage to two items in a shipment of a service member's household goods[(1)] to $100 per pound per item because the member had signed the carrier's commercial "High Value Inventory" (Form 1181-S) on which he agreed to that limitation if he failed to specifically declare any item valued at more than $100 per pound; these two items were not listed. The Air Force contends that such a limitation is inapplicable, and the only applicable released valuation is $1.25 multiplied by the weight in pounds of the entire shipment.

Background

The record shows that the shipment was picked up in Montgomery, Alabama, on July 7, 1993, and was delivered to Minot, North Dakota, on July 27, 1993. On September 17, 1993, the shipper dispatched a Notice of Loss or Damage (DD Form 1840R) reporting damage to several additional items including Descriptive Inventory Items 117 and 118, both described as "broken." The Descriptive Inventory identified both items as carrier packed 1.5 cubic foot cartons containing Indian Pots.

The member states that the pots were made by the Zuni and Acoma Pueblo Indians of New Mexico, were purchased by the member's wife's aunt in the 1930's, and were given to the member's wife by her uncle after the aunt's death in 1973. Sales receipts are non-existent and sales prices are unknown. The member was unable to find a competent appraiser for the pots in North Dakota, and was referred to the appraiser in Colorado who had appraised the collection of Indian art in the aunt's estate at the time of her death. The member sent detailed color photographs to the appraiser in Colorado. In his February 6, 1995, letter, the appraiser identified Item 117 as an Acoma water jar, c. 1920-1940, worth approximately $1,200 to $1,500 unbroken and $400-$600 broken and repaired. The repair cost was estimated to be $400. Item 118 was identified as a Zuni water jar, c. 1900-1930, worth approximately $4,500-$5,500 unbroken, $1,000-$1,200 broken and repaired with a repair estimate at about $600. The appraiser described the market for broken Indian pots as "very marginal," but he also advised AFLSA that comparable Indian pots sell for $100-$1,000 in the Santa Fe, New Mexico area. On arch 10, 1995, the member filed his claim against the Air Force which included $6,200 for the two pots, but the Air Force allowed the member only $1,000 for each pot based on repairs and a loss of value. This amount was the

maximum limit for payment of claims involving art objects under service regulations. The claim against the carrier dispatched on May 3, 1995, included only $1,000 for each pot.

In its appeal to DOHA, Stevens had pointed out that at the time of tender the member failed to designate these two items as valuable artifacts requiring special handling. When the carrier picked up the shipment, it required the member to specifically list on its standard "High Value Inventory" (Form 1181-S), which it uses in commercial shipments, all items worth more than $100 per pound per article. This form specifically provided, among other things, that if the article is not listed on this form, liability for loss or damage will be limited to no more than $100 per pound per article. The member did not list Items 117 and 118 on the Form 1181-S. Stevens noted that there was no pre-tender appraisal and contends that the member failed to provide a statement explaining the basis of valuation. Stevens urged us to disregard the appraiser's estimate because the appraiser did not personally inspect the two items.(2) Stevens requests a refund of $1,800 of the $2,000 set off by the Air Force for the two items and contends that the shipper did not present sufficient evidence to establish a *prima facie* case of liability against it.

The PPGBL indicates that the net weight of the shipment was 17,650 pounds, and the shipment was specifically released at "VALUATION: 22100.00" or $22,100 (which is $1.25 per pound). No other valuation is noted on the PPGBL. The tariff or rate authority cited in block 31 of the PPGBL was "RS D-2 - 100%," which suggests that the parties anticipated that the Military Traffic anagement Command's (MTMC) Domestic Personal Property Rate Solicitation D-2 (the Solicitation) would apply to the entire shipment.

Discussion

For reasons explained below, we agree with the Air Force that the Solicitation applied to this shipment. We construe its released valuation provisions to apply to the exclusion of Stevens' agreement from the member to a released valuation at $100 per pound per article maximum liability for any item exceeding a value of $100 per pound which the member failed to list on the High Value Inventory. However, even if Stevens' limitation had applied, we are not sure how much this would change the actual dollar outcome here. The Settlement Certificate noted that there is no record of the weight of each pot. Our adjudicators determined from a studio that collects similar objects that an 11" diameter Acoma water jar in their stock weighs 6.5 pounds and that the typical weight range for Pueblo Indian water jars is 4.5 to 9 pounds. To the extent that these weights may have been relevant, they suggest a maximum valuation higher than the amount that Stevens had offered in settlement, and it explains Stevens' emphasis on other issues, such as the efficacy of the repair estimate, in its submission to DOHA.

The exclusive application of the Solicitation's released valuation provisions is apparent in a survey of its key provisions. The Air Force refers us to Item 5, Section 1 of the Solicitation. Section 1 which states that the "Rates and charges in this Rate Solicitation apply to a released value of $1.25 times the net weight of the shipment (in pounds) unless otherwise stated on PPGBL." The PPGBL did not address the released value of high value articles that were not declared on the "High Value Inventory,"and merely states that the entire shipment (without exception) is released to the specific $22,100 amount. In addition, Section 2a states that the carrier's legal liability for loss or damage to goods is limited to the amount declared by the shipper times the net weight of the shipment. Item 17, Section 2 states that the carrier's maximum liability is $1.25 times the net weight (in pounds) of the shipment for any lost or damaged article unless the shipment is released at either a lump sum value declared by the shipper or an amount greater than $1.25 times the net weight, whichever is greater. Here, the lump sum equates to $1.25 per pound times the net weight of the shipment, and no exceptions were noted.

In its September 6, 1996, correspondence to the Air Force Stevens argued that these pots were articles of "extraordinary or unusual value." And, our review of the Solicitation indicates in Item 5, Section 2f that "the carrier shall be liable, only to the extent of its stated liability, for small items of extraordinary value such as expensive cameras, watches, jewelry, and furs." However, the terms "extraordinary value" and "unusual value" are terms of art in the transportation industry. These terms had been defined by the former Interstate Commerce Commission and the courts, and in applying them, the Comptroller General found that antique porcelains, even those of high value, do not fit within these terms. *See* 53 Comp. Gen. 61 (1973), *aff'd* B-178161, Apr. 15, 1974. The pots involved in this claim appear to be similar to such antique porcelains.

Items 117 and 118 were subject to the $22,100 of released valuation on the entire shipment. The Air Force acted reasonably in adjudicating Stevens refund claim. The local Claims Judge Advocate was concerned about the member's failure to advise Stevens about the nature of Items 117 and 118. The record indicates that other claims officials were concerned about the member's failure to obtain a pre-shipment appraisal. AFLSA also was concerned about the limited information provided by the member. This explains, in part, the Air Force's refusal to waive the $1,000 maximum per item limit on payment of claims filed by members against the military service for a loss/damage to art objects.[(3)] The Air Force limited its subrogation claim against Stevens to those limits.

Conclusion

The Air Force's adjudication is a reasonable basis for settlement, and we modify our settlement accordingly.

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 shipment involved Personal Property Government Bill of Lading (PPGBL) SP-197655; Air Force Claim # Minot AFB 95-311; and Stevens' file 93-68556.

2. In a memorandum to Stevens dated November 12, 1996, the Air Force pointed out to Stevens that the appraiser had previously viewed all of the items in the aunt's collection. The record also indicates that Air Force officials discussed this claim with the appraiser and noted that he had about 25 years of experience with the type of art involved here.

3. *See* Air Force Instruction 51-502, *Personnel and Government Recovery Claims*, paragraph 2.45.1.1 (July 25, 1994). The shipment moved when the previous Air Force regulation was effective, Air Force Regulation 112-1, *Claims and Tort Litigation* (October 31, 1989), and Table 6-1 set forth maximum allowances for each type of item.