
In Re:

Air Land Forwarders, Inc.

Claimant

)

DATE: July 29, 1999

Claims Case No. 99071408

CLAIMS APPEALS BOARD DECISION

DIGEST

Under the 1992 version of the *Military-Industry Memorandum of Understanding on Loss and Damage Rules* (MOU) the service or service member must dispatch the *Notice of Loss or Damage* (DD Form 1840R) noting additional loss or damage to the carrier at the address appearing in block 9 of the *Joint Statement of Loss or Damage at Delivery* (DD Form 1840), the reverse side of the DD Form 1840R. When the carrier clearly designates an address in block 9 and the service dispatches the DD Form 1840R to a different address, the service fails to comply with the requirements of the MOU. However, where there is an inference that the proper carrier officials received notice of the additional loss or damage despite the service's failure to properly dispatch the DD Form 1840R, the service's breach of the MOU's requirements is harmless error.

DECISION

Air Land Forwarders, Inc. (AVLN) appeals the June 21, 1999, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 99060705 for the refund of \$175 set off by the Army to recover for transit loss and damage in connection with the shipment of a service member's household goods.⁽¹⁾

Background

The record indicates that the shipment was picked up in Tacoma, Washington, on March 31, 1997, and was delivered to the service member in Mechanicsburg, Pennsylvania, on July 3, 1997. The shipper and the carrier's representative did not note any damage on the *Joint Statement of Loss or Damage at Delivery* (DD Form 1840) on the day of delivery. The DD Form 1840 listed "AVATAR Van Lines, 815 S. Main Street, Jacksonville, FL 32207" as the carrier/contractor in block 9 as the name and address of the carrier/contractor. This DD Form 1840 was signed by the service member and the carrier's representative. The Army dispatched a *Notice of Loss or Damage* (DD Form 1840R) noting additional loss and damage to "AVATAR Van Lines, Inc., 5266 Highway Avenue, Jacksonville, FL 32254" on July 8, 1997, as noted in blocks 3a and 3b of the DD Form 1840R. A *Demand on Carrier/Contractor* (DD Form 1843) and other documents associated with the claim were dispatched to the carrier at the address listed in block 3a of the DD Form 1840R on arch 18, 1998. In a letter dated June 30, 1998, AVLN contends that it had no notice of the loss and damage noted on the DD Form 1840R until it received the March 18, 1998, demand on March 24, 1998.

AVLN argues that it is not liable for any loss or damage to the items listed on the *Notice of Loss or Damage* that was dispatched on July 8, 1997, because it was not sent to the address listed in block 9 of the DD Form 1840 as required by the *Military-Industry Memorandum of Understanding on Loss and Damage Rules* (MOU), effective January 1, 1992.

DOHA's Settlement Certificate noted that part of the notations on the DD Form 1840R blurred through to the DD Form 1840 side of the form making part of the address in block 9 difficult to read. The Settlement Certificate also found, among other things, that the DD Form 1840R was delivered to a valid address belonging to AVLN, an address listed in the Military Traffic Management Command's (MTMC) Pamphlet 55-1, *Carrier Approval Pamphlet*, as its proper

address.⁽²⁾ The Settlement Certificate referred to two prior Comptroller General decisions⁽³⁾ and our decision in DOHA Claims Case 99010414 (February 23, 1999) to stress the point that the key matter for consideration in determining the adequacy of the notice of loss or damage is whether a carrier is given sufficient information to alert it to investigate the loss/damage. The Settlement Certificate also noted that this claim is distinguishable from the claim in DOHA Claims Case 99010414, *supra*, because in the prior decision the service incorrectly dispatched the DD Form 1840R to an address of an agent and not a valid address of the carrier company itself. The Army's administrative report points out that the claims office had dispatched the DD Form 1840R to the address in the *Carrier Approval Pamphlet* and that AVLN did not respond to its inquiry concerning why AVLN's employees at Highway Avenue address would not have forwarded the DD Form 1840R to the proper office.

Discussion

Under paragraph I of 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). Additionally, the 1992 version of the MOU specifically qualified carrier acceptance of written documentation on the DD Form 1840R to overcome the 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." *See* DOHA Claims Case No. 99010414, *supra*. 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.

The purpose of the 1992 modification to the MOU which allowed the carrier to specify the address to which the DD Form 1840R will be dispatched, is to help assure that the carrier actually receives timely notice of loss or damage so that it can conduct an appropriate inspection. In DOHA Claims Case No. 99010414, *supra*, there was little assurance that the carrier received the DD Form 1840R in a timely manner when the government dispatched notice to a contractor of the carrier rather than to the carrier itself, despite the carrier's direction that the notice be sent to its own specific address. Some of the facts in this case are like those in 99010414 because AVLN did designate a specific, and as we view it, a legible address to which to send the DD Form 1840. The Army sent it to a different address. The service or service member is obliged under the terms of the MOU to dispatch the DD Form 1840R to the address clearly specified by the carrier in block 9 of the DD Form 1840, notwithstanding the address listed in the *Carrier Approval Pamphlet*. The reason for this is apparent: the services agreed by contract to do so.

However, the Army's contractual breach in this case does not automatically result in a decision for AVLN. The record in this case shows that the DD Form 1843 and associated claim documents were dispatched eight months later to the same erroneous address as the DD Form 1840R and that AVLN actually received those documents only six days after dispatch. We do not question AVLN's veracity when it states it never received the DD Form 1840R, but looking at the most objective evidence available to us, there is a clear inference that if the DD Form 1843 reached the proper officials within six days after it was sent to the incorrect address, then the DD Form 1840R followed the same route when it was addressed to that address. Moreover, we note that the Army dispatched the DD Form 1840R only five days after delivery, and the MOU allows the service to dispatch the DD Form 1840R up to 75 days after delivery.⁽⁴⁾ This allowed time to channel the mis-addressed DD Form 1840R within AVLN to reach the responsible company officials so that they could conduct a timely investigation. As a result, we find the Army's failure to dispatch to the address in block 9 of the DD Form 1840 to be harmless error. Since AVLN received timely notice of the claim, the Army's contractual breach did not prejudice to AVLN's substantial rights.

Conclusion

We affirm the Settlement Certificate for the reasons noted herein.

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 refers to Personal Property Government Bill of Lading YP-083,158; Army Claim No. 98-354-0097; and carrier claim ALI980162.
2. The *Carrier Approval Pamphlet* shows AVLN to be listed with the same name and address as that noted in block 3a of the DD Form 1840R.
3. The Settlement Certificate cites *Ace Moving and Storage, Inc.*, B-258959, April 13, 1995, and *Lift Forwarders, Inc.*, B-249479, Oct. 19, 1992.
4. In contrast, the DD Form 1840R in DOHA Claims Case No. 99010414 was dispatched 60 days after delivery.