

---

In Re:

Katy Van Lines

Claimant

---

)

DATE: July 21, 1999

Claims Case No. 99070514

## CLAIMS APPEALS BOARD DECISION

### DIGEST

Generally, the dispatch date entered on the *Notice of Loss or Damage* (DD Form 1840R) is controlling for purposes of the 75-day dispatch period required by the *Military-Industry Memorandum of Understanding on Loss and Damage Rules*. A carrier cannot avoid liability due to lack of otherwise timely notice when it complains that the Army dispatched the Notice to an incorrect address, and therefore the carrier failed to receive the Notice, because the second of five numbers in the carrier's street 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) was illegible. The carrier is at least partially responsible because it is responsible for completing block 9 of the DD Form 1840 and its agent signed the form with the illegible address on it.

### DECISION

Katy Van Lines (KVNL) appeals the June 21, 1999, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 99060704 for the refund of \$471 set off by the Army to recover for transit loss and damage in connection with the shipment of a service member's household goods.<sup>(1)</sup>

### Discussion

The record indicates that the shipment was picked up in Germany on October 26, 1994, and was delivered to Jacksonville, Alabama, on January 10, 1995. The shipper did not note any damage on the *Joint Statement of Loss or Damage at Delivery* (which appears to be labeled both as a DD Form 1840 and a DD Form 1840R but should have been a DD Form 1840). The *Joint Statement* form listed "Katy Van Lines, Inc., 10526 Park Row, Houston, TX 77084" as the carrier/contractor in block 9 as the name and address of the carrier/contractor, but the "0" in the address is not completely legible. This *Joint Statement* was signed by the service member and the carrier's representative. A *Notice of Loss or Damage* (which also has the designation DD Form 1840 and DD Form 1840R but should have been a DD Form 1840R), noting additional loss and damage, was dispatched to "Katy Van Lines" on February 16, 1995, but no address was listed in block 3a along with the carrier name.

KVNL 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 February 16, 1995, because it never received the *Notice of Loss or Damage*. It contends that the Army did not comply with the *Military-Industry Memorandum of Understanding on Loss and Damage Rules* (MOU). The carrier does not dispute that the *Notice of Loss or Damage* was dispatched, but to support its position, KVNL argues that there was no address listed in block 3a; that the street address listed on the *Joint Statement Loss or Damage* was "16526 Park Row," not "10526 Park Row;" and that in any event, it never used the "10526 Park Row" address in its letterhead. KVNL also points out that the "10526 Park Row" address was not listed in the Military Traffic Management Command's (MTMC) Pamphlet 55-1, *Carrier Approval Pamphlet*, as its proper address.<sup>(2)</sup> KVNL contends that the Army's claim which included the *Demand on Carrier/Contractor* was mis-addressed to the "10526 Park Row" address and that it had to be re-sent to the proper address. To support its claim, KVNL cites, among other decisions, our decision in DOHA

Claims Case No. 99010414 (February 23, 1999) discussed below. Finally, KVNL points out that the government agency has a responsibility to make a reasonable effort to locate the carrier. *See Ace Moving and Storage, Inc.*, B-258959, April 13, 1995; and *National Forwarding Co.*, B-247457, Aug. 26, 1992.<sup>(3)</sup>

## 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, as KVNL points out, the 1992 version of the MOU 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." *See* DOHA Claims Case No. 99010414 (February 23, 1999). 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.

Construing all of the facts in the light most favorable to KVNL, we must disallow its claim. While not entirely legible, a reasonable person could have concluded that the second numeral of the street address looked more like a "0" typed over a "6" and that the "0" was the intended second number. In such circumstances, the shipper or claims office dispatching this *Notice of Loss or Damage* is reasonably justified in dispatching a copy of it to the "10526" address, rather than to a "16526" address. Moreover, KVNL's agent signed the *Joint Statement of Loss or Damage at Delivery* along with the member, and the ambiguity in the second numeral was apparent when the agent signed this form.<sup>(4)</sup> Of the two parties, the carrier is in a better position to know the correct address information for block 9 and clarify any ambiguities. In the 1992 modification to the MOU, the carrier industry obtained a measure of certainty that a DD Form 1840R would be dispatched to whatever address the carrier designates via block 9 of the DD Form 1840, but this places an increased burden on the carrier to make certain that the address is completely legible. Also, in accordance with the General Instructions for this form, the carrier is responsible for completing the form. The carrier's agent cannot simply ignore an apparent illegibility. Our point in DOHA Claims Case No. 99010414, *supra* was that the government cannot ignore the address supplied by the carrier where the carrier made the address clear. Here, to the extent that the address was not clear, and the carrier's agent could have clarified it.

## Conclusion

We affirm the Settlement Certificate.

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 UP-584,211 and Army Claims No. 96-231-0053.

2. KVNL's exhibit indicates that the address as listed in the *Carrier Approval Pamphlet* was "16526 Park Row."
3. These two Comptroller General decisions reviewed settlements involving claims in which the operable MOU did not contain language directing the shipper to dispatch notice of loss or damage "to the address listed in block 9 of the DD Form 1840R "
4. Item 25 of the Military Traffic Management Command's *Domestic Personal Property Rate Solicitation D-3*, which appears to have applied at the time, contemplates that the carrier will supply the DD Form 1840 to the member. *See also* Items 39 and 53 of the *Tender of Service: Personal Property, Household Goods and Unaccompanied Baggage*, signed by carriers participating in DoD traffic, which is set forth in Appendix A to the *DoD Personal Property Traffic Management Regulation*, DoD 4500.34-R (1991). The General Instructions for the Joint Statement of Loss or Damage at Delivery state that the carrier or contractor will complete and sign the form and obtain the member's signature.