In Re:

Resource Protection

on behalf of

Cartwright International Van Lines, Inc.

Claimant

)

DATE: August 20, 1999

Claims Case No. 99080320

CLAIMS APPEALS BOARD DECISION

DIGEST

The Air Force set off money from a household goods carrier to recover transit damage the carrier caused to a service member's property. The Air Force based the amount of the carrier's liability on an estimate of repair costs extrapolated from depreciated replacement costs without obtaining an actual repair estimate. Assessment of liability in this manner is reasonable to establish a *prima facie* case of liability when an actual repair estimate is unavailable at destination and when the carrier failed to exercise its inspection right and obtain its own repair estimate to confirm whether the Air Force's claim exceeded its maximum liability, i.e., the lesser of repair costs or depreciated replacement costs.

DECISION

Resource Protection, on behalf of Cartwright International Van Lines, Inc. (Cartwright), appeals the June 10, 1999, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) disallowing a refund of $512.50 set off by the Air Force to recover for transit loss and damage in connection with the shipment of a service member's household goods in 1997.[(1)]

Background

The record indicates that the shipment was picked up in North Dakota on April 17, 1997, and was delivered to the service member in Greece on May 30, 1997. The member claims that every item was scratched, and Cartwright delivered five stereo or electronic items with significant damages.[(2)] The four stereo items are involved in this appeal: a dented cassette tape deck; the broken glass on a stereo cabinet; the front of a speaker system broken into pieces; and a smashed CD player. The Air Force dispatched its subrogated claim against Cartwright on August 27, 1997, and in September 1997, Cartwright denied the claim in total for the "Pioneer Home Theater" (which we assume describes the four items) because "no documentation was provided to substantiate any of the amounts claimed." After set off, on May 16, 1998, Resource Protection argued that all of the damage was repairable damage with the exception of the CD player. The carrier did not inspect or offer a damage estimate.

In this appeal, Resource Protection contends that there is no *prima facie* case of liability against Cartwright because there was insufficient proof of the amount of damages on four stereo items. Its position appears to be that while the Air Force may have developed a depreciated replacement cost for each of the four stereo items, it was improper for the Air Force not to actually obtain repair estimates for each of them and apply actual repair costs if any was lower than the depreciated replacement cost for the item. For example, in correspondence with the Air Force Legal Services Agency,[(3)] Resource Protection criticizes the Air Force's application of the catalog price ($120) to purchase an audio cabinet with a glass front door to replace the glass front door of the damaged stereo cabinet in this claim. Resource Protection believes

that such an amount as a valid repair cost is "very unlikely." Resource Protection states that the services have an internal procedure for deferring settlement with a member until he/she returns to the United States if a claim cannot be supported, and it suggests that a carrier should be able to invoke the benefits of such a procedure.[(4)] Resource Protection argues that the proper procedure here was to suspend collection against the carrier until an estimate was available. Resource Protection argued that Cartwright was not required to pay for any of the damages it caused until more substantiation was provided, and at different points it cited Item 19g of Cartwright's tariff[(5)] and DOHA's Claims Cases 98012618 (February 12, 1998), *aff'd* 98030604 (June 19, 1998); and DOHA Claims Case No. 96070220 (September 5, 1996).

The Air Force acknowledged that its approach in this case was "unusual" and suggests that normally it would have obtained repair cost estimates for some or all of the stereo items. But in its administrative report, the Air Force Legal Services Agency stated that because of the lack of repair facilities at destination (a remote area overseas), the only reasonable method it had for determining repair costs was to use the Exchange catalog for determining replacement costs, and then use the replacement cost to estimate a fair repair cost based on the claims examiner's experience.

Discussion

To establish a *prima facie* case of liability against Cartwright, the service member (or the Air Force in subrogation) must show that Cartwright received the goods in a certain condition; that it delivered them in a more damaged condition; and the amount of damages. Thereafter, the burden would shift to Cartwright to show that it was free from negligence and that the damage was due to an excepted cause relieving it from liability. *See Missouri Pacific Railroad Company v. Elmore & Stahl*, 377 U.S. 134, 138 (1964). As indicated above, Resource Protection is arguing here that the Air Force never established a *prima facie* case of liability for the stereo items because the service failed to prove the amount of damages.

Generally, household goods carriers consider depreciated replacement costs when settling claims for loss or damage, but by contract the Department of Defense agrees to limit the carrier's liability to repair costs when they are less than depreciated replacement costs. *See* DOHA Claims Case No. 97122315 (January 12, 1998). Here, the Air Force did develop replacement costs and, either with the August 27, 1997, subrogated claim or sometime later, the Air Force presented the basis of such costs to Cartwright or Resource Protection. The Air Force used the amount of the depreciated replacement cost based on a cabinet with the glass front as the estimate for repairing the broken glass of the damaged cabinet here, but it applied an amount less than depreciated cost for the damaged tape deck and the damaged speaker. By Resource Protection's own admission the CD player did not appear to be repairable, but it appears that the Air Force assessed something less than depreciated replacement cost for that item as well. Resource Protection may be correct in saying that the glass front could have been repaired for something less than depreciated replacement cost, but it offered us no objective evidence to confirm this. Moreover, it is not clear that the damaged speaker and damaged tape deck were repairable. While the service's claims adjudicator may suspend adjudication of the member's claim pending receipt of such evidence as a repair estimate or replacement costs, the adjudicator was satisfied in this instance that the replacement cost quotations were sufficient for adjudication.

In providing replacement cost quotations for each item, the government provided sufficient documentation to substantiate the claim for purposes of a *prima facie* case of liability. The Air Force also explained why it was unable to obtain repair estimates at destination. On the other hand, Cartwright failed to exercise its salvage rights; failed to inspect; failed to offer its own repair estimate on any item; and once the claim was filed, failed to do any more than continue to demand more substantiation concerning the amount of damages. Resource Protection finally argued that the claim must fail because no repair estimate was offered, which was much more specific than Cartwright's original basis for denial. Given the entire record, there is no basis for finding that the Air Force acted arbitrarily, capriciously, or without a reasonable basis; therefore, Resource Protection must demonstrate by clear and convincing evidence that the Air Force's calculation of damages was unreasonable. *See* DOHA Claims Case No. 97122315, *supra*, citing DOHA Claims Case No. 96081210 (April 28, 1997); DOHA Claims Case No. 96081202 (April 28, 1997); DOHA Claims Case No. 96081902 (January 8, 1997); American Van Services, Inc., B-259198, May 5, 1995; Andrews Forwarders, Inc., B-257613, Jan. 25, 1995; American Van Services, Inc., B-256229, Sept. 8, 1994; and American Van Services, Inc., B-250492, Apr. 21, 1993.

Our decision in DOHA Claims Case No. 98012618, *supra*, does not support Resource Protection's position. In that decision, the Air Force did not provide the carrier with specific dollar amounts of loss or damage for each claimed item, only the total amount of all loss and damage. We recognized that the carrier was entitled to these specific dollar amounts, but we did not hold that the Air Force failed to present a *prima facie* case of liability because of its failure to provide this information. Furthermore, the facts in the instant claim are clearly distinguishable: here the Air Force did provide specific amounts for each item claimed and eventually supported the replacement costs on which the amounts claimed were predicated. Neither that decision, nor any decision by this Board or by the Comptroller General stands for the proposition that a carrier can avoid or defer liability for transit damage simply by insisting on more support for the amount of damages claimed, especially when the damaged item was available for the carrier's inspection.

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 ZP-129,258; Air Force Claims No. Aviano AFB 97-958; and Cartwright File No. 97-0650.

2. The fifth item, a television, is not involved in this appeal.

3. Letter of September 25, 1998.

4. Our review of Air Force Instruction 51-502, *Personnel and Government Recovery Claims*, dated March 1, 1997, and its 1994 predecessor indicates that claims personnel may suspend adjudication of a member's claim if the claimant has not provided required information on the claim form or evidence, such as repair estimates or replacement cost quotations. *See* para. 2.87.14 of AFI 51-502. But, the regulations states nothing specifically about any procedure that suspends adjudication until the member returns to the United States.

5. The applicability of such carrier tariffs is questionable. *See* DOHA Claims Cases 98012618, footnote 6 (February 12, 1998) and 98082401, footnote 2 (September 2, 1998).