
In Re:

Stevens Forwarders, Inc.

Claimant

)

DATE: September 13, 1999

Claims Case No. 99081804

CLAIMS APPEALS BOARD DECISION

DIGEST

The record contains sufficient evidence of the tender of bats, gloves, and other athletic equipment to hold a carrier *prima facie* liable for their loss when the service member claims, even without a separate supporting statement, that these athletic articles were removed from a hallway closet and packed by the carrier in a wardrobe carton described in the inventory by the carrier's agent as "clothes/hallway." The carrier's claim for refund on the basis that the member failed to support the tender of these articles, is not meritorious when the descriptive inventory includes three other wardrobe cartons which, in contrast, were simply described as "clothes."

DECISION

On July 29, 1999, Stevens Forwarders, Inc. (Stevens) appealed the November 8, 1996, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 96070173. In the Settlement Certificate, DOHA disallowed Stevens' claim for a refund of \$944.52, that was offset by the Air Force for transit loss to the household goods of a service member.⁽¹⁾ This appeal involves \$674.52 of the \$944.52 that was offset for missing athletic equipment.

Background

The record shows that the shipment was picked up in Las Vegas, Nevada, on December 4, 1992, and delivered to the service member in Denver, Colorado, on February 9, 1993. At the time of delivery, the member and the carrier's agent noted on the Joint Statement of Loss or Damage at Delivery (DD Form 1840) that Descriptive Inventory Item No. 268, a carrier-packed wardrobe carton containing "clothes/hallway" items was missing. On April 16, 1993, the shipper dispatched a Notice of Loss or Damage (DD Form 1840R) which specified the exact nature of the missing contents: pool cues, baseball gloves, racquetball and racquets.

In its appeal, Stevens denies liability because there is no evidence of tender of these items. Citing the Comptroller General's decision in *Cartwright Van Lines*, B-241850.2, Oct. 21, 1991, Stevens contends that the Air Force erred because the member failed to include a required statement describing the circumstances surrounding tender when, as here, there is no direct relationship between the inventory description and the contents. Stevens argues that Item 268 was a wardrobe carton, and as an expert packer, the writer of Stevens' appeal points out that the purpose of such a carton is to ship hanging clothes, not loose items like bats and gloves. Stevens specifically notes that "there is only one wardrobe carton used in this entire shipment." Stevens argues that when its agent intended to pack dissimilar items like toys and clothing, it so specified (e.g. Items 252, 253, and 254 were "clothes/toys" or "toys/clothes"). But when its agent described things generally (e.g. Items 316, 317, 320, and 321 as "Stg. Rm. Items") it provided no other item description. Moreover, items like athletic equipment "would more likely have been in the carton listed from the storage room." Stevens also argues that the pool cues can be broken down. Accordingly, without a statement from the member describing the circumstances surrounding tender, Stevens interprets "clothes/hallway" as involving only clothing from the hallway closet.

Discussion

As Stevens indicates, there are three elements on which the service member or his service in subrogation must present to establish a *prima facie* case of liability against the carrier: tender of an item to a carrier, delivery in a damaged or more damaged condition, and the amount of damages. See *Missouri Pacific Railroad Company v. Elmore & Stahl*, 377 U.S. 134, 138 (1964). Stevens' arguments focus on the member's failure to prove that he tendered these athletic articles to the carrier.

The Air Force reasonably could interpret the language "clothes/hallway" in a different manner than Stevens. Stevens may be correct that a wardrobe carton was not the best choice for the athletic equipment involved in this appeal, but if the athletic equipment was co-located with the coats and sweaters, it may have been a packing container of opportunity. If Stevens' agent had intended Item 268 to describe only the coats and other clothing in the hallway closet, he would have described the contents merely as "clothes." But, the presence of the word "hallway," particularly following a slash mark, indicates a separate category of articles and not just the location where the "clothes" came from. Moreover, our review of the inventory shows that there are at least three other wardrobe cartons in this shipment: Items 228, 229 and 237, and Stevens' agent described the contents therein only as "clothes."⁽²⁾ Thus, "hallway" must refer to something more than just "clothes." If the agent had intended to pack only clothing in a wardrobe carton, he would have described it as "clothes" like he did in Items 228, 229, and 237. In such circumstances, the Air Force reasonably could find that the "hallway" articles were the bats, gloves, racquets, or other miscellaneous athletic equipment. It would not be unreasonable to co-locate athletic equipment, especially athletic equipment used outdoors like the gloves, bats and racquets, near the jackets and sweaters.

The better practice would have been for the member to include a statement about this co-location, but it is not critical to the outcome here because the agent stated that he packed something else with the "clothes" in Item 268. Basically, those other articles were hallway closet items which were not clothing. Compare this situation from that in DOHA Claims Case No. 96070226 (September 5, 1996) where the shipper claimed a large amount of linens in a box marked only as "clothes" and *Aalmode Transportation Corp.*, B-240350, Dec. 18, 1990, where the shipper claimed a compact disk player in a carton marked "knickknacks." The situation here is more analogous to articles having a somewhat less direct relationship but a broad inventory description like the camera missing from the box of "storage closet items" in *Cartwright Van Lines*, B-241850.2, *supra*. As the *Cartwright* claim indicates, the Comptroller General generally found sufficient evidence of tender in situations involving broad item descriptions, and placed the burden of proof on the carrier who drafted the inventory description. See also DOHA Claims Case No. 96070203 (September 5, 1996) where there was no statement from the member in the record.

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 involves Personal Property Government Bill of Lading (PPGBL) SP-301,443; Air Force Claim Lowry AFB #93-905; and carrier claim #92-74312.

2. We are troubled by the carrier's failure to identify Items 228, 229 and 237 when, as here, it indicates that it specifically reviewed the inventory looking for other wardrobe cartons. This, coupled with the carrier's failure to appeal this matter until almost three years after settlement because the official concerned was unaware of the settlement until recently, compels us to closely scrutinize the appeal.