
In Re:

Stevens Worldwide Van Lines, Inc.

Claimant

)

DATE: September 9, 1999

Claims Case No. 99080602

CLAIMS APPEALS BOARD DECISION

DIGEST

The Air Force acted reasonably in charging the carrier with the replacement of two ordinary household items which were reported by the member and the carrier's representative as missing at delivery when: the Air Force had waited 58 days before approving payment to the member; the carrier had not indicated in any way that it was likely to recover the items; and the Air Force did not have any information indicating that the carrier had recovered the items until more than 70 days after delivery.

DECISION

Stevens Worldwide Van Lines, Inc. (Stevens) appeals the June 23, 1997, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 97042816. In the Settlement Certificate, DOHA affirmed Stevens liability for transit damage to a shipment of a service member's household goods.⁽¹⁾ In this appeal, Stevens challenges its liability for two items on the Descriptive Inventory (Item 71, a 10-speed bicycle and Item 113, a dish pack containing kitchenware) which were initially reported as missing but which were recovered by Stevens and remain in its possession.

Background

The record shows that the shipment was picked up in Panama City, Florida, on May 25, 1994, and was delivered to Charleston AFB, South Carolina, on July 11, 1994. At delivery, the shipper and Stevens' representative noted on the Joint Statement of Loss or Damage at Delivery (DD Form 1840) that Items 71 and 113 were missing. On August 30, 1994, the service member dispatched a Notice of Loss or Damage (DD Form 1840R) which included greater specificity concerning the kitchen items which were missing. The member also presented her claim against the Air Force on that date.⁽²⁾ On September 7, 1994, the Air Force advised the member that it would pay her claim, and it dispatched to Stevens its subrogated claim. The date of payment to the member was September 19, 1994. On September 15, 1994, the member asked for reconsideration on a part of her claim not involving Items 71 and 113, and the next day the claims office approved an additional \$39.99. Meanwhile, in what appears to be nearly identical letters to the claims office dated September 9, 1994, and September 21, 1994 (received by the claims office on September 13 and 26, 1994, respectively), Stevens advised the Air Force and its agents that three items (Item 113 and two others) were reported missing as specified on a copy of an attached DD Form 1840R and were being traced with negative results to date. In its letter to the claims office dated September 22, 1994, and received by the claims office on September 28, 1994, Stevens advised that it is denying the claim for Item 71 and the articles in Item 113 because it had located both items.

Stevens contends that paragraph 2.73.2 of Air Force Instruction 51-502, *Personnel and Government Recovery Claims*, discussed in the Settlement Certificate, is irrelevant because it did not affect Stevens' rights under its contract with the government.⁽³⁾ One of Stevens' arguments is that the Air Force failed to properly exercise its duty to mitigate any damage that Stevens may have caused in misplacing these two items. Stevens contends that its Senior DoD Claims Adjuster contacted the member directly after the member's claim against the Air Force had been approved but before the

check had been received, and he discovered that the member had not then purchased replacement items. Stevens also argues that under the *Tender of Service* the carrier has 30 days to notify the shipper of the status of lost items,⁽⁴⁾ and that the DD Form 1840R dispatched on August 30, which it states it received on September 20, 1994,⁽⁵⁾ contained a much more specific identification of the contents of Item 113. Thus, Stevens suggests, the DD Form 1840R is the document that matters for purposes of allowing the carrier 30 days to advise on the lost status of an item. Stevens points out that the claims office acknowledged that it received Stevens' tracer letters dated July 22, 1994, and September 29, 1994, and that the Air Force had reconsidered the member's claim after receiving Stevens' settlement offer. Stevens believes that a decision here in favor of the Air Force would be counterproductive to the policy of tracing missing property. As evidence of Stevens' good faith, Stevens refers us to an unrelated claim in which Stevens continues to honor a military family's request that it continue to trace for missing wedding photographs even though it is 1-1/2 years after the incident.

Discussion

There is a reasonable basis to support the Air Force's action without considering AFI 51-502. The member and Stevens' agent noted that Items 71 and 113 were missing on July 11, 1994, the day of delivery. Stevens was required to trace them immediately. The *Tender of Service* allows the carrier 30 days to trace and report on the results. The member provided adequate notice of loss on the DD Form 1840; greater specification in a Notice of Loss or Damage was not needed to trigger a tracing requirement. There is no indication in the record that Stevens needed more information to trace the missing dish pack. The Air Force did not approve the settlement of the member's claim against it until September 7th; therefore, Stevens had significantly more time than 30 days to trace these items and report back. As of September 7th, the most that the Air Force and the member knew was that the items were still missing, and Stevens had not provided any information suggesting the likelihood of finding them. As it turned out, the Air Force was not apprized of the likelihood of recovery until September 28th. In such circumstances, the Air Force gave Stevens more than a reasonable amount of time to locate the missing items. The Comptroller General has indicated that once the carrier has at least 30 days to trace the missing items and report positive results, it may be held liable even if they are located later. *See Caisson Forwarding Company, Inc.*, B-256686.3, Dec. 28, 1995.

We agree with Stevens that AFI 51-502 is not directed at carriers and does not directly control a carrier's contractual rights and liabilities. But the courts have indicated that a service's or agency's internal regulations provide guidance in interpreting contractual requirements and are indicative of the government's shipping practices which a carrier must be aware of. *See Baggett Transportation Co. v. United States*, 23 Cl. Ct. 263, 272 n.5 (1991), *aff'd* 969 F. 2d 1028, 1033 (Fed. Cir. 1992). Here, Stevens knew or should have known that if it failed to recover the missing items before the Air Force approved the member's claim, the government might have to pay for the missing property and involuntarily take control of that property.

The claim involving the missing wedding photographs is distinguishable from the present case. The family with the missing wedding pictures cannot do much more than continue to rely on the good graces of Stevens and other carriers that serve the uniformed service community to try to locate the photographs, no matter how long it takes. The photographs have little inherent market value, but are obviously extremely important to the lives of the members of the family involved. In contrast, the missing bicycle and kitchen ware have little sentimental value, but they do have a fairly predictable market value for replacement purposes. The member's forbearance for 58 days while Stevens attempted to locate these fairly standard household items was more than sufficient.

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 shipment involved Personal Property Government Bill of Lading (PPGBL) VP-887,601; Air Force Claim # Charleston AFB 94-846; and Stevens' file 94-6508.
2. The member presented her claim against the Air Force under the Military Personnel and Civilian Employees' Claims Act, codified at 31 U.S.C. § 3721.
3. The paragraph states that if lost property is located after the settlement authority approved the member's claim for payment, the member can accept or disclaim interest in the located property.
4. The *Tender of Service* is set forth in Appendix A to the Department of Defense *Personal Property Traffic Management Regulation*, DoD 4500.34-R (October 1991). Paragraph 38 of the *Tender of Service* states, among other things, that in case of missing items, "tracer action will be initiated immediately and the PPSO and member will be advised in writing of the results within 30 days from the date of delivery of the shipment."
5. Although Stevens states that it did not receive the DD form 1840R until September 20, 1994, its tracer letter to the Air Force dated September 9, 1994, states that it had received the DD Form 1840R. Further, Stevens' October 5, 1995, letter to the Air Force indicates that it had received a Demand on Carrier on September 13, 1994.