
In Re:

Air Land Forwarders, Inc.

Claimant

)

DATE: September 14, 1999

Claims Case No. 99081806

CLAIMS APPEALS BOARD DECISION

DIGEST

A service member presents sufficient evidence of loss or damage to support a *prima facie* case of liability against a household goods carrier where the carrier delivers an entertainment center missing two major parts and the member provides evidence of the depreciated replacement cost. The carrier has the duty to investigate the claim to determine the nature of the missing parts, and if the carrier requests clarification from the member or service concerning the nature of those parts during the 120-day period when the carrier considers the claim, the member or the service must reasonably cooperate in responding to the carrier's request for information. However, the carrier's rights are not substantially prejudiced where it had an opportunity to obtain the information about the missing parts at delivery or where it failed to inspect.

DECISION

Air Land Forwarders, Inc. (Air Land Forwarders) appeals the July 29, 1999, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 99060716 for the refund of \$549 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 by the carrier's agent in Columbia, South Carolina, on May 28, 1997, and was delivered to the service member by another agent in Heidelberg, Germany, on July 16, 1997. The shipper and the carrier's representative noted at delivery on the *Joint Statement of Loss or Damage at Delivery* (DD Form 1840) that Descriptive Inventory Item 299, wood shelves, "were missing two major parts." The Army dispatched a *Notice of Loss or Damage* (DD Form 1840R) on August 4, 1997, noting that Item 299, a wood entertainment center, was "missing two major parts." The Descriptive Inventory contained two relevant entries: Item 291, an "Entertainment Center" with pre-existing damage (PED) noted, and Item 299, "Wood Shelves on right" with PED. A *Demand on Carrier/Contractor* (DD Form 1843) and other documents associated with the claim were dispatched to Air Land Forwarders on January 6, 1998, and the attached *List of Property and Claims Analysis Chart* (DD Form 1844) claimed \$549 in depreciated replacement cost under Items 299 and 291 for a "Wood Entertainment Center - missing two major parts. Picture Attached." In a letter dated April 7, 1998, Air Land Forwarders advised the United States Army Claims Service that it considered Item 291 as involving a "vague reported condition" because the report of the damage merely stated that the center was "missing two major parts." It asked that the Army describe which two major parts were missing, and it contends that to date, it received no answer. Air Land Forwarders states that it has the right under paragraph 5i of Domestic Personal Property Rate Solicitation D-1⁽²⁾ to require proof of the loss claimed, and based on our decision in DOHA Claims Case No. 98012618 (February 12, 1998), it contends that it was improper to set off for the depreciated replacement cost.

Discussion

Our decision in DOHA Claims Case No. 98012618 is inapplicable to the current claim. Our 1998 decision involved the Air Force's failure to claim a specific amount of damage for each line item of damage claimed. The carrier was aware of the total amount of damage claimed, but it was not aware of the amount of damages on each of the line items. We found that the Air Force had presented a *prima facie* case of liability against the carrier despite the Air Force's failure to provide a specific dollar amount for each line item of damage claimed, but we also believed that set off may have been inappropriate until the per item accounting had been provided. The current claim involves the entertainment center, a discernable item even though it may include more than one line item on the descriptive inventory, where a specific dollar amount of damage is claimed. ⁽³⁾

Air Land Forwarders sought clarification from the Army about the nature of the missing parts, and in this regard, we believe that both the Army and Air Land Forwarders failed to properly perform their responsibilities. For its part, the Army was not very helpful in responding to Air Land Forwarders's request for information. We reviewed the record, and like Air Land Forwarders, we cannot determine the nature of the missing parts. In response to Air Land Forwarders's April 7, 1998, letter, the Army merely advised Air Land Forwarders that it had been advised of the damages and that "the damages were extensive and needed to be replaced." Air Land Forwarders then advised the Army that the member had not complained about any physical damage; the claim involved missing parts. Air Land Forwarders again sought clarification concerning the nature of the missing parts, but the Army merely responded by advising Air Land Forwarders that the parts were missing. On the other hand, Air Land Forwarders could have easily determined what parts were missing. Its agent at destination was advised of the problem as he delivered the item, and Air Land Forwarders failed to perform an inspection in which it could have discovered information concerning the damages and developed its own repair estimate if it chose to do so.

We recognize that the carrier has the right to ask the service member or military service to support the claim. However, a carrier cannot argue that it was substantially harmed where it had the opportunity to obtain necessary information to investigate the claim, and failed to take advantage of that opportunity. Typically, such opportunities include situations where the member and the carrier's agent noted loss or damage at delivery or where the carrier failed to physically inspect during the inspection period. *See* DOHA Claims Case No. 98021009 (March 5, 1998).

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-342,323; Army Claim No. 98-E50-0032; and carrier claim ALI980014.

2. Household goods moving in international through government bill of lading (ITGBL) service in May 1997 were subject to the Military Traffic Management Command's International Personal Property Rate Solicitation I-7; it contained

a similar provision in Item 410.

3. Based on the record, it appears that Item 299 involves the shelves and associated parts from the right side of the entertainment center.