

DATE: October 5, 1999

In Re:

Resource Protection

on behalf of

Carlyle Brothers Forwarding, Inc.

Claimant

)
Claims Case No. 99081805

CLAIMS APPEALS BOARD DECISION

DIGEST

When the Service obtains a repair estimate on a damaged item, it is not required to also document the depreciated replacement cost. The depreciated cost used in determining carrier liability in household goods cases is the replacement cost of the lost or damaged item at destination, not the purchase price. The carrier cannot overcome a repair estimate for purposes of a *prima facie* case of liability against it merely by arguing the depreciated purchase price is less than the repair cost.

DECISION

Resource Protection, on behalf of Carlyle Brothers Forwarding, Inc. (Carlyle), appeals the July 19, 1999, Settlement of the Defense Office of Hearings and Appeals (DOHA), under DOHA Claim No. 99060712, which denied, in part, Carlyle's request for a refund of monies offset for damage to the household goods shipment of a service member. [\(U\)](#) The only item of concern in this appeal is inventory item number 197, a guitar.

Background

The record shows that the shipment was picked up on May 28, 1996, at Tampa, Florida, and was delivered on July 5, 1996, to San Antonio, Texas. The List of Property and Claims Analysis Chart (DD Form 1844) used by the claims office listed the guitar as worth \$450 when it was acquired as a gift in 1967, and the repair cost as \$210. The service obtained a repair estimate from a music studio which estimated a cost of \$210 for repairing the cracks in the guitar and for revarnishing it. The carrier's estimate from a furniture repair firm merely acknowledges that the guitar was damaged. The carrier originally denied liability for the guitar stating that the service had not provided evidence to show that the crack was caused by anything except atmospheric condition. The \$210 repair cost was offset against the carrier. Carlyle argued that it was due a refund because the \$450 purchase price less a maximum deduction of 75 percent for depreciation is less than the \$210 repair cost. The Settlement Certificate upheld the Army's offset of \$210, stating that the carrier had not submitted evidence that the offset of the repair cost was unreasonable.

On appeal, Resource Protection contends that the purchase price less 75 percent depreciation (a total of \$112.50) is less than the repair cost (\$210) and therefore the Army should not have held Carlyle liable for the repair cost. Resource Protection argues that a carrier's liability never exceeds the depreciated value of an item under any circumstances, whether the item is repaired or not. Additionally, Resource Protection contends that Carlyle is entitled to a further reduction in liability by 25 percent of the depreciated value of the guitar because salvage was denied.

Discussion

To establish a *prima facie* case of liability against the carrier, the service member (or the Service in subrogation) must show that the carrier received the goods in a certain condition; that it delivered them in a more damaged condition; and the amount of damages. Thereafter, the burden shifts to the carrier 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). At issue in this case is the amount of the carrier's liability for damage to the guitar.

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). Based on a repair estimate by a music studio, the service determined that the guitar could be repaired, and used the repair cost to both reimburse the service member and set the carrier's liability. This established a *prima facie* case. The carrier had the burden to provide evidence that the service acted unreasonably.

Resource Protection's argument that a depreciation of the purchase price should have been taken into consideration is fallacious. In determining carrier liability in household goods cases, the general practice is to depreciate the replacement cost at the time and place of delivery, not the purchase price. With a repair estimate in hand, the service was not required to document the depreciated replacement cost of the guitar in order to establish a *prima facie* case. *See DOHA Claims Case No. 98091417* (October 6, 1998). Resource Protection has provided no evidence of the replacement cost, but attempts to use the purchase price as the basis of the calculation merely because it is a dollar figure most favorable to the carrier. It is likely that the replacement cost at delivery of the 30-year old guitar was greater than the purchase price. The fact remains, however, that the record is silent as to the replacement cost. With no evidence submitted by the carrier to the contrary, the service's use of the repair cost stands.

As the Military-Industry Memorandum of Understanding on Salvage, effective April 1989, states, the carrier is entitled to all items on which it has paid a claim for the total depreciated replacement cost of the item. When a carrier is unable to exercise its salvage rights for an item of \$50.00 or more, the item's salvage value credited to the carrier will be 25 percent of the item's depreciated replacement value, the carrier's liability is reduced based on the salvage value of the item. In this case, the guitar was repaired and, therefore, salvage appropriately was not considered.

Conclusion

We affirm the Settlement Certificate.

_____/s/_____

Michael D. Hipple

Chairman, Claims Appeals Board

_____/s/_____

Christine M. Kopocis

Member, Claims Appeals Board

_____/s/_____

Jean E. Smallin

Member, Claims Appeals Board

1. This matter involves Personal Property Government Bill of Lading VP-884,619; Army Claim 97-141-0285; and Carrier Claim 96-0052.