February 22, 2000

In Re:

National Claims Service, Inc.

on behalf of

A Alpha Transportation Company, Inc.

Claimant

Claims Case No. 99102711

CLAIMS APPEALS BOARD DECISION

DIGEST

A military service's failure to provide a carrier during the 120-day investigation and settlement period with support for the original cost of a sofa claimed as damaged and listed on the *List of Property and Claims Analysis Chart* (DD Form 1844) did not invalidate an otherwise *prima facie* case of liability against the carrier when: the record contained a repair estimate for the damages claimed; the carrier chose not to take advantage of opportunities to examine the damaged item and obtain necessary information upon which it could have ascertained depreciated replacement cost; the carrier actually settled the claim before requesting the purchase cost information; and the information requested (the purchase price) was not directly related to replacement costs.

DECISION

The National Claims Service, Inc. (NCS), on behalf of A Alpha Transportation Company, Inc. (AAHA)[(1)], requests a refund of $2,490.50 of the $2,711.43 set off by the Army for transit damage to a sofa belonging to a service member when he shipped his household goods to his home of record at the termination of his active duty service.[(2)] Due to the nature of the issues raised by NCS and for administrative convenience, the Claims Appeals Board directly settles this matter.

Background

The record shows that AAHA's agent obtained the shipment in Ozark, Alabama, on March 19, 1997, and delivered it to the member in Midlothian, Virginia, on June 12, 1997. For purposes of this claim, the only issue in dispute centers on the amount of damages to a sofa (Descriptive Inventory Item 255) shipped with the household goods. The Descriptive Inventory identified Item 255 as a "Sofa - 6 cushions," and no pre-existing damage was noted. The Army's administrative report further described it as a Highland House tuxedo sofa with six cushions, two bolsters, three throw pillows and a straight skirt. On the *Joint Statement of Loss or Damage at Delivery* (DD Form 1840), the member and AAHA's agent noted that the sofa was delivered torn. AAHA did not inspect the damage. The Army dispatched its subrogated claim against AAHA on April 8, 1998. The claim documentation included the *Demand on Carrier/Contractor* (DD Form 1843), a copy of the *List of Property and Claims Analysis Chart* (DD Form 1844), and a repair estimate for re-upholstering the sofa. In its administrative report, the Army referred to the DD Form 1844 which described the damage as a tear on the right side below the arm and a tear on the left seat cushion. The member states that

he purchased the sofa in August 1996 for $4,700, and the repair cost for the sofa (re-upholstering) was $2,779.77. AAHA's liability was reduced to $2,490.50 after depreciating the fabric. On May 19, 1998, NCS responded by indicating that the carrier retained its representational services and that it completed the investigation and determined, among other things, that there was no substantiation of the value of the sofa.

NCS believes that there is no basis for holding the carrier liable because, during the 120-day period it had to investigate the claim, AAHA had requested proof of the $4,700 purchase price, but the Army failed to provide it. NCS suggests that it was proper to require proof of the purchase price because the $4,700 claimed was more than three times in excess of normal range of amounts for a new sofa. NCS believes that DOHA's decisions improperly "lower the bar" on behalf of the military services to allow the services to avoid their duties regarding substantiation of the amount of damages on the rationale that a carrier opted not to pay for a separate inspection or estimate. On damage valuation, NCS seeks to have this Board recognize a distinction between those instances in which the carrier is merely taking "pot shots" at a military service when the service simply fails to have supporting documents on "normal priced items," and those instances where the military installation's adjustor neglected to demand "normal and prudent" substantiation on value.

Discussion

Generally, under federal law, in an action to recover from a carrier for damage to a shipment, the shipper establishes his *prima facie* case when he shows delivery in good condition, failure to deliver or arrival in damaged condition, and the amount of damages. Thereupon, the burden of proof is upon the carrier to show both that it was free from negligence and that the damage to the cargo was due to one of the excepted causes relieving the carrier of liability. *See Missouri Pacific Railroad Company v. Elmore & Stahl*, 377 U.S. 134, 138 (1964). NCS argues that the Army's *prima facie* case fails because the member and the Army failed to demonstrate the purchase price of the sofa.

This shipment is governed by the Military Traffic Management Command's *Domestic Personal Property Rate Solicitation D-4* (effective November 1, 1995), referenced herein as the Solicitation. Item 5,2,i of the Solicitation also states that the carrier may, at its option, require proof of loss or damage claimed. Assuming that the carrier agrees that it is responsible for the transit damage, it should also know the amount of its liability under the various methods of calculating it. Item 5,2,b of the Solicitation states that the carrier's liability is the lesser of the cost of repair, replacement or actual cash value (less depreciation and salvage) at the time and place of loss or damage. Thus, a carrier has an incentive, and a duty, to investigate the claim because, for example, AAHA's liability would have been less if it had shown that damages calculated under the depreciated replacement costs method were lower than the repair cost method. Item 5,2,i reflects the carrier's regulatory duty to investigate and dispose of a claim within 120 days of its receipt. *See* 49 C.F.R. § 1005.5; and *American Van Services*, B-252972.2, July 14, 1995.

Under Item 5,2,i of the Solicitation, the carrier may ask a claimant to provide additional information to support the claim. In this claim, AAHA's request for support of the original cost (*e.g.*, a copy of the purchase receipt or other evidence) was reasonable considering the expensive nature of the item. NCS indicated that it had already settled the claim without supporting evidence of the original cost noted, but otherwise the Army still should have addressed this reasonable request for support. The question is whether the Army's inaction necessarily negates a *prima facie* case of liability. We do not think that it should in light of the totality of the circumstances here.

We agree that this claim appears to be somewhat distinguishable from other similar claims that we have considered. For example, in DOHA Claims Case No. 97122315 (January 12, 1998), the carrier challenged the Army's application of the Table of Adjusted Dollar Value and the failure to forward a copy of the repair estimate for a teak table delivered

damaged. It argued that the Army/claimant's *prima facie* case of liability failed because it did not offer sufficient proof of the value of the loss. We found that the carrier had the right to request clearer proof of damages, but it was error for the carrier not to raise this until after the 120-day period of investigation. In contrast, the carrier in this claim did ask for proof of the original cost during a period within 120 days of the Demand.

But AAHA cannot place sole blame on the Army for its failure to obtain the evidence it needed to properly settle the claim. As indicated above, the NCS ay 19th correspondence indicated that it had already settled the claim without requesting additional support; it simply stated a basis for rejection of the claim on the sofa and offered a check in settlement for other transit loss/damage. More significantly, as in DOHA Case No. 97122315, *supra*, this carrier did not take advantage of the opportunity it had to inspect the damaged sofa, obtain needed information about it to independently ascertain the proper replacement cost, and present its own damage estimate. Additionally, this sofa was reported damaged at delivery, and much of the information about the sofa could have been obtained by the delivering agent whether or not AAHA later performed an inspection. Even if AAHA was content with the member's information about the sofa, and decided not to inspect, it could have contacted Highland House to obtain corroborating information about suggested retail price.

A decision cited by NCS is indicative of decisions where we agreed with the carrier and found a lack of sufficient information on value for purposes of presenting a *prima facie* case of liability against the carrier. *See* DOHA Claims Case No. 98021008 (February 27, 1998). The claim in 98021008 involved a lost carpet; therefore, it was not available for the carrier's inspection. Moreover, the member, and the Air Force in subrogation, used replacement carpet priced at $14 per yard without some showing that the proposed replacement carpet was similar to the carpet that was actually lost. Also, there was no description in the record of the make/model of the lost carpet or replacement carpet despite the carrier's request for such information during the period of time it had to investigate the claim. In 98021008 it was clear that the carrier would have had a very difficult task in properly investigating the claim and corroborating the factual assertions of the claimant.

In contrast, the sofa here was available for the observation of the agent at delivery; for carrier inspection after delivery; and for AAHA's verification with the manufacturer of suggested retail prices for a particular type of sofa. In 98021008, replacement cost was directly in issue; here, in contrast, replacement cost is indirectly in issue. AAHA never focused on depreciated replacement costs. In 98021008, there was no evidence of the value of the damage other than the member's assertion concerning the replacement costs; here, in contrast, the member provided an objective repair estimate from a firm that appears to be in the business of professionally repairing upholstered furniture. Thus, we are faced with two choices: either we invalidate an otherwise *prima facie* case of liability for damage occurring in transit merely because the Army/member did not provide supporting evidence on data having indirect relevancy; or we maximize the carrier's right to obtain any information it deems necessary to settle the claim even though it chose, for pecuniary reasons, not to take advantage of earlier opportunities to verify supporting facts in the claim. Under these circumstances, we believe that any mistake by the Army is harmless when compared with the lack of evidence from the carrier that may have shown that the depreciated replacement cost (not the original purchase price) would have been lower than repair costs. There is no basis for us to accept the NCS proposal that we ignore a carrier's duty to investigate a claim and that we collaterally review claims officials' determinations on "normal and prudent" substantiation of valuation in a member's claim when the original purchase price for an item was not within some indefinite normal range. Whatever the member originally paid for the sofa, AAHA should have investigated the depreciated replacement cost rather than focusing on the lack of substantiation of the purchase price.

Conclusion

We disallow the claim.

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. AAHA is the standard carrier accounting code recognized by the Military Traffic Management Command for this carrier under its listing of approved carriers. *See* ftp://144.101.8.197/outbound/carrpam/domp.txt (Page 2 of 243).

2. This matter refers to Personal Property Government Bill of Lading YP-386,699; Army Claim No. 98-311-699 (listed by NCS as 98-311-0111); and carrier reference N-4099.