

KEYWORD: Transit Damage; notice of loss - evidence of date of dispatch.

DIGEST: A military service impeaches the date of transmittal that one of its claims officials entered on a *Notice of Loss or Damage* (DD Form 1840R) by presenting evidence which clearly shows that the official was not assigned to the claims office on the date on which he purportedly dispatched the DD Form 1840R (August 13, 1994). The service contends the claims official actually transmitted the DD Form 1840R to the carrier on the same month and day one year prior to the date indicated on the DD Form 1840R (August 13, 1993). The military service has supported its offset action when additional development of the record also indicates that: operating procedures at the claims office required dispatch of the carrier's (pink) copy of the DD Form 1840R documentation on the same day as it was logged into the claims office; the record contains a handwritten memorandum from another official in the claims process who heard the dispatcher's supervisor remark that she observed the log and that it indicated that the date of dispatch was in 1993; and when claims adjudicators in this Office found evidence of carrier receipt of the DD Form 1840R documentation on September 1, 1993. **This decision was affirmed by the Deputy General Counsel (Fiscal), Department of Defense, on December 21, 2001.**

CASENO: 99121410

DATE: 02/24/2000

In Re:

Resource Protection

on behalf of

Allied Freight Forwarding, Inc.

Claimant

This decision was affirmed by the Deputy General Counsel (Fiscal), Department of Defense, on December 21, 2001.

DATE: February 24, 2000

Claims Case No. 99121410

CLAIMS APPEALS BOARD DECISION

DIGEST

A military service impeaches the date of transmittal that one of its claims officials entered on a *Notice of Loss or Damage* (DD Form 1840R) by presenting evidence which clearly shows that the official was not assigned to the claims office on the date on which he purportedly dispatched the DD Form 1840R (August 13, 1994). The service contends the claims official actually transmitted the DD Form 1840R to the carrier on the same month and day one year prior to the

date indicated on the DD Form 1840R (August 13, 1993). The military service has supported its offset action when additional development of the record also indicates that: operating procedures at the claims office required dispatch of the carrier's (pink) copy of the DD Form 1840R documentation on the same day as it was logged into the claims office; the record contains a handwritten memorandum from another official in the claims process who heard the dispatcher's supervisor remark that she observed the log and that it indicated that the date of dispatch was in 1993; and when claims adjudicators in this Office found evidence of carrier receipt of the DD Form 1840R documentation on September 1, 1993.

DECISION

Resource Protection, on behalf of Allied Freight Forwarding, Inc. (Allied), appeals the November 22, 1999, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 99091304, disallowing a refund of \$3,343.42 set off by the Air Force to recover for transit loss and damage in connection with the shipment of a service member's household goods in 1993.⁽¹⁾

Background

The record indicates that the shipment was picked up at Ellsworth Air Force Base, South Dakota, on March 18, 1993. A small partial delivery occurred on April 2, 1993, and Allied's agent delivered the balance of the shipment to the service member on June 16-17, 1993. The member and Allied's agent noted some damages at delivery, but most of the loss and damage was reported to Allied by the member on two *Notices of Loss or Damage* (DD Form 1840R) with a handwritten addendum, both DD forms bearing a dispatch date of August 13, 1994. The member presented his claim to the Air Force in June 1995, and in July 1995, after noticing the August 1994 dispatch date, an Air Force claims examiner inquired concerning the actual date of dispatch.⁽²⁾ The examiner contacted the Law Office Manager at the Air Force facility on Fort Meade, Maryland, that had processed the member's DD Form 1840R documentation,⁽³⁾ and as her handwritten Memorandum For Record (MFR) dated July 14, 1995, explained, she was advised by the manager that the Fort Meade log showed that "the attorney did indeed sign the DD Form 1840R on 1993."⁽⁴⁾ The Law Office Manager then prepared a typewritten MFR, dated July 21, 1995, finding that the claims official "must have inadvertently [sic] put the wrong year on this form [the DD Forms 1840R]." The Law Office Manager also stated that the claims official who dispatched the DD Form 1840R transferred on February 1, 1994, and did not work in the office in August 1994. The Law Office Manager did not mention anything about the log or include a copy of it with her MFR.

In this appeal, Resource Protection contends that the DD Forms 1840R clearly state that the dispatch date was August 13, 1994, and that there is no evidence that they were dispatched in August 1993. Resource Protection believes that the Air Force's position that the claims official placed an incorrect year on the DD Forms 1840R is merely a "guess" based on what should have occurred. The only physical evidence supporting the Air Force's position is the "log" referred to in the administrative report, but a copy of that log is not part of the record. Resource Protection also notes that the Air Force did not produce a statement from the member describing when he presented the DD Form 1840R to the Air Force satellite office on Fort Meade.

We were not satisfied with the evidence produced by either the Air Force or Resource Protection, and sought additional development. On December 29, 1999, we asked the Air Force to search for any logs showing the dispatch date of the DD Form 1840R documentation, and we asked Resource Protection to produce the carrier's pink copy original from the DD Form 1840/1840R set. On January 18, 2000, we received Resource Protection's response indicating that the pink copy(ies) was no longer available because the Air Force delayed in filing its subrogated claim for about two years, which is the length of time that Allied maintained the original pink copy(ies). On February 3, 2000, the Air Force Legal Services Agency advised us that it was unable to locate logs going back to August 1993, and on February 15, 2000, it indicated to us that the standard operating procedure at the Fort Meade satellite office was to dispatch the carrier's pink copy(ies) of the DD Form 1840R on the date it was logged in.

Finally, one of our senior adjudicators carefully examined the DD Form 1840R documents developed by Resource Protection from Allied's microfiche file, and he believes that they contain evidence consistent with receipt in 1993. The adjudicator made a photocopy of the copies produced by Resource Protection from Allied's microfiche, then looked for evidence of a perforated date stamp (*i.e.*, black spots representing holes punched in the original pink copy). Our adjudicator then punched holes in the photocopies he made, and he concluded that at least one of three documents with evidence of perforated information embedded in it indicated that it was received on September 1, 1993. [\(5\)](#)

Discussion

To establish a *prima facie* case of liability against Allied, the service member (or the Air Force in subrogation) must show that Allied received the goods in a certain condition; that it delivered them in a more damaged condition; and the amount of damages. Thereafter, the burden would shift to Allied 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). As indicated above, Resource Protection is arguing here that the Air Force never established a *prima facie* case of liability against it for the items reported on the DD Forms 1840R with an August 1994 dispatch date because there is no showing that the claims office dispatched these forms to Allied within 75 days of delivery.

Normally, due to the presumption of administrative regularity, we assume that the administrative officer dispatched the DD Form 1840R on the date of dispatch indicated thereon. *See* DOHA Claims Case No. 98043011 (May 13, 1998); and DOHA Claims Case No. 96070208 (January 27, 1997). In this case, however, the Air Force contends that it did not follow normal procedures in that its para-legal claims official who dispatched the DD Form 1840R documentation to Allied typed an incorrect year in the dispatch date.

In the absence of clear and convincing evidence to the contrary, we accept the Air Force's finding that the para-legal claims official who dispatched the DD Form 1840R documentation was not assigned to the Fort Meade office in August 1994, and he could not have dispatched these documents on August 13, 1994. *See McNamara-Lunz Vans and Warehouses, Inc.*, 57 Comp. Gen. 415, 419 (1978). However, since the Air Force has concluded that the dispatch dates on the face of the two forms were incorrect, the Air Force must demonstrate when the two forms were dispatched.

We believe that the record contains evidence consistent with an August 13, 1993 dispatch date: the dispatcher was assigned to the Fort Meade satellite office in August 1993 not in August 1994; the Law Office Manager at Fort Meade stated to a claims examiner that the log showed that the dispatching official at the Fort Meade satellite office did dispatch the DD Form 1840R in 1993; and the Fort Meade office's operating procedures required a dispatch to the carrier on the day that the DD Form 1840R was logged in.

Additionally, the Board takes notice of the business practice used by many carriers to date stamp documents when they are received. Some date stamps perforate the actual document in a pattern designating the date. The microfiche copy of the DD 1840R documentation submitted by Resource Protection in this case, includes such a date stamp. We recognize the pattern of perforations in these documents clearly shows that Allied received them in 1993. A *prima facie* case for the items reported in this documentation has been established.

Conclusion

We affirm the Settlement Certificate.

See Dissenting Opinion

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

Dissenting Opinion

I respectfully disagree with the factual finding drawn by my colleagues.

A review of the two DD Form 1840R forms indicates that the dispatching para-legal claims official attempted to enter the incorrect year (1994) four times, not just once, on the two forms. He had to type the year twice in "Date of Dispatch" block, once on each form, and he also had to type the incorrect year twice in the "Date Signed" block, Block 4c, once per form. His attempts to type this date were characterized by differences in style in representing the month ("Aug" on one form and "August" on the other), typographical errors including an attempt to correct the number of the day in August on one of the forms, and a typographical error in typing the year itself at one spot ("19994"). In these circumstances it would be difficult to find that the dispatching official typed the correct day and correct month with an incorrect year, even once, in the middle of the year; however, it is even more unlikely to assume that he would do so multiple times, stopping for corrections in the process. We have to accept the Air Force's report that the person no longer worked in the Fort Meade satellite office in August 1994, but in light of all the circumstances, it is reasonable to expect the Air Force to provide substantial independent corroboration of the actual day, month and year of dispatch.

The Fort Meade satellite office's internal procedure is no help. It establishes that a copy of the DD Form 1840R documentation is routinely dispatched to the carrier on the day that it is logged in at the claims office, or more liberally, on the day that the member presents it to the claims office. But, the Air Force did not produce a copy of the log or a

statement from the member concerning when he presented the DD Form 1840R documentation. There is thin supporting evidence in the form of a handwritten statement from a claims examiner who stated that the Law Office Manager reported to her that the manager had reviewed the log and that the log indicated that the year of dispatch was 1993. However, this was undermined by the follow up typewritten statement from the Law Office Manager herself who did not mention the log.

Our adjudicator deserves recognition for his examination of the DD Form 1840R documentation, but he is not an expert in document examination for the purpose explained above. In my view, the presence of "9-1-93" or similar characters is not reasonably observable on the documentation; therefore, his view that these characters were perforated into the documentation carries little weight. The opinion of a qualified expert would be much more persuasive.

The examiner's statement and our best guess about the perforation marks on the DD Form 1840R documentation is not substantial enough for the Air Force to meet its burden to support a finding that the DD Form 1840R documentation was dispatched to the carrier on August 13, 1993. Without more corroboration, Allied's claim should be allowed.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

1. This matter refers to Personal Property Government Bill of Lading SP-394,841; Air Force Claim No. Bolling AFB 95-1212; and Allied Claim No. 817515.

2. It is undisputed that the DD Forms 1840R would be untimely for advising Allied of later discovered loss or damage if, in fact, they were dispatched in August 1994. Loss or damage to household goods discovered and reported by the member to the claims office more than 75 calendar days after delivery is presumed not to have occurred while the goods were in the carrier's possession, and the carrier accepts the DD Form 1840R as evidence of later discovered loss or damage for purposes of establishing a *prima facie* case of liability against it only if the DD Form 1840R involved is dispatched within 75 calendar days of delivery. See Paragraph I of the *Military-Industry memorandum of Understanding on Loss and Damage Rules*, effective January 1, 1992.

3. This facility receives DD Forms 1840 and 1840R from Air Force personnel, but then forwards them to the local claims office at Bolling Air Force Base, DC. The claims office at Bolling is responsible for the balance of claims office functions. This Fort Meade satellite facility is unrelated to the Army's installation claims office on Fort Meade or the Army Claims Service.

4. It appears that the examiner's reference to "attorney" actually refers to a para-legal claims official.

5. The adjudicator found that one of the forms contained the word "CLAIMS" followed underneath it by "+9 1 ? 93" where the ? symbol represents a character that he was not able to discern.