

DATE: May 2, 2000

In Re:

Foremost Forwarders, Inc.

Claimant

Claims Case No. 00041902

CLAIMS APPEALS BOARD DECISION

DIGEST

A shipper offers sufficient proof of a *prima facie* case of liability against a carrier for damage to a desktop computer when he offers evidence that the computer was in good working order prior to tender to the carrier and the nature of the internal damage is consistent with its having been mishandled or dropped, *e.g.*, physical damage to otherwise sturdy components like a main board and drives. The mere lack of external damage is not sufficient evidence to rebut the carrier's liability.

DECISION

Foremost Forwarders, Inc.(Foremost), appeals Defense Office of Hearings and Appeals (DOHA) Settlement Certificate 99110810, March 24, 2000, in which this Office upheld the Navy's set off of \$200.48 for transit damage to a service member's household goods. [\(U\)](#)

Background

The record shows that the shipment originated at Andersen Air Force Base, Guam, on January 26, 1998, and another Foremost agent delivered it to the service member in Escondido, California, on February 13, 1998. The Descriptive Inventory included Item 171, a computer tower. On a Notice of Loss or Damage (DD Form 1840R) dispatched on February 18, 1998, the service member noted that although there was no external damage, the computer failed to "power on." The member obtained a damage estimate from a computer repair facility dated February 27, 1998, and the repairman noted that the hard drive came loose from the hardware holding it in place and was found laying on top of the main board. The floppy drive was damaged and had to be replaced, and the main board and hard drive had to be repaired. The repairman believes that the computer must have been bumped or dropped during transit. The member provided a handwritten supplementary statement in March 2000, in which he stated that his computer was working up to the day it was packed. The member remembers using it for accessing the Internet and for faxing during the final week before packing. The total repair cost was \$200.48.

On appeal, Foremost argues that no act or omission of its agents caused the damage, and it properly packed, crated and transported the computer. Foremost contends that any bump or drop could have been due to the normal rigors of transportation and that there is no evidence that its agents were negligent. Foremost contends that we should disregard the member's statement that the computer was working prior to shipment as "moot" because it was made two years after delivery and is self-serving. The condition of the hard drive could have existed prior to shipment and was aggravated

during shipment.

Discussion

The issue here is whether the Navy presented enough evidence to establish a *prima facie* case of liability against Foremost. The service member, and the Navy in subrogation, must show that Foremost received the computer in good condition; that it delivered the computer in a damaged condition; and the amount of damages. Thereafter, the burden would shift to Foremost 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). If these three factors exist, the carrier's negligence or lack of negligence is not directly relevant. Thus, Foremost's best argument is that the Navy never established a *prima facie* case of liability against it because there is no proof that the computer was delivered with damages it did not have at origin.

Foremost was not required to test the computer prior to accepting it for shipment. *See Interstate Van Lines, Inc.*, B-197911.5, June 22, 1989. That, however, does not end the matter. The question is whether there is evidence that the computer was in proper working order prior to shipment. *See* DOHA Claims Case No. 98020215 (February 10, 1998); and *Carlyle Van Lines, Inc.*, B-257884, January 25, 1995. When the nature of the internal damage to an item is consistent with its having been mishandled or dropped and the shipper states that the item was in working order when he tendered it to the carrier, the mere lack of external damage is not sufficient proof to rebut the carrier's liability. *Id.* Here, while the member made his statement two years after the fact, he was able to provide some detail concerning how he used the computer up to the time that it was packed. Moreover, in this claim, as in DOHA Claims Case No. 98020215, *supra*; *Carlyle Van Lines* and in *Department of the Army--Reconsideration*, B-255777.2, May 9, 1994, the damage involved the physical breaking of normally sturdy internal components (drives and main boards). *See also Allied Intermodal Forwarding, Inc.*, B-258665, Apr. 6, 1995.

Conclusion

We affirm the Settlement.

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 transaction involves Personal Property Government Bill of Lading ZP-383,614; Navy Claim No. PCA 98-1264; and the carrier's Ref. No. FF981444.