

DATE: May 17, 2000

In Re:

Suddath Domestic Military

Claimant

Claims Case No. 00050801

CLAIMS APPEALS BOARD DECISION

DIGEST

Tender of an item to a carrier is established as an element of a *prima facie* case of carrier liability where the item allegedly lost or damaged is reasonably related to items shown on the inventory of a carton's contents, particularly where it would not have been unusual to pack the item in that carton, and the carrier did the packing and prepared the inventory list. Accordingly, where a shipper claims, for example, that boots and shoes were missing from a wardrobe carton marked as "clothes," there is sufficient evidence of tender for purposes of a *prima facie* case of liability against the carrier.

DECISION

Suddath Domestic Military (Suddath) appeals the October 15, 1999, Settlement Certificate in DOHA Claim No. 99091305, which disallowed Suddath's claim for reimbursement of \$298 that the Air Force offset for the loss of shoes and boots missing from a service member's household goods shipment.⁽¹⁾

Background

The record indicates that Suddath obtained the member's household goods in Phoenix, Arizona, on August 24, 1995, and delivered them to him in Alexandria, Virginia, on September 28, 1995. In a *Notice of Loss or Damage* (DD Form 1840R) dispatched on October 26, 1995, the member notified Suddath that the following pairs of footwear were missing or stolen from Descriptive Inventory Item 235, a carrier-packed wardrobe carton containing "clothes:" Nike basketball shoes, Timberland boots, steel toe shoes and jungle boots. On January 22, 1996, the Air Force advised Suddath of its subrogated claim against the firm which included \$298 of liability for the footwear described above. The member again contended that the footwear was contained in Item 235. The January 22nd correspondence included copies of the DD1840R and the *List of Property and Claims Analysis Chart* (DD Form 1844). On April 9, 1996, Suddath responded that the three pairs of boots and one pair of basketball shoes would not have been contained in a wardrobe carton because the carton contained a bar specifically designed for hanging clothes on hangers. It also stated that no cartons

were reported missing at delivery and there was no indication of pilferage. On August 24, 1999, the member made a handwritten statement in which he stated that he saw his shoes and boots in his closet on packing day just before the packers started packing, and that he never saw these items again after that. A copy of this statement was provided to Suddath in September 1999.

On appeal Suddath elaborates on points it made earlier with the Air Force and our Office. Suddath points out that Item 235 was not missing and there is no indication it was tampered with. No "clothing" was reported missing; shoes and boots (which in Suddath's view are not "clothing") were reported missing. The member and the Air Force failed to demonstrate, during the carrier's 120-day claim settlement period, that the member had tendered the boots and shoes to Suddath. Finally, Suddath complains that the Air Force belatedly produced the August 24, 1999, statement from the member, noting that it was long after the period in which Suddath had to adjudicate the claim and long after delivery. Suddath believes that consideration of such a statement is either improper or little weight should be given to it. Suddath appears to be concerned about the self-serving nature of the statement made after setoff; the Comptroller General's criticism of statements with similar content in other claims; the carrier's limitations on defending itself beyond its claim settlement period; and the amount of time that has elapsed. Suddath cites Comptroller General decisions B-206117, B-205084, and B-240350 to support its position, and requests the Chairman of this Board to personally investigate this claim.

Decision

Tender of an item to the carrier is the first element in establishing a *prima facie* case of carrier liability for loss or damaged household goods; the shipper also must show that the item was not delivered (or was delivered in a more damaged condition) and the value of the item. *See Missouri Pacific Railroad Co. v. Elmore & Stahl*, 377 U.S. 134, 138 (1964). In a tender dispute where an item is lost, we have inferred tender when the lost item bears a reasonable relationship to the items described on the inventory as the carton's contents. There is no need for an exact match between the description of the lost item and the contents of the carton. That is particularly true when it would not have been unusual to pack the item in the carton, and the carrier did the packing and prepared the inventory list. *See* DOHA Claims Case No. 96070226 (September 5, 1996); *American Van Services, Inc.*, B-249966, Mar. 4, 1993. It does not matter that shoes or boots meet the strict definition of "clothes" or "clothing;" they are clearly associated with each other and it would not be unusual to pack them together. The following are examples of comparable situations where either this Office or the Comptroller General inferred tender of articles within cartons even though the tendered article may not have strictly met the definition of words used by the carrier to describe the carton's contents: tree lights with a Christmas tree in DOHA Claims Case No. 96070203 (September 5, 1996); a tool box with tools in *Ambassador Van Lines, Inc.*, B-256546 (September 23, 1994); pots, kitchen utensils, silverware, baking tins, an electric mixer and knives in cartons described as either "dishes," "pots," or "pans" in DOHA Claims Case No. 96111201 (March 13, 1997). We agree that the August 1999 statement adds little in the way of evidentiary value, but it is unnecessary to the result. ⁽²⁾

The legal authorities cited by Suddath are distinguishable. As our Settlement Certificate noted, in the *Paul Arpin* decisions the Army had arbitrarily assigned certain articles to specific inventory items (cartons) without evidence that those items were packed with them. The *Paul Arpin* decisions noted that the only statement explaining tender was a general statement by the claimant acknowledging criminal penalties for filing a false claim. The Comptroller General had observed that the record was devoid of any indication that the shipping cartons had been opened or that most of the articles allegedly lost were related directly to any category of items on the inventory. *See Paul Arpin Van Lines, Inc.*, B-205084, June 2, 1982, *aff'd* B-205084, June 8, 1983. The Army also arbitrarily assigned two china platters to a dish pack containing related items in *Paul Arpin Van Lines, Inc.*, B-206117, Sept. 21, 1982. As the Settlement Certificate also noted, the *Aalmode* decision involved a compact disc player allegedly contained in a box of "knickknacks." *See Aalmode Transportation Corp.*, B-240350, Dec. 18, 1990.

Suddath's argument that there was no evidence of tampering is irrelevant in this instance because Suddath was responsible for the entire move. *See* DOHA Claims Case No. 96111201, *supra* citing *McNamara-Lunz Vans and Warehouses, Inc.*, 57 Comp. Gen. 415, 418 (1978).

Finally, we have no authority to investigate this matter. This Board does not conduct investigations or adversary hearings in adjudicating claims, but relies on the written record presented by the parties. *See* 4 C.F.R. 31.7; DOHA Claims Case No. 98081904 (September 30, 1998); and *Major Joel L. Bennett, U.S. Army (Ret)*, B-251159, Mar. 16, 1993.

Conclusion

We affirm the Settlement Certificate.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Christine M. Kopocis

Christine M. Kopocis

Member, Claims Appeals Board

Signed: William S. Fields

William S. Fields

Member, Claims Appeals Board

1. This matter involves Personal Property Government Bill of Lading (PPGBL) SP-320,204; Air Force Claim No. 96-407 (Bolling AFB); and Suddath file 960015.
2. Where such a statement is necessary to the outcome, the claims office staff should obtain significantly more detail than that offered by this statement. For example, there should be a detailed description explaining how the article claimed to be tendered came to be associated with other objects in the carton.