DATE: May 17, 2000

In Re:

Resource Protection

on behalf of

Carlyle Van Lines, Inc.

Claimant

Claims Case No. 00050802

CLAIMS APPEALS BOARD DECISION

DIGEST

Post-delivery movement of a shipper's household goods does not invalidate the shipper's right under the Military-Industry emorandum of Understanding on Loss and Damage Rules to dispatch notice of loss or damage anytime up to 75 days after delivery.

DECISION

Resource Protection, on behalf of Carlyle Van Lines, Inc. (Carlyle), appeals the April 24, 2000, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 00041003 disallowing Carlyle's claim for a refund of $380.11 offset by the Air Force to recover for the loss of a service member's household goods.[(1)]

Background

The record shows that on September 9, 1998, Carlyle picked up the shipment in Bellevue, Nebraska, and on September 18, 1998, Carlyle made a partial delivery to the member at his temporary quarters in Wichita Falls, Texas. At that time, the member signed a *Statement of Accessorial Services Performed* (DD Form 619-1). Descriptive Inventory Items 101 and 123 were specifically listed in this partial delivery. Item 101 was described on the inventory as a 4.5 cubic foot, carrier-packed carton containing bedding. Item 123 was described as a 3.1 cubic foot, carrier-packed carton containing knickknacks. The remainder of the shipment was delivered to the member on November 13, 1998, after he had been assigned to government quarters. Subsequent to the second delivery, the service member dispatched a Notice of Loss or Damage (DD Form 1840R) notifying Carlyle that the disputed articles were missing from the September 18th delivery. The member stated that a *Detroit Lions* quilt was missing from Item 101 and that 16 *Precious Moments* plates were missing from Item 123.

Resource Protection argues that post-delivery movement of articles contained in Items 101 and 123 limited application of the notification provision in the Military-Industry Memorandum of Understanding on Loss and Damage (MIMOU), effective January 1, 1992. The notification requirement includes a provision that allows the member to dispatch notice to the carrier of exceptions to clear delivery anytime up to 75 days after delivery.[(2)] Resource Protection argues that under paragraph 37 ("Unloading and Unpacking at Destination") of the Tender of Service (TOS), the carrier is required to make a "one time placement of furniture and like items in the appropriate room of the dwelling or a room designated by the property owner."[(3)] As we understand Resource Protection's argument, paragraph 37's one-time placement requirement necessarily limits the 75-day notice provision because if the member was permitted the full 75 days in this instance, the carrier would be liable for something more than a one-time placement at one address. Resource Protection also suggests that the subsequent movement had the effect of displacing it as the last custodian of the property because persons unknown later moved the property an additional 15 miles to the permanent quarters after the member had acknowledged receipt of the property on the DD Form 619-1. Resource Protection also notes that the Comptroller General decision *National Forwarding, Inc.*, B-238982, June 22, 1990, *aff'd* B-238982.2, June 3, 1991, was provided by our Office even though it is irrelevant to the issue, and that the other cited decisions were distinguishable because they involved a one-time delivery to one address.[(4)]

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). Under the MIMOU, when loss or damage is not reported at delivery, a notice of later discovered loss or damage (usually the DD Form 1840R) dispatched to the carrier not later than 75 days following delivery shall be accepted by the carrier as overcoming the presumption of the correctness of the delivery receipt. The issue here is whether the member's right to provide notice of loss or damage is limited to less than 75 days if the member decides to move the property after delivery.

Resource Protection's interpretation of relationship between paragraph 37 of the TOS and the MIMOU is strained. The plain meaning of the language in the MIMOU does not suggest any limitation of the 75-day notification provision, and the plain meaning of paragraph 37 is a description of the carrier's responsibilities as he unpacks on the day of delivery. Paragraph 37 does not address liability or notification of loss or damage. Each provision can be given full effect without limiting the other.

Moreover, the Comptroller General found that the member has up to 75 days to dispatch notice even if the member reports the loss or damage after he or someone other than the carrier moves the property to a different address. *See American VanPac Carriers*, B-246852, Mar. 20, 1992, which applied *Interstate Van Lines, Inc.*, B-197911.3, *supra* to the situation therein. Also, in *Stevens Worldwide Van Lines, Inc.*, B-251343, Apr. 19, 1993, the Comptroller General held that the 75-day notification provision did not obviate the carrier's inspection rights even if the member reports a loss and then moves the lost or damaged property from Alabama to Florida before the carrier can inspect.

Conclusion

We affirm the Settlement Certificate.

Signed: Michael D. Hipple

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Michael D. Hipple

Chairman, Claims Appeals Board

Signed: William S. Fields

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William S. Fields

Member, Claims Appeals Board

Signed: Michael H. Leonard

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Michael H. Leonard

Member, Claims Appeals Board

1. This matter involves Personal Property Government Bill of Lading (PPGBL) ZP-259381; Air Force Claim No. Sheppard AFB 99-303; and Carlyle File No. 99-0003.

2. Paragraph 1(A) of the MIMOU provides, in relevant part that: "The carrier shall accept written documentation on the DDForm 1840R, dispatched within 75 calendar days of delivery to the address listed in block 9 on the DD Form 1840, as overcoming the presumption of correctness of the delivery receipt."

3. As Resource Protection suggested, the *Tender of Service: Personal Property, Household Goods and Unaccompanied Baggage* (TOS) is part of the contract between the military services and a participating carrier. The TOS is set forth in Appendix A to the *Personal Property Traffic Management Regulation*, DoD 4500.34-R (October 1991). Our research indicates that the applicable version of the TOS is OMB 0702-0022 (October 31, 1995) which accompanies Change 1 to the regulation (June 1995). In the 1995 version, the "Unloading and Unpacking at Destination" provisions are found at paragraph 38, not paragraph 37, but for purposes of the discussion herein, the wording is not significantly different. For simplification, we will refer to this paragraph as paragraph 37.

4. The other referenced decisions are: B-270385, Jun. 20, 1996; *Cartwright Van Lines, Inc.*,

B-243746, Aug. 16, 1991; and *Interstate Van Lines, Inc.*, B-197911.3, Feb. 2, 1990. The *National Forwarding* and *Cartwright* decisions were not cited in the Settlement Certificate. The Air Force had cited *National Forwarding* to support the proposition that timely dispatch of a DD Form 1840R overcomes the presumption of the correctness of the delivery receipt.