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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: American International Moving, Corp.

File: B-247576

Date: September 2, 1992

DIGEST

A carrier does not overcome the government's prima facie case of liability against it for damaged household goods by asserting that the owner denied the carrier the right to inspect the damaged items by repairing them prior to the end of the inspection period, where the firm did not even pursue its inspection rights within the inspection period.

DECISION

American International Moving, Corp., requests review of our Claims Group's settlement upholding an offset by the Air Force against funds otherwise due American to recover for damages of $458.99 to a service member's household goods.[1] We affirm the settlement.

American picked up the member's household goods at his former residence in Fort Walton Beach, Florida, on September 26, 1988, and delivered them to his new residence in Enid, Oklahoma, on October 4, 1988. The record contains a "carrier" copy of a Joint Statement of Loss or Damage at Delivery (DD Form 1840), dated October 4, 1988, describing seven damaged items including a torn back on a couch (item 99) and broken styrofoam in a jacuzzi cover (item 123).

American states that the "original" of the DD Form 1840 dated and signed by the member on October 4, 1988, did not note any damage at the time of delivery, which the carrier argues shows that the shipment was delivered undamaged. American complains that it was not until December 19, 1988, 75 days following delivery, that it received another copy of the DD Form 1840 listing damages (along with a Notice of Loss or Damage, DD Form 1840R, listing additional damaged items not relevant to this dispute). American also complains that these items (except the jacuzzi cover) were

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[1]The move was accomplished under Personal Property Government Bill of Lading PP-593,632.

repaired before it received the notification, and that it therefore effectively was denied the right to inspect for damages with respect to those items. The carrier further contends that the couch on which the Air Force is claiming damages, item 96, is not the same couch as the one noted on the DD Form 1840 (item 99). Finally, the company contends that there is no evidence of an expenditure to repair the cover and, therefore, the member is not entitled to recover the $4.84 estimated tax on the cost of repair.

The Air Force found no evidence that American attempted to inspect the household goods or contacted the owner concerning inspection at any time. The record indicates that American first mentioned its inspection right in its letter of April 18, 1990, as a part of contesting the Air Force's claim.

To establish a prima facie case of carrier liability, it must be shown that the shipment was delivered to the carrier in a certain condition and that it arrived at its destination in a more damaged condition. In addition, the shipper must establish an amount of damages. Thereafter, the burden is on the carrier to show that it was free from negligence and that the damage resulted from an excepted cause relieving the carrier of liability. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134, 138 (1964); Stevens Transportation Co., Inc., B-243750, Aug. 28, 1991.

We find that American received adequate timely notice of the damages. The industry and the Department of Defense have agreed to certain rules for processing loss and damage claims, set out in the Joint Military-Industry Memorandum of Understanding. The shipper can show that loss or damage occurred while the household goods were in the possession of the carrier by completing the DD Form 1840 with the carrier's representative at the time of delivery, noting any loss or damage. The shipper also can notify the carrier of additional loss or damage within 75 days of delivery, generally by using the DD Form 1840R. Such notice operates to overcome the presumption of correctness of the original delivery receipt (in this case, the DD Form 1840 signed at the time of delivery). Although here the shipper evidently annotated a copy of the delivery DD Form 1840 to report damage discovered after delivery, that clearly provided adequate notice to American. See Sherwood Van Lines, 67 Comp. Gen. 211 (1988).

Regarding the pre-notice repairs, American had 45 days from the date of dispatch of the notice of damage (December 12) to inspect the items for purposes of ascertaining its liability, thus giving American until January 26, 1989, to accomplish the inspection. However, the record contains no

indication that American tried to inspect or even raised the issue within that period. Since American did not exercise its right to inspect, and therefore did not rely on this right, the repairs are irrelevant. See Fogarty Van Lines, B-235558, Dec. 19, 1989; Continental Van Lines, Inc., B-215559, Aug. 23, 1985.

American also objects to being held liable for damage to the couch, because the notice listed the couch as inventory item 99, whereas the member's couch was inventory item 96. The inventory describes item 99 as a "couch piece" and item 96 is described as a "couch." In our view, the reference to a "couch" on the DD Form 1840 next to the listing of item 99 was sufficiently descriptive for purpose of notice of damage to the couch.

Finally, American contends it should be relieved of liability for estimated tax in the amount of $4.84 on the jacuzzi cover repair, because there is no evidence that the money was spent for such repair. The applicable rule appears at Air Force Regulation 112-1, para. 6-25b (C1, March 20, 1984), which provides that taxes on repairs are not to be considered until the claimant pays such charges. However, this provision was intended as guidance in paying claims to members under the Military Personnel and Civilian Employees Claims Act of 1964, as amended, 31 U.S.C. § 3721, and does not address third party recoveries. A carrier may be liable to a service member for amounts or types of liability for loss/damage to household goods that are different from the amounts a military service may pay that member under 31 U.S.C. § 3721 on account of such loss/damage. See Fogarty Van Lines, B-235558.5, Apr. 29, 1991.

We affirm the Claims Group's settlement.

for James F. Hinchman
General Counsel