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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Van Services, Inc.

File: B-249834

Date: February 11, 1993

DIGEST

1. Where goods pass through the hands of several bailees, any loss or damage is presumed to have occurred in the hands of the last one.

2. Written notice to the carrier of in-transit damage is adequate where a specific shipment is identified and the shipper lists several particular inventory items that were "damaged." Under such circumstances, the carrier is alerted to the need to investigate the facts.

DECISION

American Van Services, Inc., requests review of our Claims Group's settlement disallowing its claim for a refund of $1,097.77, the amount set off by the Air Force to recover damages to a retired service member's household goods.[1] We modify the settlement.

The member's household goods had been placed into nontemporary storage (NTS); the NTS contractor had prepared an itemized inventory which included observations about the condition of some items. When American obtained the goods from the NTS contractor for delivery, it prepared a rider to note conditions differing with those on the inventory for several items. After delivery, the retired member noted lost or damaged items on the DD Form 1840[2], and a DD Form 1840R notifying American of additional damage was later dispatched.

American disputes its liability for numerous items. We affirm the Claims Group's settlement, which endorsed all of the Air Force set-off, for the items discussed in sections

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[1]American accomplished the move under Personal Property Government Bill of Lading PP-650,346.

[2]Joint Statement of Loss or Damage at Delivery.

(1)-(4) below, but we reverse it for the items discussed in sections (5)-(6).

The issue regarding each item is whether the shipper established a prima facie case of carrier liability. To do so, the shipper must show tender of the goods to the carrier, delivery in a more damaged condition, and the amount of damages. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134, 138 (1964). Moreover, when goods pass through the custody of several bailees, it is a presumption of the common law that the damage occurred in the hands of the last one. See Stevens Transportation Co., Inc., B-243750, Aug. 28, 1991. The carrier then bears the burden of proving either that the damage did not occur while in its custody or that the damage can be attributed to one of five exceptions. McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415, 418 (1978).

(1) The Air Force assessed American $198.50 for damage to two kitchen items in a carton labeled inventory item 12, and $24 for a hole in a lampshade in another carton, item 185; each had been packed by the NTS contractor. American's rider stated that each of the cartons had been crushed. American, which did not open the cartons to examine their contents when it took them from the NTS facility, contends that the kitchen items had been improperly packed and were repairable anyway, and that the rider notations for the two cartons establish that the NTS contractor was liable for any damage.

We find no merit in American's arguments. We first point out that the carrier could have opened any cartons exhibiting external damage and repacked (at its own expense). See Eastern Forwarding Co., B-248185, Sept. 2, 1992; Air Land Forwarders, B-247425, June 26, 1992.

Also, to escape liability for damaged articles based on an allegation of improper packing by the previous bailee, a carrier must show not only that the goods were improperly packed but also that the packing was the sole cause of the damage. Ogden Transfer & Storage Co., B-248182, Sept. 8, 1992. American has not done so. In this respect, even if the NTS contractor crushed the box containing the shade, that does not explain the hole in the shade, especially when crushing is not reported as a damage. Mere speculation by the carrier concerning the cause of the damage does not relieve the firm of liability. Stark Van Lines of Columbus, Inc., B-213837, Mar. 20, 1984.

Finally, our Office will not question an agency's calculation of the value of the damages to a member's household goods unless the carrier presents clear and convincing evidence that the agency acted unreasonably.

See Ambassador Van Lines, Inc., B-249072, Oct. 30, 1992. American has not offered any repair estimates.

(2) The Air Force assessed American $20 for breaking the glass of a picture in inventory item 165, a 3.1 cubic foot carton. American complains that because the inventory stated that the carton contained "dried flowers" there is no evidence showing tender of the picture. American also disputes the $20 glass replacement cost that the Air Force assessed.

We find that the Air Force, and our Claims Group, reasonably concluded that it was not unusual for the picture to have been packed with "dried flowers" and other decorative articles in Item 165. See Carlyle Brothers Forwarding Co., B-247442, Mar. 16, 1992. Also, American simply assumes that the glass could have been replaced for less than $20 without presenting clear and convincing evidence to rebut the government's estimate.

(3) Items 221 and 222 were table leaves for the dining set. The NTS contractor and American's rider each noted specific scratches, chips and dents; the DD Form 1840 noted that both leaves were "damaged"; and the estimate provided with the Air Force's claim described the leaves as "splintered and gouged." American was assessed a repair cost of $50 for each leaf. American contends that it received inadequate notice of the damage, and that the estimate was unreasonable since it came from a construction company, not a regular furniture repairman.

We find no merit in American's notice argument. In Continental Van Lines, Inc., B-215507, Oct. 11, 1984, we concluded that notice was adequate for purposes of a prima facie case even where specific item numbers, article descriptions and types of loss/damage were not provided. Here, the member stated inventory numbers and article descriptions on the DD Form 1840 or 1840R. American had enough information to initiate a prompt and complete investigation of the facts surrounding damage to particular items in a specific shipment; such notice is adequate.[3] As to the company's disagreement about the repair cost, it simply has offered no competent evidence to refute the Air Force's assessment.

(4) American was assessed $19.80 for damage to item 283, a hamper; $35 to repair damage to item 220, an antique desk;

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[3]The record does not indicate that American inspected this shipment even with numerous notations of damage. Had the carrier done so, it would have identified the specific damage.

and $35 to repair item 226W, a sewing machine. For each one, American's request for review is based on its disagreement with the extent of the damage; the adequacy of the notice; and/or the accuracy of the repair estimate. We have reviewed the record regarding each item and, based on the principles set out above, we find nothing improper in the assessments.

(5) The Air Force assessed American a depreciated replacement cost of $423.15 for a dining room chair with arms, identified as item 232. American suggests that this may be the wrong item number, since item 232 was a chair without arms, whereas item 175 was a chair with arms. American points out that if item 175 was the chair allegedly damaged, rider notations indicate that the NTS contractor was liable for the damage. We are unable to determine the correct item number for the chair, especially since item 229 also appears to have been a dining room chair with arms. We therefore recommend that the Air Force clarify the identity of the damaged chair--our review of the record shows that if it was item 175, the carrier may be entitled to a refund, but if it was item 229, the carrier may not be so entitled.

(6) The Air Force assessed American $150 to repair items 225 and 226, a dining room table top and table legs. American also was assessed $35 to repair each of two shelves, items 178 and 211. American argues that the claimed damage is little different from the damage recorded when it picked up the items from the NTS facility.

The government has not shown that the damage to items 225/226 at the time of delivery was greater than the damage noted by American when it prepared its rider. Pre-existing damage to the table consisted of scratches on the top, top edge and legs; a corner was rubbed. The rider stated that the table was chipped, stained and dented. The repair estimate stated that veneer was chipped off, and that the top, sides and legs were scratched and gouged. Except for the word "gouged," nothing is added to the description of the damage between pick-up and delivery, and we do not view the inclusion of the word "gouged" in these circumstances as establishing that additional damage occurred while the table was in American's custody. See Continental Van Lines, Inc., 63 Comp. Gen. 479 (1984). Similarly, we find no evidence of additional damage with respect to items 178 and 211. Since there is no evidence of greater or different damage incurred in transit, American is not liable for these items. See Ambassador Van Lines, Inc., supra.

In sum, we affirm the Claims Group's settlement with respect to all items but items 232 (which should be referred back to the Air Force for further investigation, as discussed), 225/226, 178 and 211.

for James F. Hinchman
General Counsel