148703

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Van Services, Inc.

File: B-249966

Date: March 4, 1993

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.

DECISION

American Van Services, Inc., requests review of our Claims Group's settlement allowing American a refund of $123.27 set off by the Air Force for transit loss or damages to a service member's household goods.[1] We modify the settlement.

American picked up the member's household goods on November 30, 1988, after preparing an inventory; it delivered them on December 20, 1988. Lost and damaged items were noted at delivery, and the shipper informed American of additional damages on the Notice of Loss or Damage, DD Form 1840R, dispatched on February 24, 1989.

The following items and their replacement costs are in dispute: (1) a broken ceramic plaque packed in a 1.5 cubic foot carton of books (item G126), $15.08; (2) a crushed vacuum cleaner brush packed in a dishpack with shelf glass (item G89), $16.95; (3) a broken wicker basket packed in a 4.5 cubic foot carton of games (item G58), $8.65; (4) two crushed lamp shades in a 3.2 cubic foot carton (G96) described as containing a lamp shade, $8.50; and (5) missing nuts and bolts for metal shelving (items 0154-0156), $25.20.

American contends that evidence of tender to it of the first three items is insufficient because they were not separately itemized in the inventory and were not related to the item

[1]This shipment moved under Personal Property Government Bill of Lading RP-144,675.

labels on the cartons in which they allegedly were packed. Also, the firm appears to argue that it should not be held liable for the second lamp shade ($4.25) when the inventory indicates that only one was tendered. As to the nuts and bolts, American contends that the DD Form 1840R provided inadequate notice of loss because the member described the loss of "screws," not nuts and bolts for the shelves; in any event, the shelving was "nearly worthless" due to pre-existing damage.

We reverse the Claims Group's settlement with respect to the vacuum cleaner brush and wicker basket; it is otherwise affirmed.

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. See Missouri Pacific Railroad Co. v. Elmore Stahl, 377 U.S. 134, 138 (1964); Fogarty Van Lines, B-235558.5, Apr. 29, 1991. 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. Carlyle Brothers Forwarding Co., B-247442, Mar. 16, 1992. 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 American Vanpac Van Lines, B-239199.4, Sept. 29, 1992. In this case, we note that the carrier packed the first four items in issue, and labeled the boxes containing them.

We agree with American that a ceramic plaque normally would not be packed in a carton of books. Here, however, on the DD Form 1840R the member specifically observed that the plaque was "broken into several hundred pieces." Such damage is consistent with the plaque's placement with relatively heavy objects. Accordingly, we think the finding of our Claims Group that the ceramic plaque was contained in item G126 was reasonable.

Likewise, we uphold the findings of our Claims Group with regard to the second lamp shade, since it is not unusual to pack more than one lamp shade in the same carton.

We disagree with respect the vacuum cleaner and wicker basket. A vacuum cleaner brush is clearly unrelated to shelf glass. The Air Force argues that parts of same vacuum cleaner were scattered in three other locations: items 0102, 0152 and 0172. Those three cartons, however, were specifically listed on the inventory as containing vacuum cleaner parts. We also note the lack of any specific personal observations by the shipper or others describing

the packing process and how the brush came to be packed with the shelf glass.

For the same reason, we see no basis to conclude that the wicker basket was located with the box of games. The Air Force noted that the shipment contained other wicker objects and suggested that the basket may have been in the same room with the games. But, the record contains no observations by the shipper concerning origin packing, and we cannot ascertain from the record whether the basket and games were located together. Also, we find it significant that American separately and specifically itemized in the inventory another wicker basket (item 0161) that it transported.

We find no merit in American's argument that it received inadequate notice about the missing nuts and bolts for items 0154 through 0156 simply because the member described the shelf fasteners as "screws." Also, we will not consider American's suggestion that the shelving was "nearly worthless" without clear and convincing evidence that the Air Force's calculation of damages was unreasonable. Ambassador Van Lines, Inc., B-249072, Oct. 30, 1992.

We reverse the Claims Group's settlement with respect to the vacuum cleaner brush and wicker basket; it is otherwise affirmed.

James F. Hinchman
General Counsel