



Decision

PR

Matter of: Ambassador Van Lines, Inc.

File: B-249072

Date: October 30, 1992

DIGEST

1. The General Accounting Office will not question an agency's calculation of the value of the damages to items in the shipment of an employee's household goods unless the carrier presents clear and convincing evidence that the agency acted unreasonably.
2. Where the record shows pre-existing damage to household goods claimed damaged in transit, but lacks evidence of greater or different damage incurred during the shipment, the carrier is not liable.

DECISION

Ambassador Van Lines, Inc., requests review of our Claims Group's settlement modifying an offset of \$936.35 by the Navy against funds otherwise due to Ambassador to recover¹ for damages to a civilian employee's household goods.² We affirm the settlement in part, and we reverse it in part.

The record shows that this shipment was picked up at the employee's former residence in Belleville, Illinois, on November 14, 1990, and was delivered to his new residence in Ridgecrest, California, on December 19, 1990. Some of the damages claimed were noted at delivery on the Joint Statement of Loss or Damage at Delivery (DD Form 1840), while others were noted by the employee in the Notice of Loss or Damage (DD Form 1840R) dispatched to the carrier on January 2, 1991. The Navy conducted its own inspection on January 11, 1991; the results were included in the Government Inspection Report (DD Form 1841) of that date.

Ambassador completed a descriptive inventory of the goods tendered to it at origin, and because that inventory listed pre-existing damage (PED), the firm denies liability for some items and disputes the amounts set off for others.

¹The move was accomplished under Personal Property Government Bill of Lading TP-360,981.

- 18 600
- Bar stools (items 2 and 3); coffee table (item 37), and oak chairs (items 51 and 52); Ambassador ~~denies~~ any liability (which totaled \$164), claiming that all damage was PED.
 - Oak Bar (item 4) and hutch top (item 5): The inventory described the PED on item 4 as a rubbed front rail and dented top and on item 5 as including scratches at various locations. The DD Form 1840 noted that the carrier dented the top of item 4, and that there was additional damage to item 5. Written correspondence from the employee states that while some dents in item 4 were PED, the ones he described were damages added during transit. The total cost of repairs for items 4 and 5 was \$175, but the Navy ultimately adjudicated damages in the amount of \$105 to reflect 40 percent depreciation due to PED. The carrier claims that it is liable for only half of the damage, or \$87.50.
 - Television (item 106): On the inventory, Ambassador described PED as a "scratched top, dented top, left & scratched left, side, scratched, rubbed bottom, front corner right." The DD Form 1840 described damage as a "front right and left corner rubbed; scratched right side top; wheel loose; dent front left." The DD Form 1841 attributed the additional damage to the top of the console television to a leaking grease gun in an adjacent carton. The cost of repairs for item 106 was \$250, but the Navy ultimately adjudicated damages in the amount of \$175 to reflect 30 percent depreciation for PED. The carrier seeks recovery of \$120.
 - Washer (item 136) and flower pot (item 108): Ambassador contends that it was not negligent.
 - Table lamp (item 39): No PED was noted on the origin inventory; the DD Form 1840R noted that the metal crystal holder was broken. Replacement cost for item 39 was \$150, but the Navy ultimately adjudicated damages in the amount of \$105 to reflect depreciation. The carrier believes that it should be charged no more than \$50 to reflect loss of value because the lamp was still useful; it claims a \$55 refund.
 - Brass lamp (item 162): No PED was noted on the origin inventory; the DD Form 1840R noted that the top was dented (in three places). Replacement cost for item 106 was \$150, but the Navy

ultimately adjudicated damages in the amount of \$112.49 to reflect depreciation. The carrier believes that its offer of \$50 is reasonable since the lamp was still useful; it claims a \$62.49 refund.

- Brass shelves (item 195): On the inventory, Ambassador described PED as a scratched front; the DD Form 1840R described damages as a stripped screw. This screw stripped from the center post rendered the unit unstable. Replacement cost for item 195 was \$100, but the Navy ultimately adjudicated damages in the amount of \$85 to reflect depreciation. The carrier argues that the Navy failed to prove that repairs were uneconomically and that replacement was required; it offered \$25 for repairs.
- Television (item 49): On the inventory, Ambassador described PED as a rub on the front, corner, top, right, and a scratch/chip at the top, front edge. The DD Form 1840R noted that all corners were rubbed, and that the top front and back corners were nicked. The repair costs were \$100, and the Navy adjudicated the total amount against the carrier. The carrier regards all damage as pre-existing, and requests a full refund of \$100.
- Shelf unit (item 66): The inventory described PED as a scratched and rubbed rear edge, top and bottom. The DD Form 1840R noted that the top, back was rubbed and that the second shelf had a scratched front. Repair cost for the shelf with the scratched front was \$40, but the Navy ultimately adjudicated damages in the amount of \$20 to reflect PED. The member states that he saw the carrier scratch the shelf with a knife when taking the wrapping off. Ambassador requests a complete refund.
- Overstuffed rocker (item 102): On the inventory, Ambassador described PED as scratches and rubs to the front edge, left arm, side and legs. The DD Form 1840R noted a hole in the right side top, as well as a dent in the left arm. The cost to reupholster was \$635, but the Navy adjudicated damages of \$580 against the carrier. Ambassador requests a refund of \$72 because the new fabric in reupholstering should be depreciated (5 percent or 10 percent per year).

ANALYSIS

Generally, to recover from a carrier for damaging his property, a shipper must establish a prima facie case by showing tender of the goods to the carrier, delivery in a more damaged condition, and the amount of damages. Thereafter, the burden is on the carrier to show that he was free from negligence and that loss was due to an excepted cause relieving the carrier of liability. Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134, 130 (1964) ✓

Sufficient, competent evidence of additional damage does not exist with respect to items 2, 3, 37, 51 and 52. We cannot distinguish between the PED on the inventory from that on the DD Forms 1840/1840R. Where the record shows the existence of pre-existing damage and lacks evidence of greater or different damage incurred in transit, the carrier is not liable for damages. See Continental Van Lines, Inc., 63 Comp. Gen. 479 (1984) ✓

Ambassador argues that a different amount of depreciation should apply on items 4, 5, and 106, but the firm did not offer evidence of the value of these items prior to tender. For example, Ambassador merely speculates that items 4 and 5 should have been depreciated by 50 percent, rather than the 40 percent that the Navy ultimately applied to them. Without competent evidence of the market value of these items before transit, we have no basis to reverse an administrative determination of damages. See Motor Service Co., Inc., B-229087, Mar. 28, 1986; Paul Arpin Van Lines Inc., B-213841, Sept. 18, 1984; Ryder Truck Lines, B-213839, Aug. 29, 1984. ✓

Ambassador denies any liability for items 136 and 108 saying it was not negligent. But as the standard set out above indicates, if an item is tendered to a carrier and then delivered in a more damaged condition, the carrier must show that it was not negligent and that the damage was due to an excepted cause. Ambassador did not allege an excepted cause here.

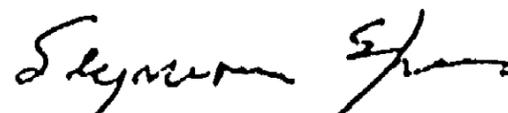
The carrier argues that damages on items 39 and 162 should be limited to a nominal amount because they were still useful for their intended purpose. It also contends that the Navy erred by not proving that item 195 was not repairable. However, the carrier has the burden of proof on the reasonableness of the damages. Ambassador offered no repair estimates that might have shown that item 195 could have been repaired economically. Regarding items 39 and 162, a property owner is entitled to recover the cost of such repairs or replacements that are necessary to restore him to the position he would have occupied had there been no loss or damage to the shipment. See 53 Comp. Gen. 109 ✓

1975), even if loss of value may be, in some instances, a reasonable measure of damages, Ambassador did not demonstrate that the Navy's measure of damages (depreciated replacement costs) was unreasonable for these two items. (The carrier's evidence might have included repair costs and an indication about whether such repairs would have been noticeable.)

Although Ambassador denies liability for items 49 and 66, the DD Forms 1840R indicate that both incurred additional damage in transit. For item 66, none of the PED noted in the inventory suggests that the second shelf was damaged, but the DD Form 1840R specifically refers to the second shelf. The member's observations about the carrier scratching the shelf also support the finding of additional damage. The DD Form 1840R for item 49 indicates that all corners were rubbed, while the inventory indicates that only some of them were damaged.

Finally, with regard to item 102, the Navy's Schedule of Property and Claim Analysis Chart (DD Form 1844) indicates that 10 percent depreciation in fact was applied to the rocker and thus is reflected in the reupholstering costs.

The Claims Group's settlement is affirmed with respect to all items except 2, 3, 37, 51 and 52.


James F. Hinchman
General Counsel