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

Decision

Matter of: American Van Services, Inc.
File: B-252671
Date: August 19, 1993

DIGEST

1. 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.
2. A notice of loss or damage is sufficient to overcome the presumption of correct delivery if it is written, timely, and in content sufficient to alert the carrier that damage has occurred for which reparation is expected and which the carrier should investigate.

DECISION

American Van Services, Inc. requests review of our Claims Group's settlement modifying the Air Force's set-off against funds due to American to recover transit damages to the household goods of a civilian employee.¹ We modify the settlement.

The carrier transported the goods from Norfolk, Virginia, to Tyndall Air Force Base, Florida, delivering them on March 28, 1990. The employee noted damages to some items in the Joint Statement of Loss or Damage at Delivery (DD Form 1840), and to others in Notices of Loss or Damage (DD Form 1840R) dispatched on April 10, 1990, and on June 6, 1990. The carrier contests its liability for damage to items 14-17, dining chairs (\$50); item 33, a curio cabinet (\$80); item 77, a plaster/stone occasional table (\$65); item 35/36, a wardrobe (\$75); item 57, a chest with mirror (\$175); item 70, a coffee table (\$332.50); item 30, a 2-piece sectional (\$50); item 28, a chest (\$60); and a second mirror, also associated with item 57 (\$190).

¹The shipment moved under Personal Property Government Bill of Lading TP-799,717.

We affirm the Claims Group's settlement with regard to items 33, 77 and 14-17; we modify or reverse the settlement on the remaining items.

To establish a prima facie case of carrier liability, the record must show that an item was tendered to the carrier in a certain condition, that the carrier delivered it in a more damaged condition, and the amount of damages. Thereafter, the burden is on the carrier to show that it was free from negligence and that damage resulted from an excepted cause relieving it of liability. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134, 138 (1964).

American contends that it is not prima facie liable for any item because the damage claimed for each item was indistinguishable from the pre-existing damage (PED) noted on the inventory. Where the record shows the existence of PED and lacks evidence of greater or different damage incurred in transit, the carrier is not liable for the damages. See AAA Transfer & Storage, Inc., B-248535, Oct. 22, 1992.

Our review of the record shows that there was PED, and distinguishable evidence of transit damage, to the chairs (items 14-17); the cabinet (item 33); the wardrobe (item 35/36); the chest and its mirror (item 57); and the coffee table (item 70). The record, however, suggests that there is no ascertainable additional cost for repairing the PED to the first two--it appears that the PED necessarily would have been repaired in the process of repairing the transit damage. American therefore is liable for item repairs even if PED was repaired in the process. See Interstate Van Lines, Inc., B-197911.2, Sept. 9, 1988.

In contrast, the additional costs to repair the PED for the other items appear to be ascertainable. The Air Force should reconsider the wardrobe, excluding repair of the gouged left side; the chest, excluding repair of the right side of the chest itself; and the coffee table, excluding repair of the frame.

American also takes issue with the depreciated replacement cost (\$65) the Air Force used for the table (item 77), arguing that the table was so damaged that it was worthless when tendered to the carrier. Aside from mere conjecture, however, the carrier offered no evidence of the table's value (or lack thereof) prior to shipment; therefore, we cannot conclude that the depreciated replacement cost used by the Air Force was incorrect. See AAA Transfer & Storage, Inc., supra.

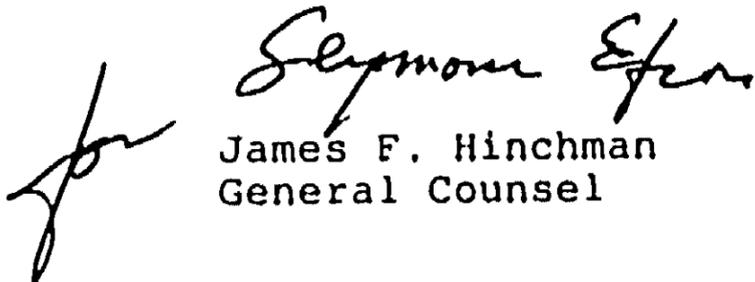
American is not liable for any damage claimed to the sofa (item 30) or to the chest (item 28). The four cushions of

the sofa were torn; this is indistinguishable from the "torn" condition noted in the inventory. Similarly, the many chips to the top and sides of the chest are indistinguishable from the chips and other damages noted as PED on the top, sides and other areas.

American also is not liable for damages claimed to a second mirror identified as item 57. (The chest with that item number had its own mirror.) This second mirror is described as a 13-panel beveled glass mirror on a frame. American contends that there is no evidence that it ever was tendered this second mirror. We agree. It does not appear that a second mirror was a component of the chest; the record includes a photograph of the chest's mirror but not of the second one; and we are unable to find any reference to a 13-panel beveled mirror as an independent item in the inventory under a different number.

Finally, American contends that it was not properly notified, in a timely manner, of damage to some of the items in issue. We disagree. The carrier was generally notified about damage at delivery by the DD Form 1840, and later through two DD Forms 1840R. All notices were timely, and contained enough content to alert the carrier that damage occurred for which reparation is expected. See AAA Transfer & Storage, Inc., supra; Continental Van Lines, Inc., B-215507, Oct. 11, 1984.

We are returning this matter to the Air Force for settlement consistent with this decision.


James F. Hinchman
General Counsel