Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: A&A Transfer & Storage, Inc.

File: B-252974

Date: October 22, 1993

DIGEST

1. When damage claimed by the owner of an item of household goods is a type that cannot be observed by the carrier's inspection at tender, the record contains no proof of the good condition of the item at that time, and the record does not indicate that the damage resulted from other damage to the item for which the carrier is liable, the government has not established a prima facie case of carrier liability for that damage.

2. The General Accounting Office will not question an agency's calculation of the value of the damages to items in the shipment of a member's household goods unless the carrier presents clear and convincing evidence that the calculation is unreasonable.

DECISION

A&A Transfer & Storage, Inc., requests review of our Claims Group's settlement upholding the Air Force's set-off of amounts otherwise due to A&A to recover transit damages on items in a shipment of a service member's household goods.[1]

A&A received the goods from a non-temporary storage (NTS) contractor on November 2, 1988 (after storage for 2 years), and delivered them to the member on November 6. The carrier contends that the Air Force has not met its burden of proof on the measure of damages to two speaker systems, a wooden cabinet, and a wooden radio. Therefore, A&A argues, there is no prima facie case of liability. The carrier also contends that there is no proof that the torn speaker cones inside the speakers were tendered to the NTS contractor in good condition.

We modify the settlement.

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[1]This shipment moved under Personal Property Government Bill of Lading PP-993,892.

On the measure of damages, A&A complains that the government did not provide complete information on the AF Form 180[2] about the radio and cabinet (e.g., brand name, model, and size), did not prove that items like the speakers were not repairable at a cost below the depreciated replacement cost, did not recognize the carrier's right under the Depreciation Guide to apply a higher depreciation rate than that suggested when there is evidence of extensive pre-existing damage (e.g., the speakers), and did not depreciate at the proper rate (e.g., the radio).

Generally, to recover from a carrier for damaging 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. The burden then is on the carrier to show that it was free from negligence and that the injury was due to an excepted cause relieving the carrier of liability. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134, 138 (1964).

As A&A points out, there is no evidence in the record showing that the speaker cones were tendered to the carrier in good condition, nor does it appear that their condition was visible upon reasonable inspection. Compare Interstate Van Lines, Inc., B-197911.5, June 22, 1989; Paul Arpin Van Lines, Inc., B-193182, Mar. 18, 1981, aff'd B-193182, June 16, 1981, 81-1 CPD ¶ 493. We also note that although water damage to the speakers was noted at delivery,[3] the record does not suggest that the water damage caused the speaker cones to tear, and there is no evidence of a puncture or other external damage that would be consistent with damage to the cones inside.

The record thus does not support a prima facie case against A&A for the speaker cone damage. Since the damage to the cones presumably affected the Air Force's measure of the damage to the speakers, the Air Force should reassess the carrier's liability for those items.

As to the other damage, the AF Form 180 includes a property description section to help the agency verify the member's claim against the government. The lack of specific information in it does not relieve a carrier of liability to the government. In this regard, A&A inspected the damaged items, so that data like brand name, model and size should have been available; substantial information in fact was

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[2]Claim for Loss or Damage to Personal Property Incident to Service.

[3]The carrier did not seek review of the Claims Group's finding that it was liable for the water damage.

contained in the repair estimate as well as the AF Form 180 (e.g., the radio was a Musicaire table radio); and the shipper furnished a personal opinion on the value of the property. In our view, the evidence is adequate for a prima facie case against A&A, so that the burden of proof properly was shifted to the carrier.

In settling a member's claim, the carrier does have the right under the Joint Military-Industry Depreciation Guide to consider actual care and usage of an item before applying the depreciation rates in the Guide for average care and usage. The carrier's opinion, however, is not definitive. To defeat recovery by the government at a higher amount, the carrier still has the burden of proving by clear and convincing evidence that the agency's calculation was unreasonable. See Ambassador Van Lines, Inc., B-249072, Oct. 30, 1992. A&A has offered little positive evidence of the value of the radio or cabinet.

A&A also raises specific arguments concerning the calculation of depreciation and salvage to the wooden radio. We will not consider the issues, however, since the carrier did not raise them with the Air Force or the Claims Group. Compare American Vanpac Carriers, B-249929, Sept. 3, 1993.

The matter is remanded to the Air Force for reassessment of damages on the speakers. The appeal otherwise is denied.

Seymour Efros

James F. Hinchman
General Counsel