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Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: American VanPac Carriers

File: B-256688

Date: September 2, 1994

DIGEST

Proof of tender of lost household goods is established for purposes of a prima facie case of carrier liability, even though the articles were not specifically listed on the carrier's pick-up inventory. The carrier prepared the inventory and packed the cartons claimed to have contained the articles, and the record includes a statement by the owner reflecting his personal knowledge of the exact location of the articles at the time of the move and their proximity to other missing objects.

DECISION

American VanPac Carriers requests review of our Claims Group's settlement upholding the United States Army Claims Service's set-off of money otherwise owed to the carrier to recover for the loss of a service member's household goods.¹ The company denies liability for three objects: an AT&T telephone, a Cannon "Sureshot" camera and a television remote control. We affirm the Claims Group's settlement.

The service member claimed that the telephone was contained in item 67, described on the inventory as a carrier-packed dish pack of kitchen glass. According to the member, the camera and remote control were contained in item 85, described as a carrier-packed dish pack of lamps. An Army Claims Service official interviewed the service member twice by telephone in late July 1993 (almost 4 years after he tendered the shipment to the carrier), and the member stated that, at the time he moved, his telephone was located on a kitchen counter, the remote control was located on the same end table as one of the lamps, and the camera was kept on a shelf inside a door on an end table that one of the lamps was on (along with some missing oil jars).

¹This shipment involves Personal Property Government Bill of Lading TP-124145 (John Unrue).

American VanPac contends that it investigated this matter with the origin agent and that while the agent only vaguely remembered this move, it was the agent's normal business practice not to pack a telephone with glasses. American VanPac argues that most carrier personnel will pack glass separately due to its fragile nature and that "no carrier" will pack a telephone with glass because the telephone is bulky and heavy. American VanPac also argues that it is unusual to pack lamps in a dish pack and that doing so indicates that the carrier had undertaken an "extraordinary effort" to protect the lamps. Under such circumstances, American VanPac states that it would not make sense to ship objects like the remote control or the camera with the lamps because they may damage the lamps. Generally, American VanPac challenges the reliability of a member's statement made so long after he tendered the shipment and in the context of adjudicating a claim.

To establish a prima facie case of carrier liability for the loss of an item, the shipper must first show that he tendered the item to the carrier. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134, 138 (1964). However, not every household good has to be listed on the inventory, and a carrier can be charged with loss where other circumstances are sufficient to establish that the goods were shipped and lost. See Aalmoder Transportation Corp., B-240350, Dec. 18, 1990. The member cannot establish tender only on the strength of an unsupported self-serving acknowledgement of the penalties for filing a false claim, but he must make a statement that reflects some personal knowledge of the circumstances of the tender of the item to the carrier. Id.

In view of the details provided by the member, we believe it was reasonable for the Army to accept the member's statement concerning the location of the missing items prior to their being packed by the carrier.

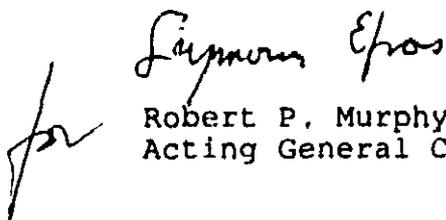
We are not persuaded by the carrier's argument that it was unlikely that the telephone would not be in item 67 because the telephone was a heavy object while the other items involved in item 67 were fragile. A modern telephone may be a light object, and the applicable Tender of Service² indicates that when the packing of fragile items (e.g., glassware, chinaware, bric-a-brac and table lamp bases) has been completed and space is left in a dish pack, such space may be used for packing other light items.

²See item 43e in Appendix A, Department of Defense Personal Property Traffic Management Regulation, DOD 4500.34-R (May 1986).

For similar reasons, we are not persuaded by the carrier's argument that the "extraordinary effort" expended to protect the lamps indicates that the remote control and the camera would not have been packed with the lamps. The member's statement establishes the proximity of the remote control to the lamp. A remote control usually is a small and very light device that generally is not individually packed and itemized. The inventory states that the service member owned a Mitsubishi large screen television; this type of television usually comes with a remote control. We do not think it was unreasonable to pack such a light/delicate device in the remaining space around a lamp in a dish pack.

The member's statement concerning the location of the camera, and the other objects maintained with it, was very specific. While a camera ordinarily is not directly related to a table lamp, in this instance, given the specific detail concerning the camera's location vis-a-vis other objects, the Army could reasonably find that the camera was tendered for shipment with other objects in missing item 85.

Under these circumstances, it would not be reasonable to conclude from American VanPac's own inventorying and labeling decision; that the member did not tender the three missing objects to the carrier. See Cartwright Van Lines, B-241850.2, Oct. 21, 1991. The Claims Group's settlement is affirmed.



Robert P. Murphy

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