



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: OK Transfer & Storage, Inc.

File: B-261577

Date: March 20, 1996

DIGEST

A military service has not established a prima facie case of liability for transit loss of a mink coat claimed by a service member when the member contends that the coat was included in a box marked on the descriptive inventory as "clothes" and the only evidence of tender, other than the claim itself, is a photograph of the member's wife dressed in a fur coat, notice on the day that the household goods were delivered that a fur coat was missing, and a general statement of loss written by the member. The member's general statement was a standard statement that he owned or used various listed missing items (including a "mink fur coat"); that they were not delivered at destination; that he had checked all of the rooms in his quarters to make sure that the packers left nothing behind; and that all items had been packed by the carrier. The member's evidence did not include any type of purchase receipt or its equivalent; the record did not indicate the name and address of the vendor of the coat; and there was no detailed statement of the circumstances surrounding the tender of the lost coat to the carrier.

DECISION

The Department of the Army requests review of our settlement allowing OK Transfer & Storage, Inc.'s (OK Transfer) claim for recovery of \$675 offset by the Army for the transit loss of a mink coat belonging to a service member.¹ We affirm our settlement.

OK Transfer picked up the member's household goods on September 9, 1992, at Fort Riley, Kansas, and delivered them to the member in Atlanta, Georgia, on January 22, 1993. At the time of delivery, the member and carrier noted that a box identified on the descriptive inventory as item 41, a carrier packed 3.1 cubic feet box of "clothes," was missing. While there was no further description of the contents on the inventory, the member identified the contents of item 41 as a "fur

¹The member's (Reginald A. Smith) household goods moved under Personal Property Government Bill of Lading RP-892,883.

coat" and 2 winter coats. Simultaneously, the member and carrier noted that inventory item 42, also a carrier packed 3.1 cubic feet box of clothes, was missing.

The member claimed that the fur coat was a 3/4 length mink coat purchased in November 1990 for \$1,050, with a replacement cost of \$1,500. In support of his claim, the member wrote a standard statement that he owned or used various listed missing items (including a "mink fur coat"); that they were not delivered at destination; that he had checked all of the rooms in his quarters to make sure that the packers left nothing behind; and that all items had been packed by the carrier. The member also provided a photograph showing his wife dressed in a fur coat.

OK Transfer contends that the picture of the member's wife in the fur only proves that she wore a coat at some point, but it does not establish a prima facie case of carrier liability for a mink coat that was tendered and lost. The carrier believes that any driver would have inventoried the coat as a mink coat or a fur coat if one had been tendered. The carrier also believes that it was the member's duty to alert the carrier about the high value nature of tender, and it points out that the member also signed the inventory.

Claim Settlement

In Settlement Certificate Z-2869191(0), March 22, 1995, we held that a mink fur coat was an item of such intrinsic value that it should have been listed on the inventory. We also noted that there was no evidence that the shipper informed the carrier that such a coat was to be shipped nor that the shipper asked the carrier whether the fur should have been listed on the inventory. Therefore, the evidence failed to show tender of such a coat.

The Army Claims Services identifies several bases of error in the certificate. Citing two of our prior decisions, the Army contends that a shipper is not obliged to inform a carrier that he intends to ship an item of exceptional value. The Army contends that if OK Transfer wanted to protect itself, it had the burden of inquiring from the shipper on whether he intended to ship high value items, and if he did, OK Transfer should have prepared a separate high value inventory listing such items.

The Army also suggests that it is not necessary to prove that a mink coat was tendered to OK Transfer because a reasonable and logical relationship existed between a carton described as containing "clothes" and a fur coat packed within it. The Army also points out that the loss of both items 41 and 42 was noted immediately upon delivery and to support its request for review, the Army contends that the member recently indicated to an Army Claims Service representative that

all of the coats were in the hall closet and that his wife remembered seeing the packers pack the fur coat. The Army specifically states that the shipper has no responsibility with respect to the inventory.

Discussion

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; the shipper also must show that the item was not delivered (or was delivered in a more damaged condition) and the value of the item. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134, 138 (1964). 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. 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 Van Services, Inc., B-249966, Mar. 4, 1993. But, where the value of a lost item is in question, the member must furnish some substantive evidence on the issue, like a detailed statement by the shipper or others. See All-Ways H & S Forwarders, Inc., B-252197, June 11, 1993, and Suddath Van Lines, B-247430, July 1, 1992.

We disagree with the Army's position that the member has no responsibility for the accuracy of the carrier's inventory decisions; paragraph 1006g(13) of the Department of Defense Personal Property Traffic Management Regulation, Department of Defense Reg. 4500.34-R (October 1991) specifically states that "the member shall verify the accuracy of all items and information . . . on all shipping documents before signing." We construe the inventory against the carrier as the preparer, and we agree that OK Transfer's decision to label the boxes as "clothes" allowed the member and the Army to claim that the contents included coats, which are reasonably related to "clothes." The issue in dispute is whether there is sufficient evidence on the record to demonstrate that the member tendered the claimed mink coat to OK Transfer. The more valuable the lost object is, the higher the evidentiary standard. See All-Ways, supra.²

²While not directly relevant, the Army's own regulations for implementing the Military Personnel and Civilian Employees Claims Act of 1964, now codified at 31 U.S.C. § 3721, states that the claimant is responsible for substantiating ownership or possession, the fact of loss or damage, and the value of the property, especially for expensive items. See Department of the Army Regulation 27-20, Claims, para. 11-8b (1990).

The photograph of the member's wife dressed in a fur coat is some evidence that she owned a fur-type coat, and the member did note the loss of a "fur coat" at the time of delivery. But, in these circumstances, such evidence, by itself, does not overcome the absence of a purchase receipt or its equivalent. A reasonable fact finder in these circumstances would look for a receipt. The mink was a major purchase made within 2 years of the move, and the member reasonably should have been expected to retain a receipt of such a purchase. In the absence of such a receipt, it is reasonable to expect some form of substitute documentation evidencing ownership (e.g., an appraisal, charge card receipts, cancelled checks or bank statements, a statement by the seller that he sold the coat to the member and the description/price of the coat). At the very least, the member should have provided the name and address of the seller. A purchase receipt or some substitute documentation, while not absolutely essential, is important in these circumstances.³

The second major deficiency is the lack of a detailed statement of the facts surrounding the tender of the mink coat to the carrier. Initially, the Army bolstered the photograph with a handwritten statement from the member indicating that, after the packers finished, he searched all of the rooms and did not find anything remaining. In the past, we criticized similar statements because they are not very probative. Compare National Claims Services, Inc., B-260385, Aug. 14, 1995, and Aalmode Transportation Corp., B-240350, Dec. 18, 1990. While the Army advises that the member recently "indicated" that his wife saw the packers place the coat into the carton, we do not think that this is entitled to much weight because it is not a written, sworn statement by the observer describing in detail the circumstances surrounding the tender of the lost object. Moreover, the Army injected this information into the record at a very late date.

In recent years, we have reviewed several claims involving disputes over the accuracy of the descriptive inventory, the member's responsibility in reviewing the inventory, whether the inventory ought to reflect relatively expensive or unusual articles and the value of such items. We suggest that the military services, the Department of Defense, and industry representatives develop more precise standards in this area. The results here exemplify the recovery problems that a military service experiences when it does not demand more exacting proof from the member concerning the nature of his claim. On the other hand, while there is no suggestion of a fraudulent claim in this case, a carrier like OK Transfer which is not vigilant in accurately itemizing relatively expensive or unusual articles,

³Army guidance on the substantiation of claims under 31 U.S.C. § 3721, for example, states that as a rule of thumb, a claimant is normally required to provide a purchase receipt or similar evidence to confirm the value of items for which more than \$100 is claimed. See Department of the Army Pamphlet 27-162, Claims, para. 2-41 (1989).

unnecessarily exposes itself to liability. Both the government and industry need to assure more accurate inventories of these items.

We affirm our prior settlement.

/s/Lowell Dodge
for Robert P. Murphy
General Counsel