Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Resource Protection

File: B-270321

Date: March 27, 1996

DIGEST

1. Where proper notice of later-discovered loss or damage to a military member's household goods shipment is provided to the carrier within the prescribed time limit, as required by the Military-Industry Memorandum of Understanding (MOU), the presumption of correct delivery is overcome and the burden of establishing that it is not liable for the loss or damage falls on the carrier. The fact that the loss or damage was not noted by the member at delivery, although the carrier performed the unpacking while the member or spouse was present in the residence, does not relieve the carrier from liability since it is unreasonable to expect the member to note every item of loss or damage during the unpacking, and the MOU does not preclude claiming later-discovered loss or damage in these circumstances.

2. Where agency has assessed liability for loss or damage to household goods items against the carrier based on owner's claims, repair estimates, and an inspector's report, the carrier's assertion that the loss or damage was preexisting, without substantial supporting evidence, is not sufficient to overcome the agency's determination.

DECISION

Resource Protection, on behalf of Carlyle Van Lines, has appealed Claims Settlement No. Z-2866671(30) which denied Carlyle's request for a refund of moneys the Air Force offset for loss and damage to a shipment of an Air Force member's household goods. As explained below, we sustain the denial of the claim.

The household goods were picked up at Alexandria, Louisiana, on March 27, 1992, and delivered to Riverside, California, on April 20, 1992. Unpacking service was not waived in writing by the member, and apparently the carrier performed this service. At the time of delivery, damage to several items was noted on the DD Form 1840. Twenty-three days after delivery, DD Form 1840R was dispatched to the carrier noting a number of additional items of loss or damage. It is the carrier's liability for these later-listed items that Resource Protection disputes.

Resource Protection asserts that when the carrier performs the unpacking service, the military member personally views each item that is unpacked and directs the specific place where it is to be placed, and thus both the shipper and the unpacker know at that time whether there has been any damage. Therefore, Resource Protection argues, it is incumbent upon the shipper and unpacker to list any damage at the time of unpacking, and thus the carrier cannot be held liable for later-reported loss or damage in cases where the carrier performs the unpacking.

In support of its position, Resource Protection refers to paragraph A(1) of the Military-Industry Memorandum of Understanding regarding loss or damage to household goods. This paragraph states in part, "For later discovered loss or damage, including that involving packed items for which unpacking has been waived in writing, written documentation on DD Form 1840-1 [now DD Form 1840R] advising the carrier of later discovered loss or damage, dispatched not later than 75 days following delivery, shall be accepted by the carrier as overcoming the presumption of the correctness of the delivery receipt." Resource Protection interprets the specific reference to "packed items for which unpacking has been waived" as being unnecessary except if the paragraph was meant to exclude items unpacked in the presence of the member.

We disagree with these arguments. First, while we do not dispute that the member or his or her spouse is usually in the residence while the carrier unpacks, and directs where the items are to be placed, often the unpacking is performed by more than one person and in more than one location in the residence simultaneously, and the unpacking is, at times, accompanied by a good deal of litter and confusion. In addition, some loss or damage is not readily apparent, such as chips in glass or ceramic articles and partially missing contents of a liquor bottle. In these circumstances, as a practical matter, we can understand why the member or spouse may not note all missing or damaged items at the time of unpacking, and we do not think it reasonable to expect them to do so or lose their right to compensation for loss or damage.

In addition, we do not accept Resource Protection's interpretation of the quoted provision of the Memorandum of Understanding. The sentence in question uses the term "including" to specifically refer to packed items for which unpacking has been waived, and in our view this was for the purpose of making it clear that claims also may be filed for later-discovered loss or damage to those items even though the carrier does not perform the unpacking and its agent is not present when the unpacking is performed. This language is inclusionary rather than exclusionary. If it was intended to exclude claims for later-discovered loss or damage where the carrier performed the unpacking, language so-stating should have been used. In similar circumstances, we have interpreted the Memorandum of Understanding as providing that a proper notice of later-discovered loss or damage overcomes the presumption of the correctness of the delivery receipt even though the member did

not identify the loss or damage at time of delivery. See Suddath Van Lines, B-246907, Sept. 28, 1992; and National Forwarding Co., Inc., B-238982, June 22, 1990.

Resource Protection also disputes the Air Force's assessment of liability against Carlyle for three items of loss or damage which Resource Protection states is not supported by the record. First is a claim for broken glass on a microwave oven. The carrier argues that this glass was missing at time of tender, but the Air Force states that its inspection showed that the claim was for cracked glass around the control panel. Second is a claim for scratches on two end tables which the carrier contends have not been shown to be different from preexisting scratches noted at time of tender, but which the member claims are additional new scratches incurred in transit. And third is a claim for springs missing from a play horse. The carrier states that the inventory shows these springs as missing at time of tender, but the Air Force interprets the inventory to show that "caps" were missing from this item, not springs. In matters of this nature, we will not question the agency's assessment of damages unless clear evidence is presented to show that the agency acted unreasonably. American Van Services, Inc., B-249833, Jan. 14, 1993. Here the Air Force had the items in question inspected and relied upon the inspection report, damage estimates, and other documentation in the file in assessing liability. It has provided explanations of its findings in its July 15, 1994, report to our Claims Group, a copy of which was furnished to the carrier. We have reviewed these documents, and find that the Air Force's determinations appear reasonable, and Resource Protection has not presented any refuting evidence. Therefore, there is insufficient basis for us to overturn the Air Force's determination of liability.

In view of the above, we affirm the prior settlement.

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