Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Van Services, Inc.

File: B-270379

Date: May 22, 1996

DIGEST

When prima facie liability has been established, the burden of proof shifts to the carrier to rebut its liability. In the present situation, a prima facie case of carrier liability has been established in our view, and the carrier has presented insufficient evidence to rebut its liability.

DECISION

American Van Services, Inc., requests reconsideration of Settlement Certificate, Z-2862118(46), September 21, 1995, which denied its claim for a refund of $139.89. This amount was set off by the Air Force to recover damages to a service member's household goods. We affirm the settlement.

American disputes its liability for two damaged items, a microwave oven and a lead crystal vase. In particular, American argues that the third facet of a prima facie case, establishing the amount of damage, has not been met.

To establish a prima facie case of carrier liability for loss of household goods, a shipper must show tender to the carrier, failure to deliver, and the amount of damages. See, Missouri Pacific Railroad Co., Inc. v. Elmore & Stahl, 377 U.S. 134 (1964). When prima facie liability has been established, the burden of proof shifts to the carrier to rebut its liability. In the present situation, a prima facie case of carrier liability has been established in our view, and the carrier has not presented sufficient evidence to rebut its liability.

American questions how our Office determined that a box labeled housewares included the microwave oven. Additionally, American questions how we determined that the replacement microwave oven, a Sharp model R300A, is the equivalent of the tendered model, a Sharp model R2A52B, and that the purchase date of the microwave oven was 1992, not 1987, as established via the shipper acquired Sears estimate. Relying on the 1987 date, American requests depreciation be taken into consideration. Concerning the crystal vase, American questions how our Office determined that a chip of non-described magnitude made the vase non-repairable.

American seeks to settle on half of the replacement price for the vase, claiming repair of the vase should have been made.

The Air Force determined that the label "housewares" logically would include a microwave oven. Such description is reasonable in our opinion. The record before us indicates that the exact model microwave was unavailable in the locale and was therefore replaced with another model from the same manufacturer which was of like kind and quality. American offers no evidence to the contrary to refute the Air Force determination. In addition, the record shows that the Air Force verified the purchase date of the microwave oven to be within 6 months of the date of the item's delivery. The 1987 document American refers to was a repair estimate indicating the date of manufacture, not the date of purchase. The Air Force concluded that American was not entitled to depreciation under the circumstances. We agree with this conclusion.

Regarding the vase, the portion of the Air Force report describing the intrinsic value of such an item, and concluding that repairing the item would not restore its value, is reasonable in our opinion. American did not inspect the vase, and has offered no evidence to the contrary. The Air Force upheld the shipper's estimate of replacement of the damaged crystal vase, stating that American presented no clear and convincing evidence to the contrary. Our Office will not question an agency's calculation of the value of damages to a shipment of household goods without clear and convincing evidence from the carrier that the agency acted unreasonably. Ambassador Van Lines, Inc., B-249072, Oct. 30, 1992.

The Settlement Certificate is affirmed.

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

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