**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Carlyle Van Lines

File: B-270114

Date: May 22, 1996

DIGEST

A delivering carrier is responsible for the loss of, or damage to, a service member's household goods that were prepacked by a nontemporary storage contractor if the service member otherwise presents a prima facie case of liability against the delivering carrier. While the carrier may not have a general obligation to open prepacked containers of household goods to examine their contents, the carrier is the last bailee to possess such goods prior to delivery, and, in the absence of evidence that the loss did not occur in its custody, it is presumed that the loss did occur while in its custody.

DECISION

Carlyle Van Lines requests review of our settlement (Settlement Certificate Z-2866671-26) of September 13, 1995, in which we denied its claim for a refund of amounts set off against it by the United States Air Force to recover for transit loss or damage to service member's household goods. Two missing items remain in dispute in this review: a glass lamp with flowers ($184.90) and a missing box spring ($145.00). We affirm our settlement.

Background

The service member shipped household articles from Germany in November 1985, and they were placed into temporary storage. Afterwards, the goods were converted to nontemporary storage (NTS), and the NTS contractor in Phoenix, Arizona, prepared a second inventory. Under a separate bill of lading,[1] Carlyle obtained the household goods from the NTS contractor in June 1991, and delivered them to the service member in Vandenberg Air Force Base, California, on July 11, 1991. The descriptive inventory at origin in Germany showed item 41 as a glass lamp with flowers, and item 67 as a "spring". When Carlyle obtained the goods in 1991, the NTS contractor provided it a second inventory that facially contained

[1]Personal Property Government Bill of Lading TP-346,854 (Tricia Griggs).

many of the same items as in the first inventory, but the numbering was different and some items were described only in a very general manner (e.g., some were described as a "dish pack" instead of describing the contents inside).

The Air Force's position is that the glass lamp with flowers, item 41 on the original or first inventory, is item 103 described as a "dish pack" on the second inventory with a cross-reference to item 41. The Air Force also contends that item 67 on the first inventory is item 88 described on the second inventory as "part of bed - wood frame" which cross-references item 67. According to the Air Force, Carlyle picked up items 103 and 88 as listed on the second inventory when it obtained the shipment.

Carlyle does not deny it picked up items 103 and 88 as listed on the second inventory, but contends that it did not obtain either the glass lamp with flowers or the box spring, and that the shipper failed to show tender to it of these items. Preliminarily, Carlyle says that it requested and never received a copy of the first inventory, and, in any event, it contends that it is responsible only for what is on the second inventory. It points out that the member referred to the glass lamp with flowers on the Notice of Loss or Damage, DD Form 1840-R, as item 40, and then as item 48 in her claim. Carlyle suggests that it was not under any obligation to open a sealed dish pack cross-referenced to item 41 to determine what was inside, and that when a sealed container is tendered by a NTS contractor, acting as the shipper's agent, the burden is on the shipper to show what was in the sealed container. Concerning the bed, Carlyle makes the same general arguments and points out that "part of bed - wood frame" is not a box spring.

Discussion

In McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415 (1978), we considered a similar relationship between a NTS contractor and a delivering carrier. Some of the losses involved articles packed by the NTS contractor, and the carrier advanced the argument that it was under no obligation to unpack prepackaged containers to determine whether anything was missing or damaged. We agreed that there was no general obligation to unpack each and every prepackaged container, especially those in apparent good order, but we held that the delivering carrier was still liable for transit loss or damage when the shipper otherwise established a prima facie case of carrier liability. Specifically, we stated that once a shipper has made a prima facie case of liability for loss or damage in transit by showing a failure to deliver at destination the same quantity or quality of goods as received at origin the burden is placed upon the carrier or other bailee to show either that the damage or loss did not occur while in its custody, or that the loss or damage occurred as a result of one of the causes for which the carrier is not liable. See Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134 (1964). And when the goods pass through the custody of several bailees it is a presumption of the common law

that the loss or damage occurred in the hands of the last bailee. To establish such a case, the shipper must prove that he tendered an item for transportation, that it was not delivered or that it was delivered in a more damaged condition, and the amount of damages.[2]

The Air Force reasonably found that the dish pack (item 103) on the second inventory which cross-references item 41, is the missing glass lamp with flowers. The origin inventory notes only one glass lamp with flowers, and no glass lamp with flowers was delivered. While the NTS contractor should have described this item more specifically, the description "dish pack" is not inconsistent with the glass lamp because a glass lamp would have been packed in such a container. The shipper should have notified the carrier and filed her claim using the correct item number, but she did notify the carrier about the loss of, and claimed, only the one glass lamp with flowers. The second inventory, prepared before any dispute arose in this matter, specifically referenced item 41. While we hold Carlyle liable only for the material on the second inventory, the cross-references on the second inventory invited comparison to the document that it cross-referenced; these cross-references cannot be ignored in the carrier's claim investigation. Finally, we believe the two inventories are generally consistent except as noted above, and therefore, the cross-references to the first inventory offer substantial evidence explaining what was contained in containers described only generally in the second inventory. Carlyle offered no evidence showing that the loss did not occur in its custody.

On both inventories, there are only two large-area components related to a bed. Item 55 on the original inventory, an item described as a "mattress," appears to be the item described as a "Q MATT CTN," item 109 on the second inventory. The other such component is item 67 described as "spring" on the first inventory, and item 88 on the second inventory which is described as "part of bed - wood frame" and which cross-references item 67. Again, while the NTS contractor should have been more precise, the Air Force reasonably concluded that item 67 on the first inventory was the "part of bed - wood frame" on the second inventory. The two inventories are generally consistent, and as is the case with the glass lamp, the cross-references to the first inventory offer substantial evidence explaining the nature of the material in the second inventory. Again, Carlyle offered no evidence showing that the loss did not occur in its custody.

We do agree with the carrier that the Air Force should have provided Carlyle with a copy of the origin inventory as the cross-reference, but the failure to have done so

---

[2]In support of our decision in McNamara-Lunz, we cited two established judicial decisions involving successive transportation custodians of prepacked goods: General Electric Co. v. Pennsylvania R.R., 160 F. Supp. 186, 188 (W.D. Pa. 1958) and Julius Klugman's Sons, Inc. v. Oceanic Steam Nav. Co., 42 F.2d 461 (S.D.N.Y. 1930).

does not change the result here. We have provided Carlyle with a copy of the origin inventory. Carlyle has the right to request reconsideration within a reasonable time, if it so chooses. We affirm the Air Force offset and our prior settlement.

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