



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Allied Van Lines—Claim for Reimbursement of Amounts Collected by Setoff for Lost Computer and Software

File: B-270007

Date: June 20, 1996

DIGEST

1. A prima facie case of carrier liability is established where lost items bear a reasonable relationship to items shown on the inventory as having been packed in the carton containing the lost items. A main computer unit, associated peripheral equipment, and software that are compatible parts of a single personal computer arrangement bear such a reasonable relationship to each other.
2. Where specific items are listed on the DD Form 1840, the fact that the shipper may have mistakenly failed to identify the correct box number in which the allegedly lost items were located does not negate otherwise timely notice of the loss.

DECISION

Allied Van Lines, through its agent, Resource Protection, requests reconsideration of our Claims Settlement Z-151685(95), September 5, 1995, to the extent the settlement disallows reimbursement of the offset from funds otherwise due Allied. The setoff arose from loss during storage and shipment of the household goods of Odiss Braxton, government bill of lading No. 768-577. We affirm the Claims Settlement.

The record shows that the carrier picked up the shipment of household goods on April 8, 1992, from San Pedro, California. On April 10, 1992, the shipment, while in temporary storage in San Diego, was broken into, and some items were stolen. The remainder of the shipment was delivered to Memphis, Tennessee, on September 25, 1992.

The Army paid the shipper for items lost in the theft and filed a claim with Allied for \$4,946. Allied offered to pay \$2,672. The Army offset the entire \$4,946 and Allied requested a refund of \$2,719. Our Claims Settlement allowed refund of \$739 for a color scanner and fax modem which had been claimed by the shipper, based on a finding that the evidence of tender of those items to the carrier was deemed

insufficient. The settlement denied reimbursement for the balance of the offset, \$1,980. Allied requests refund of that amount.

According to the Military-Industry Memorandum of Understanding, (MOU) upon delivery, a carrier is responsible for providing the member a copy of the Joint Notice of loss or damage at Delivery (DD Form 1840, hereafter referred to as the 1840). The reverse side of this form is the Notice of Loss or Damage (DD Form 1840R, hereafter referred to as the 1840R) which is used to report damage discovered after delivery. The MOU provides that the carrier will accept written notice on the 1840R as overcoming the presumption that the delivery receipt was correct so long as the form is dispatched to the carrier within 75 days of delivery. The carrier then has 45 days from the dispatch date to inspect the loss or damage. The shipper then fills out a List of Property and Claims Analysis Chart (Form 1844) which is completed by the claims office and which is dispatched to the carrier with the Demand on Carrier/Contractor (Form 1843).

At issue in this case is inventory item No. 63, a box, 3 cubic feet in size, which is listed as missing on the 1840. Box No. 63 is identified on the 1840 as containing "Pack Bell Print/K board, software." At a later date, on the 1844, the shipper claimed that the computer, keyboard, laser printer, a color scanner, mouse, modem and 22 software programs were shipped in that box.¹

The main issue raised by the carrier is that since it would be physically impossible to place all the items listed by the shipper in a box of that size, either the items were not tendered or were not missing, and thus the carrier is not liable. The Army asserts that the computer is listed on the 1840, and that the carrier was on notice from the 1840 that the entire computer system was missing. In addition, the Army asserts that all of the items listed were not in one box, but were divided between boxes No. 62, 63 and 136. A statement from Mr. Braxton, dated July 17, 1995, indicates that he mistakenly identified all the items as having been in box No. 63, when he should have noted that some of the items were missing from box No. 136. Allied asserts that since it received no notice that box No. 136 was missing during the applicable 75 day time period, the notification is not timely.

The Army argues that since the items themselves were identified on the 1840, the fact that Mr. Braxton may not have identified the correct box does not relieve the carrier from liability. The Army found evidence of tender of the remaining items. The computer, keyboard and printer are listed on the inventory. The software and mouse, while not listed, bear a reasonable relationship to the computer system and might reasonably be shipped in the same cartons. This Office has held that a prima facie case of carrier liability is established where items allegedly lost, bear a

¹The computer monitor is listed on the inventory and 1840 in Box No. 62.

reasonable relationship to the items shown on the inventory as the carton's contents. Andrews Forwarders, Inc., B-255697, Apr. 22, 1994. A main computer unit, associated peripheral equipment, and software that are compatible parts of a single personal computer arrangement, even if some of the smaller components are not individually listed, bear such a reasonable relationship to each other. Since the carrier packed the shipment and was responsible for preparing the inventory, it is reasonable to conclude from the carrier's own labeling and inventory documentation that items specified on the inventory were tendered, and that related items were also included in the shipment.

The carrier's allegation that the items listed as lost could not all have fit in a single carton is supposition only. A large component of the computer system, its monitor, was apparently packed in a separate box; the other components, including the main unit, printer, keyboard, and software, may have fit into a single box. However, even if these items were packed in more than one box, their listing on the 1840 establishes they were missing on delivery. Our reading of the items listed in abbreviated fashion on this form is that the missing items included a main unit (listed as "Pack Bell"), a printer (listed as "Print"), a keyboard (listed as "K board"), and software (listed as "software").

Although the carrier and the Army disagree about some facts in this case, we conclude that the Army has established a prima facie case of liability, and that Allied has not provided evidence sufficient to relieve itself of liability. McNamara-Lunz Van and Warehouses, Inc., 57 Comp. Gen. 415 (1978). Accordingly, we affirm the Claims Settlement and deny further refund to the carrier.

/s/Seymour Efros
for Robert P. Murphy
General Counsel