



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: American Van Services, Inc.

File: B-270725

Date: June 26, 1996

DIGEST

Carrier's submission of check in payment of damages to shipment of household goods with conditional endorsement releasing carrier of any future liability for shipment is without effect as to liability for damaged items subsequently reported to carrier, where the subsequent report is provided to the carrier within 75 days of delivery in accordance with Military-Industrial Memorandum of Understanding. This memorandum specifies the responsibilities and duties of carriers, and a carrier may not unilaterally alter the basis for determining its liability for loss and damage under the Memorandum.

DECISION

American Van Services, Inc., appeals Claim Settlement No. Z-2862118(69), dated December 7, 1995, which denied American's refund request for monies set off for damage or loss to the household goods shipment of Douglas Clark, an Air Force member. For the reasons which follow, we sustain the settlement.

American picked up the member's household goods on October 27, 1993, in Niceville, Florida, and delivered the goods to Henderson, Nevada, on February 17, 1994. The member and the carrier completed DD Form 1840 (Joint Notice of Loss or Damage at Delivery) on February 17, 1994, which listed damage to a coffee table and a broken mirror. Subsequently, the member completed DD Form 1840R (Notice of Loss or Damage) on February 24, 1994, listing later-discovered damage to other items in the shipment.

On May 11, 1994, the Air Force paid the member \$553.58 in partial payment for the claimed losses but denied other items claimed because of lack of documentation or estimates. The Air Force requested that American pay \$227.95 for the damages, and American, by check dated May 24, 1994, paid the claim. The check contained the following notation on the reverse: "Proper endorsement of this check hereby releases American Van Services, Inc., of any further liability for Bill of Lading Number 20495." On the front of the check the government bill of lading number

and the member's name appeared. The Air Force endorsed and deposited the check on June 3, 1994.

Subsequently, the member submitted additional documentation which supported his claim for damage to a table and a stereo totaling \$400.41, for which payment was requested from American. American did not remit the payment. Subsequently, the amount was set off against other funds due the carrier.

American contends it is not liable for the additional damage in view of the endorsement, arguing that when the Air Force endorsed and deposited the check, American was relieved of further liability for damage to the shipment. American requests a refund of the setoff amount. The Air Force argues that since American received notice of the damage within the 75 days period set forth in the Military-Industrial Memorandum of Understanding (MOU), it is liable for the damages, notwithstanding the endorsement on the May 24 check.

We find that the acceptance and negotiation of the check by the Air Force did not bar the later demand for further damages. American cannot unilaterally alter its responsibilities and duties as specified in the MOU, including the obligation to pay for damage in transit to the household goods it has moved for military members, when damage that is otherwise payable is brought to its attention in a timely fashion. See McDonald v. United States, 13 Cl. Ct. 255 (1987), where a borrower attempted to avoid payment of outstanding escrow charges required by loan agreement by paying only loan amount with conditional endorsement marked payment in full was found to be without effect.

For the endorsement to have been effective, it would have to be considered an accord and satisfaction which is the payment and acceptance, as full settlement, of an amount less than that claimed by the creditor of the whole claim or demand, where it is not liquidated, or is the subject of a dispute between the parties. 40 Comp. Gen. 261, 264-65 (1960).

Here, the initial demand covered only those items for which the member had submitted sufficient documentation to allow adjudication of the claim. The endorsement by the Air Force served to bar the Air Force from asserting further carrier liability with regard to the items of loss and damage covered by the check. However, American received timely notice of additional liability reflected in the damage to the table and stereo within 75 days of delivery and knew that if the claim with the member were later settled, as here, the service would look to it for reparation. American Van Services, Inc., B-252671, Aug. 19, 1993. Therefore, the final amount of the claim had not been determined at the time of the check submittal by American.

American has submitted to our Office a copy of a letter from the Navy regarding another claim which states that endorsement and negotiation of the carrier's instrument constitutes full and final satisfaction of a claim. However that situation in which the Navy accepted the carrier's offer prior to making that statement, is materially different from the instant situation where there had been no final claim amount agreed upon by the Air Force.

Accordingly, we affirm the claim settlement.

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