



Comptroller General
of the United States

Washington, D.C. 20548

147020

Decision

Matter of: National Forwarding Co., Inc.
File: B-238982.4
Date: June 25, 1992

DIGEST

Military-Industry Memorandum of Understanding governing claims for loss or damage to household goods directs that form notifying carrier of damages discovered after delivery (Form 1840R) must be dispatched by agency not later than 75 days following delivery. Where Form 1840R shows that Army claims officer signed and dated form on 75th day after delivery, claims officer has complied with 75-day requirement notwithstanding that Army mailroom stamp shows that form did not leave mailroom until 77th day.

DECISION

National Forwarding Co., Inc., requests review of our Claims Group's settlement No. 2-2862672-14 denying its claim for a refund of \$509, which the Army set off from other revenues due National, for damages to the household goods of an Army member. We affirm the Claims Group's decision.

National picked up the member's household goods at Fort Carson, Colorado, on January 26, 1988. The shipment was delivered to the member's new residence at Fort Lee, Virginia, on February 17, at which time the member acknowledged receipt of the goods in apparent good condition. Subsequently, the member filed Department of Defense Form 1840R with the Army's claims office at Fort Lee claiming that several items had been damaged during shipping. The Army mailed the completed Form 1840R to National notifying the firm that the member intended to file a claim in excess of \$500 for the damage.

National denied liability, asserting that the Army had dispatched the Form 1840R to the firm more than 75 days after the household goods were delivered. The Army disagreed, settled the claim with the member for \$509, and set off that amount against other money due National.

National filed a claim with our Claims Group for the amount of the set-off; the claim was denied on September 18, 1991. National stated that the metered stamp mark on the envelope

in which the Form 1840R was mailed showed that the form was actually mailed by the Army on May 4, 1988, or 77 days after delivery of the household goods. National argued that, in accord with the Military-Industry Memorandum of Understanding governing claims for loss or damages to household goods, notification of damages must be dispatched not more than 75 days after delivery, and, therefore, National was not liable.

The Claims Group reasoned that a metered stamp is not always exact and stated it knew of no regulation or law making a metered stamp determinative regarding the date of dispatch. The Claims Group determined that the best evidence of when the Form 1840R was dispatched to National was the "Date of Dispatch" inserted in box 3a of the form by the Army claims officer. Because the claims officer had typed "2 May 1988" on the Form 1840R, which was within 75 days after delivery of the shipment, the Claims Group concluded that National was liable for the \$509 in damages and denied National's claim.

We agree with the Claims Group. The record shows that the Army claims office received the Form 1840R on Friday, April 29, 1988--72 days after delivery. On Monday, May 2, the 75th day after delivery, the claims officer apparently dated and signed the form. No United States Postal Service postmark appears on the envelope used to mail the form, but the envelope does bear a Fort Lee postage meter stamp dated May 4. Thus, there are only two pieces of evidence pertaining to the date of dispatch: (1) the May 2 date typed in the "Date of Dispatch" box of the form by the Army claims office and (2) the May 4 date on the postage meter stamp affixed to the envelope by the Fort Lee mailroom.

Under the Loss and Damage Rules of the Military-Industry Memorandum of Understanding, the Form 1840R notifying the carrier of damages must be dispatched by the claims officer not later than 75 days following delivery. In common parlance, "dispatch" means to send off with promptness or speed or to dispose of a task rapidly.¹ The carrier has not charged that the claims officer typed in the wrong dispatch date and there is nothing in the record to question the claims officer's veracity in this regard. Moreover, we have no reason to question the Army's assertion that the claims officer did, in fact, dispatch the Form 1840R on May 2, the date the claims officer typed in the "Date of Dispatch" box on the form.

National argues that the Form 1840R was not actually dispatched until it reached the United States Post Office, under the principle of contract law commonly called the

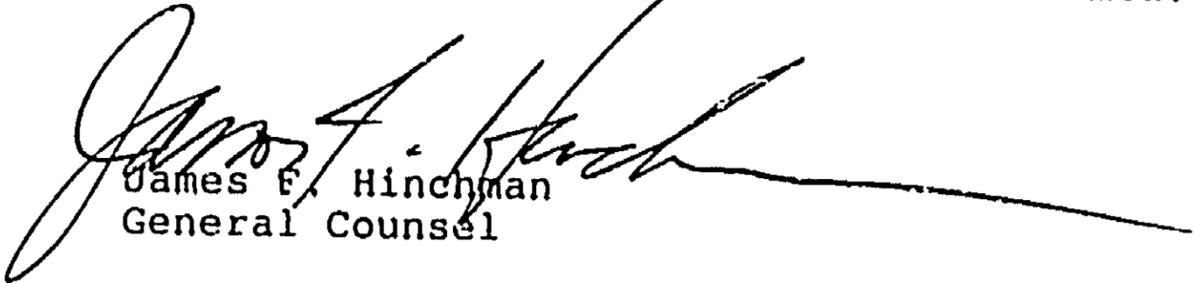
¹Webster's New Collegiate Dictionary, 1975, G. & C. Merriam Co.

"mailbox rule." National thus concludes that, since the postage meter stamp on the envelope shows that the Form 1840R was still in the Fort Lee mailroom on the 77th day after delivery, it is improper to consider the form to have been dispatched in a timely manner.

We do not agree. The so-called "mailbox rule" is a well-established principle of contract law whereby acceptance of an offer is final and binding only after it irretrievably leaves the hands of the person or firm making the acceptance. Madaus v. November Hill Farm, 630 F. Supp. 1246, 1249 (W.D. Va. 1986). However, the present case simply is not one of offer and acceptance and, therefore, we believe that the mailbox rule is not relevant. Moreover, as indicated above, the Memorandum of Understanding identifies "dispatch" as the operative event, and the form the parties use in these circumstances specifies that the claims officer put the "dispatch" date in the space provided. It thus appears that the parties' understanding under the Memorandum is that the claims officer's entry will control for purposes of the 75-day notice period.

It is our view that the Form 1840R was dispatched when the claims officer signed, dated, and sent it in the normal course of business to the Fort Lee mailroom. Accordingly, we find that the notification was dispatched in a timely manner and National was properly held liable for the damages.

The Claims Group's settlement is affirmed.


James F. Hinchman
General Counsel