Hipple
147901

Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: AAA Transfer & Storage, Inc.

File: B-248535

Date: October 22, 1992

DIGEST

1. A carrier that caused additional damage in transit to an item of household goods argues that because of pre-existing damage the shipper's agency should have assessed maximum, instead of scheduled, depreciation against the item before calculating the carrier's liability. However, because the carrier has offered no evidence of the item's market value before shipment, GAO will not conclude that the agency abused its discretion by not assessing maximum depreciation.

2. A Notice of Loss or Damage is sufficient to overcome the presumption of correct delivery if it is written, timely and in content sufficient to alert the carrier that damage has occurred for which reparation is expected.

3. Where the record shows the existence of pre-existing damage and lacks evidence of greater or different damage incurred in transit, the carrier is not liable for damages.

DECISION

AAA Transfer & Storage, Inc., requests review of our Claims Group's settlement upholding an offset by the Air Force against funds otherwise due to AAA to recover for damages to a service member's household goods.[1] We affirm the settlement in part, and we overrule it in part.

A nontemporary storage (NTS) contractor picked up the member's household goods at his residence in Shalimar, Florida, on July 29, 1988, and stored them at a warehouse in Fort Walton Beach, Florida, until AAA obtained them for delivery on December 27, 1988. The NTS contractor identified certain pre-existing damage (PED) on the origin inventory, and AAA added its own exceptions by executing a rider to this inventory. The member timely notified AAA about damaged items through the Joint Statement of Loss and

---

[1]The move was accomplished under Personal Property Government Bill of Lading PP-651,654.

Damage at Delivery (DD Form 1840) and through the Notice of Loss or Damage (DD Form 1840R) dispatched in January 1989. Repair/replacement estimates were obtained in August 1989. Four damaged items remain in dispute.

Item 67, a lamp table, was described on the inventory as having a rubbed, soiled, stained, marred and badly worn top with soiled and scratched sides. AAA's rider listed the PED as a stained, soiled, scratched, and rubbed top, leg and edge. The member noted on the DD Form 1840 that the item had a "broken" base and top. The repair estimate described item 67 as "broken" and indicated that the replacement cost was $80; the Air Force allowed 5 percent depreciation (1 year), resulting in damages of $76. The carrier contends that the value of item 67 was only 25 percent of the replacement cost ($20) when tendered to it because of the PED, and therefore claims a refund of $56.

Item 49, a plant stand, was described on the inventory as being loose all over and having soiled, badly worn, stained, rubbed and scratched top and shelves. The rider described the item as being scratched and loose all over. The DD Form 1840 described it as being broken, and the replacement estimate was $44.99. The Air Force allowed 15 percent depreciation (3 years), resulting in damages of $38.24. AAA contends that heavy PED depreciated the item's value to only 25 percent of replacement cost at time of tender ($9.75); therefore, AAA is due $28.49.

No PED was noted on the inventory or rider for Item 29, an antique mirror. On the DD Form 1840R, the member noted that the mirror was scratched, and the estimator observed that it had scratches and dents on all sides. AAA contends that it is liable only for the scratches noted on the DD Form 1840R; it is not liable for the dents since it did not receive timely notice of them. The Air Force assessed damages in the amount of $60, but AAA reclaims half of that amount.

Item 9, a cedar chest, was described on the inventory as having a rubbed and scratched top, side and front. The rider stated that the left, top and front edge of the chest was gouged. The DD Form 1840R noted that the lid was gouged on the right corner. The estimate to repair the dents and scratches on the top, sides and front was $155, and the Air Force assessed that amount against the carrier. AAA seeks recovery of the entire amount due to PED.

We agree with the Claims Group's decision, which endorsed the Air Force's set-off, on all but the last item.

To establish a prima facie case of carrier liability, the record must show that an item was tendered to the carrier in a certain condition, that the carrier delivered it in a more

damaged condition, and the amount of damages. Thereafter, the burden is on the carrier to show that it was free from negligence and that the damage resulted from an excepted cause relieving it of liability. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134, 138 (1964).

AAA does not dispute that it caused additional damage to items 67 and 49. During transit, both items broke to the extent that they had to be replaced. AAA questions whether the Air Force should have allowed more depreciation (75 percent) to reflect substantial PED. AAA refers us to Air Force Regulation 112-1 (AFR 112-1), Claims and Tort Litigation, where the Depreciation Guide found in Table 6-1 gives the approving or settlement authority discretion to increase depreciation due to extensive use of an item.

We appreciate the fact that there was substantial PED to both items, but AA firm has not offered any evidence of value of either item prior to tender. AAA merely speculates that both items should have been depreciated by 75 percent, or to 25 percent of replacement cost. Without competent evidence of the market value of these items before transit, we have no basis to reverse the administrative determination of damages. See Motor Service Co., Inc., B-229087, Mar. 28, 1988.

We see no merit in AAA's argument about item 29. Notice of a claim is adequate if it is written, timely and contains sufficient content to alert the carrier that damage has occurred for which reparation is expected. See Continental Van Lines, Inc., B-215507, Oct. 11, 1984. In our view, and irrespective of whether a "scratch" is different damage than a "dent," notice of a scratched mirror, where no PED was reported, adequately alerted AAA to promptly and completely investigate all the facts.

We agree with AAA about the cedar chest, item 9. The claim against AAA was for a gouge on the right corner of the lid, but the repair estimate involved the entire chest. Also, the rider noted a gouge to the top edge of the chest. Thus, the evidence does not establish that AAA caused additional damage. Where the record shows PED and lacks evidence of greater or different damage incurred in transit, the carrier is not liable for damages. See Continental Van Lines, Inc., 63 Comp. Gen. 479 (1984).

The Claims Group's settlement is modified accordingly.

James F. Hinchman
General Counsel