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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Stevens Worldwide Van Lines, Inc.

File: B-251343

Date: April 19, 1993

DIGEST

A carrier is not prima facie liable for damage to an item of household goods where the carrier vigorously pursued its inspection rights within the time permitted by the Military-Industry Memorandum of Understanding; without the carrier's fault, the shipper disposed of a damaged item within the time that the carrier was permitted to inspect it and before the carrier could arrange inspection; and the record indicates that the carrier had a substantial defense involving facts discoverable by inspection.

DECISION

Stevens Worldwide Van Lines, Inc., requests review of our Claims Group's settlement affirming the Air Force's set-off of $767 for transit damages to the household goods of a service member.[1] We modify the settlement.

Stevens delivered the household goods to the member's residence in Alabama on March 16, 1990. On April 2, the Air Force dispatched a Notice of Loss or Damage (DD Form 1840R) to Stevens covering the items in issue.

By letter dated May 1, 1990, Stevens asked the member to allow the carrier to inspect the damaged items. Since its agent was unable to contact the member, on May 8 Stevens sought assistance from the Air Force in arranging an inspection. On May 9, the Air Force provided Stevens with the forwarding address and telephone number of the member, who had moved after delivery, and by letter to the member of that date Stevens again requested inspection. Stevens reached the member by telephone the next day, and the member confirmed that he had moved all of the damaged items to Florida except for a waterbed (descriptive inventory items 17-32); the waterbed was given to a neighbor for repair. Stevens did not try to inspect the items in Florida, but sought the member's help in arranging an inspection of the

[1]This shipment moved under Personal Property Government Bill of lading TP-302,125.

waterbed. On May 17, the member contacted Stevens and informed a company official that the waterbed could not be inspected; the neighbor had not been able to repair the bed, so he had given it away.

Stevens contends that it is not prima facie liable for any loss or damage because it vigorously pursued its right to inspect the damage but was denied that right. The carrier argues that movement of an item before inspection makes an inspection useless because the subsequent movement could have been the cause of damage. Regarding the waterbed, Stevens complains that it was given to an unqualified repair person, and then was given away before Stevens could inspect it.

The right to inspect loss or damage is provided by the Military-Industry Memorandum of Understanding (MOU). Under the MOU, the presumption of the correctness of the delivery receipt is overcome by written notice of additional loss or damage within 75 days of delivery; otherwise, loss or damage noted after delivery generally is presumed not to have occurred in transit. For exceptions taken after delivery, a carrier waives its right to inspect if written notice of damage is dispatched within 75 days of delivery and the carrier fails to inspect within 45 days of dispatch or within 75 days of delivery, whichever is longer.

A carrier cannot usually avoid being held prima facie liable for loss or damage to the household goods it transports merely because circumstances prevent it from inspecting the damage. This general rule applies where the carrier's conduct contributed in any manner to its failure to inspect. The government must inform property owners of the carrier's right to inspect (this is done, generally, by regulation), but the carrier has the concurrent obligation to vigorously pursue its right of inspection in those situations in which the property owner does not respond to the government's instructions. See Continental Van Lines, Inc., B-215559, Oct. 23, 1984, modified by Continental Van Lines, Inc., B-215559, Aug. 23, 1985.

Nothing in the MOU suggests that the prima facie case against a carrier is lost by movement after delivery. Accordingly, notice of damage dispatched to a carrier within 75 days of delivery is presumed to have occurred in transit even if the shipper later moved the damaged item. See American VanPac Carriers, B-246852, Mar. 20, 1992. A carrier's inspection of an item reported as damaged within 75 days of delivery thus presumably would reflect the condition of that item as the carrier delivered it, and the carrier would have to prove that any damage for which it does not believe it was responsible occurred after delivery. Here, Stevens could have observed the shipment in Florida,

after it was moved, or in Alabama before it was moved, and used any information so gained to rebut the prima facie case against it. Stevens did not do so, and there is no basis in the record on which to relieve the firm of liability.[2]

We view the waterbed, for which the set-off was $588 (of the $767 total) differently. Notice of additional damage is adequate if it is written and provides the carrier enough information to initiate a prompt and complete investigation of the facts. See American Van Services, Inc., B-249834, Feb. 11, 1993. Here, the DD Form 1840R alerted Stevens that it had to investigate the facts surrounding damage to all parts of the waterbed, and Stevens vigorously pursued its inspection rights. But, the service member disposed of the parts before Stevens could arrange an inspection, and considerably before the expiration of Stevens' inspection period under the MOU. Of additional significance in this case, evidence of damages would be ascertained, in substantial part by comparing the description of damages in the DD Form 1840R with the inventory's description of the items. The DD Form 1840R stated that the waterbed parts generally were broken, scratched, gouged and nicked; however, the inventory noted that the same type of damages were pre-existing and described those damages on an item by item (not general) basis. Given these circumstances, we do not believe that the carrier should be held liable for the alleged damage to the waterbed.

The Claims Group's settlement is modified with regard to the waterbed.

James F. Hinchman
General Counsel

[2]We also note that Stevens has not explained how a denial of its ability to inspect the damaged items in this shipment could have affected it with respect to the lost items.