



149592

Decision

Matter of: National Forwarding Co., Inc.--
Reconsideration

File: B-238982.6

Date: February 11, 1993

DIGEST

Military-Industry Memorandum of Understanding governing claims for loss or damage to household goods provides that a carrier will accept written notice of loss/damage discovered after delivery as overcoming the delivery receipt's presumed correctness if the agency dispatches the notice within 75 days after delivery. The fact that a notice did not actually leave the installation until the 77th day, evidenced by the installation's postage meter stamp, is irrelevant, since dispatch from the installation's claims office was adequate for purposes of the 75-day requirement.

DECISION

National Forwarding Co., Inc., asks that we reconsider our decision in National Forwarding Co., Inc., B-238982, June 25, 1992. In that decision, we affirmed our Claims Group's denial of National's claim for a refund of \$509 that the Army set off from other revenues due the carrier, for transit damage to an Army member's household goods. National argues that we improperly concluded that the carrier was furnished timely notice of the damage. We deny the reconsideration request.

The Military-Industry Memorandum of Understanding (MOU) governing claims for loss or damage to household goods provides that for loss/damage discovered after delivery, the carrier will accept written notice on DD Form 1840R¹ as overcoming the presumption that the delivery receipt was correct, so long as the form was "dispatched" to the carrier within 75 days of delivery. The carrier then has 45 days from the dispatch date to inspect the loss/damage.

The installation's metered stamp mark on the envelope in which the DD Form 1840R in issue was sent to National bore a

¹Notice of Loss or Damage. It is the reverse side of DD Form 1840, Joint Statement of Loss or Damage at Delivery.

date that was 77 days after delivery of the household goods. We found the carrier liable nonetheless, because the "Date of Dispatch" inserted by the Army claims office in box 3a of the form was within the 75-day period.²

In requesting reconsideration, National points out that the MOU is between the military and the industry, not between the claims office and the industry. The carrier argues that release of the notice by the military installation, not by the claims office, therefore is the operative action for purposes of the 75-day period, and points out that the installation's meter stamp establishes that the notice did not leave the installation on time.

In comments on National's request, the U.S. Army Claims Service reports that after the claims office completes an 1840R, it is taken to the installation's mail and distribution center, where it is meter-stamped, and then to the U.S. Post Office that same day. The Army maintains that the dispatch date entered on the DD Form 1840R thus signifies the date the form leaves the claims office's control. According to the Army, in a series of MOU negotiations the industry has attempted to replace the "dispatch" requirement with a "postmark" one. The Army advises that the military services have opposed the proposal every time, precisely because the claims office has no control over the postmark, and every time the industry has acquiesced.

As a preliminary matter, we note that National focuses on the installation's meter-stamping, whereas the Army argues why the notice's entered dispatch date controls over the "postmark," which normally refers to cancellation at the U.S. Post Office. It appears from the Army's report, however, that by referring to a "postmark" the agency actually means the meter stamp, especially since (1) the report expresses the Army's concern with loss of the notice's control by the claims office,³ and (2) the envelope for the DD Form 1840 sent to National does not carry a Post Office postmark. In any case, since we believe

²The Army claims office received the form on a Friday, 72 days after delivery. The claims officer dated and signed the form on the following Monday, the 75th day. The envelope bore an installation postage meter stamp dated 2 days later.

³According to the Army's description of the events involved in sending notice to a carrier, the claims office has as little control over the meter stamp as it does over a Post Office postmark.

that the dispatch date entered on the form controls, as discussed below, the difference is irrelevant.

We see no basis to overrule our prior decision. The MOU identifies "dispatch" as the operative event, not the date the notice leaves the installation. The form the parties use in these circumstances specifies that the claims officer put the "dispatch" date in the space provided. As we stated in our decision, the apparent understanding of the parties when the military and the industry entered into the MOU was that the claims officer's entry of a "dispatch" date on the notice would control for purposes of the 75-day notice period.

Moreover, National had not charged that the wrong date was entered on the notice, and we have no reason to question the Army's assertion that the claims office in fact released the form on that date. Nor is there any evidence that, for example, the carrier's right to inspect in a timely manner (i.e., within 45 days of the dispatch) was frustrated under the circumstances.

In sum, we remain of the view that National was provided timely notice in this case, for purposes of overcoming the presumed correctness of the delivery receipt. The carrier's request for reconsideration is denied.

for *Seymour E. Hinchman*
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General Counsel