



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Fogarty Van Lines

File: B-248982

Date: August 16, 1993

DIGEST

Common law principles, supplemented by the Joint Military-Industry Memorandum of Understanding and Depreciation Guide, govern a carrier's liability for transit loss or damage to a service member's household goods, and provide for depreciation in the calculation. Even though Air Force regulations provide that in reimbursing the owner of a damaged item, depreciation normally should not be assessed for time in nontemporary storage, it is improper to ignore the possibility of depreciation in recovering from the carrier.

DECISION

Fogarty Van Lines requests review of our Claims Group's settlement upholding the Air Force's setoff of \$1,125 from funds otherwise due to the firm to recover for damage to a service member's household goods. The issue is whether the Air Force, in calculating the carrier's liability, should have considered the possibility of depreciation for the time that the shipment was in nontemporary storage.

We conclude that the Air Force should have considered the possibility of depreciation. We therefore reverse the settlement and return this matter to the agency for further consideration.

Fogarty picked up the member's household goods from a nontemporary storage facility after 4 years of storage and delivered them to the member shortly afterward. On delivery, the member and the carrier's representative noted that a sleeper sofa and matching loveseat (inventory items 58/59) had incurred rips, soil marks, and chipped legs. The estimated cost to repair the damage was \$1,775; the purchase price had been only \$1,250. The Air Force paid the member \$1,125 under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, 31 U.S.C. § 3721, for the depreciated replacement cost of the items. The Air Force recovered \$1,125 from Fogarty.

To determine the actual value of the member's loss, the Air Force reduced replacement costs (based here on original purchase price) by only 1 year of depreciation at 10 percent per year (\$125). No depreciation was charged for the 4 years during which the damaged items were in storage. Fogarty admits liability but contends that the measure of damages assessed against it should have included depreciation for the 4 years, since furniture like that involved here continues to depreciate while in storage. The firm claims a \$500 refund to reflect 4 more years of depreciation.

Relying on our decision in National Forwarding Co., Inc., B-238982, June 22, 1990, and its reconsideration, B-238982.2, June 3, 1991, the Claims Group affirmed the Air Force's action.

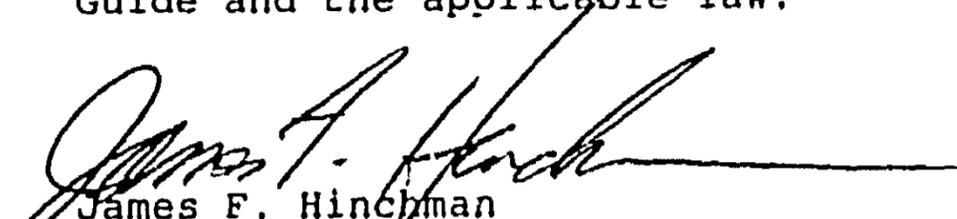
Carrier liability for transit loss or damage to household goods is governed by common law principles. Under this body of law, numerous factors must be taken into account in determining the value of an item that has been lost or damaged, including the nature of the item, the periods and conditions of storage, original and replacement costs, age, length of time in use, the extent of wear and tear, and deterioration. See Mullen v. Sinclair Refining Co., 32 App. Div. 2d 1000, 301 N.Y.S. 2d 716, 718-719 (1969); Annotation, Valuation Of Wearing Apparel Or Household Goods Kept By Owner For Personal Use, In Action For Loss or Conversion Of, Or Injury To, Such Property, 34 A.L.R. 3d 816 (1970). The Joint Military-Industry Memorandum of Understanding (MOU) and Depreciation Guide provide limited supplemental advice where the shipment is a service member's. The Guide, while recognizing that depreciation rates can vary from case to case, sets out agreed-upon depreciation rates for average care and usage for a wide variety of household goods.

In National Forwarding, the carrier lost a post-hole digger and delivered a broken fishing rod. In determining the carrier's liability for the loss and damage, the Army did not depreciate the two items during the 16 months they were in storage. The carrier objected, arguing that the items should have been depreciated during storage at the Depreciation Guide's rates. The carrier noted that while paragraph 11-13 of the Army's claims regulation (Army Regulation 27-20), governing reimbursement of members for lost or damaged household goods, specifically provides that normally there will be no depreciation during periods of storage, paragraph 11-27, which addresses carrier liability for loss or damage, does not; the carrier argued that this difference mandated that items be depreciated during storage in determining carrier liability.

We rejected the carrier's argument and upheld the Army's calculation. The items involved in National Forwarding were stored in an environment in which, according to the Army, they should not have been subjected to normal wear and tear reflected in the Depreciation Guide's rates. National Forwarding stands for the proposition that in appropriate circumstances household goods need not be depreciated for time in nontemporary storage; nothing in either the Army's claims regulation or the Depreciation Guide is inconsistent with that view. The case does not stand for the proposition that there should never be depreciation during periods of storage, or that there is no difference between the government's obligation to reimburse a member for loss or damage and the carrier's liability for that loss or damage. To the contrary, we have expressly recognized that there is a difference. American International Moving, Corp., B-247576, Sept. 2, 1992.¹

In this case, it appears from the record that the Air Force did not consider depreciation while the furniture was in storage in determining Fogarty's liability because no depreciation for this period was taken into account in reimbursing the owner.² However, whatever the reason the Air Force did not depreciate in calculating an amount to pay the owner, the agency was required by the common law and agreements with the industry to consider the possibility of depreciation in setting off against the carrier.

Accordingly, we are returning this matter to the Air Force to determine the carrier's liability under the Depreciation Guide and the applicable law.³


James F. Hinchman
General Counsel

¹In that case, we noted that an agency's obligation to service members is controlled by 31 U.S.C. § 3721, while carrier liability is controlled by the MOU and Depreciation Guide.

²The relevant provisions of the Air Force claims regulation, Air Force Regulation 112-1, are similar to those in the Army's.

³We recognize that since the member already has been reimbursed, reassessment might result in the Air Force recovering less from the carrier than it paid the member.