



Comptroller General
of the United States

61176

Washington, D.C. 20548

Decision

Matter of: Department of the Army

File: B-255795

Date: June 3, 1994

DIGEST

Carrier is presumed liable for later-discovered loss/damage to a shipment of a service member's household goods, notwithstanding the agency's failure to dispatch notice of additional loss/damage within 75 days of delivery, where upon delivery the carrier provided the member a blank notice form that neither identified the carrier or its agent, nor provided the carrier's address.

DECISION

The Department of the Army requests review of our Claims Group's settlement allowing the claim of Allied Relocation Services, Inc., for a refund of \$648 set off from funds otherwise due the carrier, for loss and damage to an Army member's household goods. We reverse the settlement.

The issue in this case involves notice to the carrier of additional damage. According to the Military-Industry Memorandum of Understanding, upon delivery a carrier is responsible for providing the member a copy of the standard form Joint Notice of Loss or Damage at Delivery (DD Form 1840), the reverse of which is the Notice of Loss or Damage (DD Form 1840R) used to report damage discovered later. The carrier then is presumed liable for damage set out in a DD Form 1840R dispatched by the service to the carrier within 75 days of delivery. Here, the Army did not timely dispatch the DD Form 1840R it received from the member because the carrier had not completed the form. The carrier simply gave the member a blank DD Form 1840/1840R that was unsigned, did not identify the carrier or its agent, and did not provide the carrier's address.

In its report on Allied's claim, the Army maintained that Allied had waived its right to notice by its failure to identify the carrier or its address on the DD Form 1840/1840R. Our Claims Group, however, held that since the agency knew the shipper's identity it could have obtained the name of the carrier from the shipper. The Claims Group based the settlement on our decision in National Forwarding

Co., P-247457, Aug. 26, 1992, where we stated that an agency has the responsibility to make a reasonable effort to find a carrier's address instead of merely holding an incomplete notice until the 75-day period expires. The Claims Group directed the agency to refund Allied the amount of the setoff.

The Army is joined in requesting review by the Navy, Air Force, and Marine Corps. Basically, the services argue that the settlement represents an unwarranted expansion of the "reasonable effort" holding in National Forwarding Co. The services point out that the Memorandum of Understanding provides that the carrier's failure to provide a DD Form 1840/1840R to the member eliminates any notice requirement, with the carrier, in effect, waiving the right to receive notice. The services argue that providing a completely blank form is tantamount to providing no form at all and should have the same effect. The Army suggests that otherwise, "the carrier's obligation would be limited to handing the member a completely blank form and then seeking to profit by its negligence when the Government was unable to mail the notice to the carrier."

We agree with the services that Allied's failure to complete the DD Form 1840/1840R excuses the Army's failure to send Allied timely notice of the damages. In National Forwarding Co., the carrier had substantially complied with the requirement to complete the form it gave the member at delivery: National's company name was in the address block, and the form included the government bill of lading number and the name and address of National's agent. The form thus was "complete enough that the Army could have determined how to contact the carrier with minimal difficulty." Here, in contrast, the form provided the shipper by the carrier did not contain any information identifying the carrier, its address, or its agent; the difficulty in identifying the carrier would have been more than "minimal" as anticipated in the cited case.

As we stated in National Forwarding Co., an agency confronted with a substantially complete DD Form 1840R should make a reasonable effort to find the carrier instead of simply holding the notice past 75 days. However, where, as here, the DD Form 1840/1840R provided the member at delivery contained no identifying information, in our view it would be unreasonable to obligate the agency to undertake to correct or otherwise mitigate the carrier's omissions by requiring the claims office to locate the shipper and then

pursue whatever information the shipper might have.¹
Rather, we believe the carrier in that case has waived its
right to notice, and therefore properly may be presumed
liable for later-discovered loss/damage to shipment.

The Claims Group's settlement is reversed.

/s/ Seymour Efros
for Robert P. Murphy
Acting General Counsel

¹The Army notes that the claims office might not have the
shipper's telephone number when the DD Form 1840R is filed,
and that although the shipper might be able to identify the
carrier by name (e.g., "Allied"), there may well be a number
of carriers with that name, not all at the same address.