



Comptroller General
of the United States

252289

Washington, D.C. 20548

Decision

Matter of: American Van Services, Inc.

File: B-256229

Date: September 8, 1994

DIGEST

A carrier is liable for transit damage to a shipment of a service member's household goods even though such damage was similar to damage reported on the origin inventory as pre-existing. An Air Force inspector examined the damaged items and found that additional damage occurred in transit, and the carrier has not presented clear and convincing evidence to rebut the inspector's report.

DECISION

American Van Services, Inc., requests review of our Claims Group's settlement involving an Air Force set-off of \$533.04 against funds due American in connection with loss and damage to a service member's household goods.¹ We affirm the settlement.

American picked up the member's household goods from Valdosta, Georgia, on August 16, 1989, and delivered them to Hampton, Virginia, on September 6, 1989. On October 27, 1989, a Notice of Loss or Damage (DD Form 1840-R) was dispatched to American notifying it of damages to various items in the shipment, including the following: item 31 (a jacket), item 66 (a headboard), item 70 (a dresser), items 44 and 46 (plant stands), item 55 (a desk), item 78 (a table), items 103 through 109 (a bunk bed), item 209 (a mirror), item 159 (a griddle), and item 199 (a dish pan). American did not conduct its own inspection of the damages, and the Air Force did not conduct its inspection until February 26, 1990.

As an initial matter, since American did not include items 46, 159, or 199 in the claim it filed with our Claims Group, so that they are not part of the settlement being appealed, we will not consider them now. See A&A Transfer & Storage, Inc., B-252974, Oct. 22, 1993. Also, on August 9, 1990, the

¹The shipment moved under Personal Property Government Bill of Lading TP-116,139.

Air Force admitted liability for item 31, the jacket (\$110.45).

BACKGROUND

Headboard (item 66) - The member purchased this item in February 1979 for \$100; he claimed that American rubbed off the finish 3 inches at the top right. Pre-existing damage (PED) noted by the carrier was a chipped, scratched and gouged front, a chipped and rubbed leg and a scratched top. The repair estimate (\$45) indicated that the item was rubbed and dented during transit. American agrees that it is liable for the damage to the headboard, but challenges the amount of damages. American argues that the repair cost should not have been used in the measure of damage because it exceeded the actual value of the item. American assumes the 1979 purchase price is the replacement cost, depreciates this by the maximum of 75 percent over 11 years of use, credits itself with the salvage value since it was not given possession of the damaged item, and then concludes that its liability should be \$18.75.

Dresser (item 70) - The member purchased this item in February 1979 for \$175; he claims that American rubbed the white strip at the top right, made a 1-inch chip at the top left front corner, and caused a 1-inch chip off the bottom center. PED was a scratched top, a chipped/scratched left and right front, scratched legs, and a chipped and dented edge. The repair estimate (\$60) involved a dented and rubbed front edge, a crushed left front corner at the top, and a chipped bottom front edge. American does not deny liability but, using an approach similar to the one it used with item 66, concludes that its liability is \$32.81.

Plant Stand (item 44) - The member received the plant stand as a gift in December 1988, and he claims that American scratched the top of it. PED was a scratched/chipped top and leg. The repair estimate (\$25) involved a dented, scratched and marred top. American contends that it is being charged with PED, but the Air Force says that its inspector found that there was no PED on this item and that those marks that the carrier had identified as scratches, were, in fact, the grain of the wood.

Desk (item 55) - The member received the desk as a gift in January 1983, and he contends that American rubbed the finish off the left front leg. PED involved scratches/chips to the top, left side, right side and front, plus a scratched and rubbed leg. The repair estimate (\$28) involved a dented and rubbed left front leg. American denies all liability and argues that the dent noted on the repair estimate is new damage and the scratch/rubbed leg was PED. The Air Force says that its inspector observed a chip

and a rub on the leg and that he noted a difference between the pre-existing rub and the rub to the leg caused by American.

Table (item 78) - The member purchased this particle board television table for \$99 in January 1984, and he contends that American chipped the back of it. PED involved a scratched/chipped top; scratched, chipped and dented right and left sides; and a scratched/rubbed leg. The repair estimate (\$18) stated that the right rear of the top was gouged. American denies liability and argues that the DD Form 1840-R did not provide timely notice that the top was damaged. The Air Force inspector observed a large chip on the "rear top."

Bunk bed (items 103 to 109) - The service member purchased a child's bunk bed in August 1988 for \$250, and he contends that American chipped and rubbed the component items in several places. PED involved chips/scratches with a scratched leg on item 103; chips with a scratched/rubbed legs on item 104; a scratched leg and chips/scratches to the top, side, and front of items 105 and 106; scratches and rubs on item 107; and chips/scratches on items 108 and 109. The repair estimate (\$85) stated that all surfaces were scratched, gouged and marred. American contends that the claimed damages were either PED or post-transit damages and that the Air Force improperly allowed the addition of a headboard repair to the cost of the bunk bed repair. The Air Force inspector agreed that there was PED and allowed 25 percent depreciation, but he observed fresh chips and rubs on all of the bed parts.

Dresser Mirror (item 209) - The member purchased this mirror in June 1984 for \$119. He claims that American chipped the right side and back of it and allowed white paint to mark the right front of it. American denies liability because the damage estimate (\$65) involved the repair of a gouge and a scratch; there is no mention of white paint or a chip. The Air Force inspector observed that the right rear side was chipped and splintered about 1 foot long, and the frame was rubbed on the lower right front.

ANALYSTS

Items 66 and 70 - American has not presented evidence showing that the original purchase price was an accurate reflection of the undepreciated replacement cost at the time of damage. Therefore, it was not shown that the depreciated replacement cost measure of damages is appropriate, nor has it shown that the repair cost measure used by the Air Force was unreasonable. Moreover, as to item 66, American did not challenge the measure of damages until this request for review. In the absence of clear and convincing evidence

that the Air Force did not reasonably employ the repair cost measure of damages, we accept the Air Force's calculation of damages. See Ambassador Van Lines, Inc., B-249072, Oct. 30, 1992; Beach Van & Storage, B-234877, Dec. 11, 1989.

Items 44, 55 and 103-109 - Based on the inspector's report, any doubt concerning the pre-existing nature of these damages must be resolved in favor of the service member. In item 44, the inspector found that the condition identified as PED was not, in fact, PED. On the other items, the inspector found transit-related damage in addition to the PED. We are concerned about the lapse in time between the delivery and the Air Force inspection³, but American failed to conduct any inspection. If American had conducted a timely inspection and provided a detailed report, it may have been able to offer evidence to overcome the Air Force's report. However, American has offered no substantive evidence to rebut the inspector's findings that additional damage was caused during transportation.

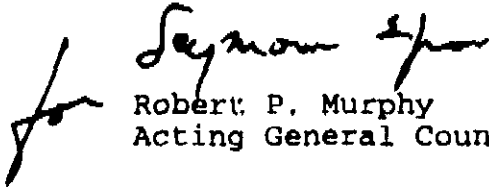
A shipper establishes a prima facie case of carrier liability by showing that the household goods, while having some damage when picked up by the carrier, were in worse condition when delivered by the carrier. See Starck Van Lines of Columbus, Inc., B-213837, Mar. 20, 1984, 84-1 CPD ¶ 337. Moreover, the fact that some PED may be repaired incidental to the repair of transit damage does not diminish a carrier's liability where the carrier has not demonstrated that the additional cost for doing so is ascertainable. See Interstate Van Lines, Inc., B-197911.2, Sept. 9, 1988. Based on the inspector's report, and in the absence of clear and convincing evidence to the contrary, we accept the Air Force's findings that American caused additional damage. See McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415, 419 (1978).

Item 78 - Notice of a claim is sufficient if it alerts the carrier that damage occurred for which reparation is expected so that the carrier may promptly investigate the facts; specific itemized exceptions to the delivery are not required. See Continental Van Lines, Inc., B-228702, Dec. 16, 1983; Continental Van Lines, Inc., B-215507, Oct. 11, 1984. In our view, the service member's notation on the DD Form 1840-R that this item was damaged met the minimum requirements. See American Van Services, Inc., B-249834, Feb. 11, 1993.

³A regulation of the Department of Defense provides that the transportation officer will arrange an inspection (when necessary) within 10 working days of receiving a damage report. See Department of Defense Personal Property Traffic Management Regulation 4500.34-R, p. 6-4 (May 1986).

Item 209 - The issue is whether the claimed damage matches the damage noted on the estimate. In our view, a gouge or scratch is not inconsistent with the paint damage on the right front. See Continental Van Lines, Inc., 63 Comp. Gen. 479 (1984), where we found no meaningful distinction between a scratch/marred table and one that had a chip, scrape or gouge.

The Claims Group's settlement is affirmed.


Robert P. Murphy
Acting General Counsel