153149

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Foremost Forwarders, Inc.

File: B-256666

Date: December 8, 1994

DIGEST

The level of damage to an item of household goods in transit estimated at the time and place (domestic or foreign) of delivery is relevant in establishing whether the damage is sufficient to determine under 49 C.F.R. § 1056.15 that freight charges on the damaged items cannot be collected by the carrier.

DECISION

Foremost Forwarders, Inc.,[1] requests that we review our settlement denying its claim for a refund of $96.53 set off by the Defense Finance & Accounting Service (DFAS) to recover charges for unearned freight on a household goods shipment in which Foremost was responsible for transit damage. We affirm our settlement.

The record shows that when the service member's household goods were delivered in Bamberg, Germany, in December 1991, his microwave oven was "crushed"; a stereo speaker cabinet, grill and woofer were damaged; and a video recorder (VCR) had a broken circuit board, a crushed top, a broken case, and a broken door. The Army determined that each item was "destroyed" for the purposes of 49 C.F.R. § 1056.15, which addresses whether carriers may assess charges for shipping items that are damaged in transit, and deducted $96.53 for freight charged by Foremost for shipping the destroyed items.

Foremost did not contest the Army's adjudication of property damages done for the purpose of resolving a claim for the damage itself, but it denies that any item was destroyed to such an extent that freight charges paid to Foremost for shipping the items were refundable to the shipper. Foremost contends that it was error to base repair costs on estimates provided by the Army/Air Force Exchange Service (AAFES), Europe, where the shipment was unpacked, arguing generally that when

[1]This matter involves Personal Property Government Bill of Lading QP-421,297 (George Aaron).

the Interstate Commerce Commission (ICC) drafted 49 C.F.R. § 1056.15, it did not contemplate high overseas repair costs and problems with the availability of parts.

Foremost states that its representative contacted the Zenith Corporation regarding the damage to the VCR and was told that the top cover, cabinet, door and circuit board of the VCR were all available at considerably less cost than that quoted by AAFES. Foremost also contends that it was not provided a copy of the Army's repair estimate to fix the microwave oven, and is thus not prepared to accept that the oven was destroyed under 49 C.F.R. § 1056.15.

49 C.F.R. § 1056.15(b) provides that if:

> "any portion, but less than all, of a shipment of household goods is lost or destroyed in transit, a motor common carrier of household goods in interstate or foreign commerce shall . . . refund that portion of its published freight charges . . . corresponding to that portion of the shipment which is lost or destroyed in transit."

The ICC has explained that the term "destruction" implies that goods are "beyond repair or renewal, that they no longer exist in the form in which they were tendered to the carrier, or that they are useless for the purpose for which they were intended." See Aalmode Transportation Corp., B-231357.2, Sept. 9, 1992.

The record reasonably supports DFAS's disallowance of the freight charges. First, in the adjudication of property damage for this shipment, the record shows that Foremost was provided copies of applicable damage estimates and a copy of the List of Property and Claims Analysis Chart (DD Form 1844). The DD Form 1844 states that the microwave was "crushed" and that the oven had no salvage value. Foremost did not dispute this adjudication and agrees that it damaged the oven. In such circumstances, without specific contrary evidence from the carrier, DFAS reasonably concluded that the oven no longer existed in the form tendered and was useless for the purpose intended.

Foremost acknowledges that it damaged the VCR and speaker but suggests that DFAS did not have appropriate evidence that these items were destroyed because the evidence presented (estimates of overseas repair costs and repair costs reflecting problems with parts availability) was not of the type contemplated by ICC when it drafted 49 C.F.R. § 1056.15.

We note, however, that the first sentence of 49 C.F.R. § 1056.15(a) specifically states that the section's provisions apply not only to household goods in interstate commerce, but also to those in foreign commerce.

It is insufficient for Foremost to allege that a considerably less costly VCR repair was available through Zenith. Even if Foremost had presented a detailed repair

estimate, which it did not, we have held that the existence of a lower carrier repair estimate does not justify reducing the amount of damages where the carrier does not show that the service member's estimate was unreasonable in comparison with local market repair costs. See Interstate International, Inc., B-197911.6, May 25, 1989. Further, in view of the four types of damage to the VCR described above, DFAS reasonably could assume that the VCR was destroyed or that it no longer existed in the form tendered and was useless for the purpose intended.

Our prior settlement is affirmed.

Robert P. Murphy
General Counsel