Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Allied Intermodal Forwarding, Inc.--Claim for Reimbursement of Amount Collected by Setoff for Damage to Household Goods

File: B-258665

Date: April 6, 1995

DIGEST

When a television was examined after a household goods move, the repairman stated that the damage the set had sustained was caused by dropping the set or applying stress or force to the face of the tube. Since a prima facie case of carrier liability was established, the carrier was liable for the damage. However, the carrier's liability should have been limited to the depreciated replacement cost, which was less than the depreciated repair cost. The carrier's claim for refund of the difference between those two amounts is granted.

DECISION

This is in response to an appeal of a Claims Group settlement which denied the claim of Allied Intermodal Forwarding, Inc., for reimbursement of an amount collected by setoff for damage to a television. We allow a partial reimbursement.

On May 16, 1991, Allied Intermodal picked up the household goods of Ensign Stephen H. Smith in Columbia, South Carolina, and shipped them under Government Bill of Lading No. RP838,065, with delivery in Orlando, Florida, on May 31, 1991. Naval authorities sent Allied Intermodal DD Form 1840R as notification of damage to a television in Ensign Smith's shipment.

Ensign Smith obtained a replacement cost estimate of $549.99 and a repair estimate of $620.68 for the television. On the estimate the repairman noted that the malfunction was due to the fact that the "shadow mask" of the picture tube had come loose inside the television. He said this would occur only if the set were dropped or if stress or force were applied to the face of the tube. The Navy accepted the repair estimate and reduced it to $589.40 due to the age of the television. When Allied Intermodal did not submit that amount, the Navy collected it by offset.

In its appeal on behalf of Allied Intermodal, Resource Protection presents two alternative lines of argument. The first is that Allied Intermodal denies liability for the damage to the television, either because it was already damaged at tender or because the damage was

caused by the normal vibration of the moving truck, which was unavoidable. In support of its position, Resource Protection cites Interstate Van Lines, Inc., B-197911.5, June 22, 1989. In the alternative, Resource Protection contends that the collection was excessive since the Navy charged the depreciated repair cost ($589.40) rather than the depreciated replacement cost ($495.00), a difference of $94.40.

A prima facie case of carrier liability is established by a showing that the shipper tendered property to the carrier, that the property was not delivered or was delivered in a more damaged condition, and that a timely claim was filed. The burden of proof then shifts to the carrier to rebut the prima facie liability. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134 (1964).

In the present situation a prima facie case of carrier liability has been established, and the carrier has not proven that it was not responsible for the damage to the television. In the case cited by Resource Protection, B-197911.5, supra, the carrier was not found liable because there was no prima facie liability since the record contained no proof of good condition prior to tender. In the record before us the shipper states on DD Form 1842 that he was unaware of any damage to the television until after delivery. Furthermore, dropping a television or applying stress or pressure to a picture tube are types of damage which could easily occur during a move. See Department of the Army, B-255777.2, May 9, 1994. Unavoidable routine truck vibration is not a likely cause of the malfunction because, as the Navy points out, this particular type of damage would be widespread after moves if such were the case. Allied Intermodal has not rebutted its liability for the damage to the television.

However, as to the amount of liability, we accept Resource Protection's contention that liability should have been limited to the replacement cost minus depreciation, which was less than the depreciated repair cost. We generally do not question an agency's calculation of the value of damages to items in a shipment of household goods unless the carrier presents clear and convincing evidence that the agency's calculation was unreasonable. The Navy's Claims Investigating Officer recommended that Allied Intermodal be charged the depreciated replacement cost, and we concur. Therefore, Allied Intermodal is entitled to a refund of $94.40 if that figure is otherwise correct.

Allied Intermodal's claim should be handled accordingly.

\s\ Seymour Efros
for Robert P. Murphy
General Counsel