Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: National Forwarding Co., Inc.

File: B-260769

Date: November 1, 1995

DIGEST

A carrier is not liable for damage to articles in a service member's household goods shipment when the carrier vigorously pursues its inspection rights within the time permitted in its contract, the service member discards the broken articles within the time that the carrier was permitted to inspect them and before the carrier had the opportunity to do so, and the record indicates that the carrier had a substantial defense involving facts discoverable by inspection.

DECISION

The National Claims Services, Inc., on behalf of the National Forwarding Company, Inc., requests review of our settlement of February 6, 1995, upholding the Army's collection of $2,468 for damage to the household goods shipment of a service member.[1] We modify our prior settlement with respect to the crystal and affirm the remainder.

On review, the carrier expresses concern about the Army's failure to accord National its inspection rights with respect to the broken crystal (item 377). The service member claimed that the carrier broke 8 stem glasses, 8 highball glasses, 8 "Old Fashion" glasses, 2 round decanters, 2 square decanters, 8 coasters, and a crystal punch bowl set with 12 glasses, with a combined liability of approximately $1,450. Some items were Baccarat crystal, others were Atlantis crystal. All of the broken articles were discarded before the carrier's inspector arrived. The service member purchased these articles around January 1979 and no purchase receipts were contained in the record.

The record indicates that the carrier quickly arranged and conducted an inspection. The carrier argues that it was unable to verify the value of the broken crystal

[1]The shipment moved under personal property government bill of lading QP-025,491 involving Robert Jones, Settlement No. Z-2862672.

articles because the service member had discarded them before its inspectors arrived. The Army does not dispute that the member improperly discarded the broken articles, but it contends that this does not defeat recovery because the values of these articles were ascertainable through photographs of some of the surviving articles. The Army also suggests that the broken articles constituted a safety hazard and that it was reasonable to dispose of them.

A carrier cannot usually avoid being held prima facie liable for loss or damage to the household goods it transports merely because circumstances prevent it from inspecting the damage. This general rule applies where the carrier's conduct contributed in any manner to its failure to inspect. See Continental Van Lines, Inc., B-215559, Oct. 23, 1984, modified in part by Continental Van Lines, Inc., B-215559, Aug. 23, 1985. But, our decisions also recognize that a carrier is not liable when it vigorously pursues its inspection rights within the time permitted in its contract; the shipper discards the damaged item within the time that the carrier was permitted to inspect it and before the carrier had the opportunity to do so; and the record indicates that the carrier had a substantial defense involving facts discoverable by inspection. See Stevens Worldwide Van Lines, Inc., B-251343, Apr. 19, 1993. The Army does not contend that the carrier failed to pursue its inspection rights; therefore, the issue is whether the carrier had a substantial defense involving facts discoverable by inspection.

The carrier is concerned that the member's crystal was not the type and quality claimed by the member and suggests that the member had tried to deceive it with respect to the value of other articles like rugs. The Army disputes the carrier's characterization of what transpired with the rugs and contends that photographs of the crystal are proof of the value. In reality, the issue is whether there was sufficient evidence on the record to establish a prima facie case of liability on the element of the value.

In totality, we cannot say that the carrier would not have had a valid defense with respect to the value of the crystal. There are no purchase receipts, and the only supporting evidence of the value of the crystal is the photographs of some of the surviving articles. But the record does not indicate whether the member made these surviving articles available for the carrier's inspector, and it is not clear to us which article presented in the photographs is identical to a specific article that was broken and claimed. Also, the Army did not explain the safety hazard in retaining the broken crystal in the container used to transport it.

Perhaps, more significantly, the two Military-Industry Memoranda of Understanding (MOU) cited by the Army do not support its position. The MOU involving "Loss and Damage Rules" does not anticipate the discarding of broken glass prior to a carrier's inspection. Moreover, the MOU with regard to salvage, which specifically does not affect existing inspection rights afforded to the industry, does anticipate the

disposal of hazardous or dangerous items like broken glass, but broken crystal having a single item value of $50 or more must be retained for carrier salvage. Many of the broken articles claimed exceeded this threshold. Thus, the government and the industry believed that it is reasonable to require the member to retain expensive broken crystal for the carrier's inspection and salvage.

For these reasons, we modify our prior settlement by affirming it except with respect to the crystal.

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