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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American World Forwarders, Inc.

File: B-247770

Date: July 17, 1992

DIGEST

1. A compromise offer submitted to a carrier by an agency to settle a loss and damage claim does not bind the agency unless accepted by the carrier. Upon carrier rejection, the agency may set off from monies otherwise due to the carrier amounts up to the carrier's full contractual liability, whether or not they exceed the amount of the proposed compromise.

2. A carrier can be charged with the loss of an item not specifically listed on the inventory where the surrounding circumstances are sufficient to establish that the item was shipped and lost. A shipper who specifies details regarding the packing and tender of such an item to a carrier or warehouseman at origin has provided adequate evidence of tender to establish a prima facie case of carrier liability.

3. When goods pass through the hand of several bailees, any loss/damage is presumed to have occurred in the hands of the last bailee.

DECISION

American World Forwarders, Inc., requests review of our Claims Group's settlement denying its claim for $1,274, which the Air Force set off from revenues otherwise due American to recover for loss and damage incurred to a service member's shipment of household goods. We affirm the Claims Group's settlement.

In October 1984 the member's household goods were packed and stored by a non-temporary storage (NTS) facility in Aberdeen, Maryland. The NTS facility tendered the goods to American on May 27, 1988, and American delivered them to the member in Marina, California, on June 22, 1988.[1] On

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[1]The portion of the move involving American is Personal Property Government Bill of Lading QP-058,255.

August 17, 1988, the Air Force sent a Notice of Loss or Damage (DD Form 1840R) to American describing later-discovered loss and damage.

American disputes liability on several grounds. First, the company contends that since the Air Force had offered, at one point, to compromise American's liability for damage to the components of a roll-top desk, the government is now precluded from setting off any amount exceeding that offer ($400) even though American did not accept it. The Air Force set off $775 on account of these items.

The carrier also disputes its liability for damage to the roll-top desk components because they had been damaged prior to American's receipt of them. The desk's components were the desk base, inventory item 30, and the roll top, item 31. When it received these items from the member, the NTS facility noted that the inside top left corner of the base was chipped and that the front edge of the base was rubbed. No damage was noted to the roll top itself. When American received these items from the NTS facility, it issued a rider to the inventory noting for item 30 that the roll-top desk had a broken corner on the right side; that it was chipped and scratched at the bottom, corner, front, left and at the right, side, top, edge; and that the desk was scratched and chipped at the bottom, corner, front, left and dented at the right, side, top. Item 31 was not specifically mentioned. In the DD Form 1840R, the shipper noted a large scratch across the surface of the desk, and that the roll top was broken into small parts.

Our Claims Group compared the NTS facility's exceptions at origin and the shipper's exceptions listed on the DD Form 1840R. The Claims Group concluded that the damage charged to American was not pre-existing.

The carrier also disputes any liability for the missing assembly hardware for a tea cart (item 58). On the DD Form 1840R, the member states that the hardware was contained in a small round can. American contends that it received the cart "knocked down" into eight pieces, and that it delivered eight pieces. The carrier contends that the origin inventory did not state that the cart was disassembled, and that American therefore had no reason to expect hardware.

Finally, American contends that even if it is liable for all of the loss/damage, the total liability should be only $1,225, not $1,274.

We find no legal merit in American's arguments. Initially, we point out that the government's recovery is not restricted to the amount it proposed in a compromise settlement. Where, as here, a carrier rejects an

administrative agency's offer to compromise a loss/damage claim against it, the agency can set off from monies otherwise due to the carrier amounts up to the full contractual liability of the carrier, whether or not they exceed the amount of the proposed compromise. CVL-Forwarders, B-216221, Oct. 12, 1984. Once American rejected the offered compromise, it was precluded from relying on it.

Generally, a prima facie case of carrier liability is established when the shipper demonstrates delivery to the carrier in a certain condition, non-arrival or arrival in a more damaged condition, and the amount of the loss or damage. See Missouri Pacific R.R. Co. v. Elmore & Stahl, 377 U.S. 134, 138 (1964). When goods pass through the custody of several bailees, it is presumed that loss or damage occurred in the hands of the last one. See McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415, 418 (1978). Once the shipper has established a prima facie case of liability, the burden is on the carrier or other bailee to show either that the damage did not occur in its custody, or that the damage occurred as a result of one of a number of causes for which the carrier is not liable. Stevens Transportation Co., Inc., B-243750, Aug. 28, 1991.

The record supports the finding that new and substantially different damage occurred to the desk while in American's custody. For example, nothing in American's rider reasonably suggests that the roll top was broken into pieces when American received it from the NTS facility. Compare Valdez Transfer, Inc., B-197911.8, Nov. 16, 1989.

Similarly, the record contains a sufficient basis to charge American with the receipt and loss of the assembly hardware for the tea cart. Not every item of household goods needs to be listed on the inventory to hold a carrier liable for its loss if other circumstances are sufficient to establish that the goods were shipped and lost. Valdez Transfer, Inc., B-197911.8, supra. The carrier admits that it received the cart in eight pieces. The member's description of the placement of the hardware into a small round can reflects sufficient personal knowledge of the circumstances of the packing and tender of the hardware to establish receipt by the NTS facility. See Sentry Household Shipping, Inc., B-243922, July 22, 1991; Aalmode Transportation Corp., B-240350, Dec. 18, 1990. Thereafter, the burden was on American as the last bailee to show that the loss did not occur in its custody. See McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. at 418.

American argues that its total liability should be only $1,225, whereas the amount set off was $1,274. However, it appears that American has not considered (1) $99 in liability for damage to item 4, a bookcase, which was

settled against the carrier by our Claims Group but was not raised in this request for review, and (2) a $50 credit resulting from the NTS facility's liability for damage to the roll-top desk.

The Claims Group's settlement is affirmed.

for Seymour Efros
James F. Hinchman
General Counsel