Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Van Services, Inc.—Claim for Reimbursement of Amounts Collected by Offset for Loss or Damage to Household Goods

File: B-261975

Date: November 9, 1995

DIGEST

The General Accounting Office will not question an agency's calculation of the value of the damages to items in the shipment of a member's household goods unless the carrier presents clear and convincing evidence that the agency acted unreasonably.

DECISION

This is in response to an appeal of a Claims Group settlement[1] which denied the claim of American Van Services, Inc., for reimbursement of amounts collected by offset for loss or damage to household goods. We affirm the Claims Group's settlement.

Under government bill of lading No. SP-224-223, American delivered the household goods of Army Major Wendy R. Mullins from storage-in-transit on October 12, 1993. At delivery the carrier's agent noted some missing and damaged items on Department of Defense (DD) Form 1840. Major Mullins later noted more missing and damaged items on DD Form 1840R. The DD Form 1840R was sent to American on December 1, 1993. Major Mullins filed a claim with the Army. The Army settled her claim and demanded $1,319.00 from American. In response American offered $542.25. The Army reduced its claim to $1,237.00, which was collected from American by setoff. The Army has since offered a refund of $36.78, but American claims further reimbursement.

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 the amount of damages has been determined. 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).

[1]Settlement Z-2862118, Apr. 11, 1995.

In the present situation a prima facie case of carrier liability has been established, and American has presented no evidence which rebuts its liability.

American argues that the pieces of furniture damaged in the move had preexisting damage and that the repair estimates submitted by the member are not itemized so as to prevent American from paying for repair of the preexisting damage. The Army report states that the preexisting damage to the furniture consisted of the usual scrapes and scratches to which furniture is subject, while the damage caused by the move was of a distinctly different kind. It consisted of conditions such as a broken door brace, a broken leg, and a loose side panel. Nevertheless, because the repair estimate did not indicate what repairs were being made, the Army reduced the amount allowed for repairs by 10 percent for the parts of a desk and 25 percent for the other furniture items. This Office will not question an agency's calculation of the value of damage to household goods unless the carrier presents clear and convincing evidence that the agency acted unreasonably. See Ambassador Van Lines, Inc., B-249072, Oct. 30, 1992. American has presented no such evidence.

Regarding items of missing hardware after the move, American questions the cost of the replacement hardware. This Office will not question an agency's calculation of the cost of replacing the missing hardware unless the carrier presents clear and convincing evidence that the agency acted unreasonably. See Ambassador Van Lines, Inc., B-249072, supra. American has provided no such evidence.

Finally, American questions whether a set of silver bowls severely damaged in the move were tendered and whether they were beyond economical repair as determined by the Army. Tender is primarily an issue when goods are missing rather than damaged. We have said that the carrier is not relieved of liability for loss or damage to household goods simply because the items are not listed on the inventory, particularly when it would not have been unusual for those items to be packed in the specific boxes they were in and the carrier packed the boxes and prepared the inventory. See American Van Services, Inc., B-249966, Mar. 4, 1993. In this situation it would not be unreasonable for silver bowls to be packed with other decorative items such as crystal and pictures. Furthermore, on the issue of damages this Office will not question the Army's determination regarding the degree of damage to the bowls in the absence of clear and convincing evidence that it acted unreasonably. American has presented no such evidence.

Accordingly, American's claim is denied, except for the $36.78 allowed by the Army.

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