



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-265703

February 1, 1996

Ocean Air International, Inc.
12 Starck Drive
Burgettstown, PA 15021-9527

Attention: April Kimball
Customer Service

Dear Ms. Kimball:

This is in response to your June 6, 1995, appeal of our Claims Group's settlement No. Z-844944(28), dated June 5, 1995, regarding the shipment of household goods belonging to Charles Vargas under GBL No. P-236,115. The settlement denied Ocean-Air International's claim for \$134 offset by the U.S. Army for loss or damage to the shipment.

This shipment was initially picked up at Columbus, Georgia, in June 1993, and placed in storage by McCarley Moving and Storage Company. Ocean-Air picked up the shipment from McCarley on July 19, 1993, for transportation to Fort Clayton, Panama, where it was delivered to the owner in September 1993. After delivery, several items of loss and damage were noted. You argue that Ocean-Air should not be held liable for loss of certain of these items since they were not specifically listed on the inventory prepared by McCarley at the time the shipment was packed at origin. The items you dispute are as follows: two sets of remote controls and wire connectors, one set of which was packed with items in a box listed as "Color TV" and one set packed with items in a box labeled "Speakers;" an answering machine packed in a box labeled "clothes;" a pressure cooker packed in a box labeled "dishes;" a blender and a mixer also packed in a box labeled "dishes;" and a steam iron packed in a box labeled "books." You argue that Ocean-Air was at the mercy of the inventory made prior to its picking up the shipment from storage, and from these labelings on the inventory, Ocean-Air had no way of knowing whether these items were tendered to Ocean-Air at the time it picked up the shipment from storage.

First, as to the loss of items not specifically listed on the inventory, we have stated that the burden on the shipper would be too onerous if he were required to offer absolute proof of tender. We thus have held that in determining whether an item not specifically listed was tendered, we would consider statements by the shipper that reflect his personal knowledge of the circumstances surrounding tender to the carrier. See Cartwright Van Lines, B-241850.2, Oct. 21, 1991, and decisions cited therein, copy enclosed.

In the present case the record includes a statement from the owner of the goods that he and his wife personally witnessed the carrier's packing of the items in question, and he provides some explanation of the location of the items in his home when they were packed, indicating why they were included in cartons containing the items listed on the inventory. While you state that you are not saying that the owner is incorrect in stating that he saw the items packed, you note a discrepancy in his statement in that he states that his goods were picked up in Columbus, Georgia, in June 1993, by Ocean-Air International, when in fact they were initially picked up by McCarley, as noted above, and Ocean-Air did not receive them until July when it picked them up at the storage warehouse. In our view, however, the owner's confusion of the carriers' names is understandable considering that the statement was provided months after the initial pick-up of the shipment, delivery to him and filing of the claim. In our view this does not affect the sufficiency of his statement to establish the fact that the items in question were tendered to the carrier in June 1993.

As to your argument that Ocean-Air should not be held liable for these items since you have no way of knowing that they were actually present in the shipment at the time Ocean-Air picked it up from storage in July, it is well-settled that when goods pass through the custody of several bailees (carriers and storage facility in this case), the loss or damage is presumed to have occurred in the hands of the last bailee, and the burden is then on that party to establish that the loss or damage did not occur while the goods were in its custody. See Air Land Forwarders, B-247425, June 26, 1992, and decisions cited therein, copy enclosed. Ocean-Air has provided no proof that the loss in this case did not occur while the goods were in its custody.

Accordingly, we affirm the Claims Group's settlement.

Sincerely yours,

/s/ Lowell Dodge
for Robert P. Murphy
General Counsel

Enclosures

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DIGEST

Where carrier picked up member's household goods from nontemporary storage and took no exception to inventory prepared by carrier that had delivered them into storage, carrier is liable for items missing at ultimate delivery to member, although the items were not listed on inventory. The member has furnished a statement that he observed the items being packed and indicating their location in his home. This is sufficient to establish tender to the carrier.