Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Andrews Van Lines, Inc.

File: B-270469

Date: May 29, 1996

DIGEST

1. A carrier is entitled to a partial refund of an amount setoff for damage to a dining table where the agency incorrectly applied a depreciated rate of 50 percent of the replacement value to compute the setoff amount, instead of using the maximum depreciation rate of 75 percent, as required by its own depreciation guide for a 20-year-old wooden furniture piece.

2. A shipper establishes a prima facie case of carrier liability for damage to the shipper's property by showing tender of the property to the carrier, delivery in a more damaged condition, and the amount of the damages. Thereafter, the carrier has the burden of proving that it was free from negligence and that an excepted cause was the sole cause of the damage. Thus, a carrier that merely offers its conclusion based on an inspection that the damage was not transit-related has not met its burden when the carrier's inventory sheet does not list the damage as preexisting damage, and the carrier's rider, prepared when the carrier removed the items from storage, likewise does not list the damage.

DECISION

Andrews Van Lines appeals our Claims Settlement Z-2729037-128, of October 12, 1995, denying its request for a refund.[1] The settlement involved offsets taken by the Department of the Army against Andrews for losses or damage to various items of household goods shipped by Elwood Tauscher under GBL No. SP-027,530.[2] Of the $1,415 amount offset, Andrews requested a refund of $1,037.46, but the Army only allowed $85. Andrews claims the remaining $952.46, not allowed. As discussed below, Andrews is entitled to an additional refund of $411.98.

[1]Carrier claim No. 93-402.

[2]Army claim No. 94-061-0967.

The first offset item Andrews disputes is a dining table listed on the shipment inventory sheet as item No. 32. The offset was $813, for damage to the fiber core veneered table top which caused the table to be useless. Andrews argues that its agent inspected the table and concluded that the damage did not occur during transit but was due to climatic conditions. Andrews argues that the Army accepted a similar conclusion by Andrews in connection with item No. 10 on the inventory sheet, a piano, and that the Army should also accept its conclusion as to item No. 32, in order to be consistent.

In response, the Army argues that the only preexisting damage to the table noted by Andrew on the inventory sheet was some scratching and marring, and that Andrews took no exceptions to this item on the rider when it picked up the shipment from nontemporary storage.

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Here, Andrews has only offered in evidence its conclusion that the damage to the table was preexisting. As the Army notes, there is no indication on the inventory sheet or on the warehouse rider that the damage was preexisting. Moreover, the damage involved could well have occurred during transit. The shipper's repair estimate indicates that the damage resulted from moisture to the fiber core veneered table top, causing it to swell up. The table could have been exposed to moisture during the delivery.

While Andrews argues that the Army accepted Andrews's conclusion that it had not caused a piano in the shipment to become warped, the facts underlying the Army's action regarding the piano may be very different from those involved here. Based on the evidence presented with regard to the table, Andrews has not met its burden of proving that the damage was preexisting.

It appears, however, that the Army did not sufficiently depreciate the table. It allowed 50 percent depreciation on this 20-year-old item. The Army's Depreciation Guide states that ordinary wood furniture depreciates at 7 percent per year to a maximum of 75 percent. Thus, while the Army set the depreciated value of the table at $813 (50 percent of $1,626), it should have set the depreciated value at $406. 50 (25 percent of $1,626). Andrews is entitled to a refund in that amount.

The next item in dispute is a child's table, listed on the inventory sheet as item No. 174. Andrews again argues that its inspection indicates that the damage is not transit-related, and it claims a refund of $75.

The Andrews inspection report itself confirmed that the table was cracked, but then states that the cracking "appears to be climatic damage." At the same time, the only preexisting damage noted on the inventory sheet regarding this item is a scratched edge; while the rider describes additional damage as including gouging, chips and dents, it does not note any splits in the wood. As in the case of the item No. 32 table, Andrews has not met its burden of proof that the damage was preexisting, and it remains liable for the child's table.

Andrews also disputes $5.48 of a $77.46 setoff for the replacement cost of item No. 124, a cupboard set. It contends it is not liable for sales taxes that are not incurred. The Army contends that the replacement cost excluded tax, since a printed notice at the bottom of the estimate stated that the prices "do not include tax." The DA PAM 27-162 at paragraph 2-18d states that sales tax is compensable after it is incurred. There is no evidence in the file that the tax was actually incurred. Therefore, the $5.48 offset for sales tax on the cupboards should be refunded to the carrier.

Andrews next disputes a setoff of $54.48 for a cuckoo clock that was listed by the shipper as missing, but was not listed on the inventory sheet. It believes that the missing clock was packed in an unnumbered carton which was noted as missing on its rider. However, Andrews is incorrect that the clock is not listed on the inventory sheet; it is listed under item No. 76. The setoff is proper.

Finally, Andrews claims $4.50 for its loss of salvage on a $20 poster. The Army argues that under the Joint Military Industry MOU on Salvage, sections c(1) and d(1), a carrier will receive no salvage credit for an item with a depreciated value of less than $50. Andrews notes that the MOU provision states that the carrier is not entitled to exercise salvage rights when "the depreciated replacement value of all salvageable items in a shipment totals less than $100 or a single item of less than $50." It argues that it is entitled to the refund because the shipment had salvageable items totaling well over $100. Since Andrews is only claiming salvage on this one item, the Army is correct that, in accordance with d(1), the $50 portion of the MOU applies. The refund claim is denied.

Accordingly, Andrews is entitled to a refund of $411.98. The remainder of its claim is denied.

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