Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Andrews Van Lines, Inc.—Claim for Reimbursement of Amounts Collected by Setoff for Damage to Household Goods

File: B-261282

Date: November 30, 1995

DIGEST

When prima facie liability has been established, a common carrier is liable for the cost of repairing household goods damaged in a move even though some incidental preexisting damage may be repaired in the process.

DECISION

This is in response to an appeal of a Claims Group settlement which denied the claim of Andrews Van Lines, Inc., (Andrews) for reimbursement of amounts collected by setoff for damage to a shipment of household goods.[1] We affirm the Claims Group's settlement.

The household goods of Sergeant John D. Hornsby, USAF, were picked up at Glendale, Arizona, on November 2, 1990, under government bill of lading No. TP-353,583 and were delivered to Las Vegas, Nevada, on February 19, 1991. The Air Force paid Sergeant Hornsby $1,596.87 for damage to the household goods and collected $1,276.92 from Andrews by setoff. The Claims Group denied Andrews' claim for reimbursement of $1,081.00 of that amount. In its appeal Andrews now claims reimbursement in the amount of $767.25. In support of its claim Andrews argues that it did not receive timely notice of the damage to one item, that the Air Force inspection is invalid because it was not dated and signed, and that much of the damage claimed was preexisting damage.

A prima facie case of carrier liability is established by a showing of tender of goods to the carrier in good condition, delivery in a more damaged condition, and the amount of damages. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134 (1964).

[1]Z-2729037-91, March 30, 1995.

In this instance prima facie liability has been established except for item number 123, a desk/vanity. Andrews has furnished its copy of DD Form 1840, Joint Statement of Loss or Damage at Delivery, which does not have damage to that item noted on it. It was also omitted from DD Form 1840R, Notice of Loss or Damage, and the record does not contain evidence of any other form on which Andrews would have received notice of damage to that item within the 75 days provided for by the Military–Industry Memorandum of Understanding (MOU). Under the MOU, the presumption of the correctness of the delivery receipt is overcome by written notice of additional loss or damage within 75 days of delivery; otherwise, loss or damage noted after delivery generally is presumed not to have occurred in transit. See, Stevens Worldwide Van Lines, Inc., B-251343, Apr. 19, 1993; National Forwarding Co., B-247457, Aug. 26, 1992.

Therefore, since there is no indication in the record of notice to the carrier within the prescribed 75-day period, Andrews is presumed not liable for damage to item 123, and its claim for reimbursement of $165.00 is allowed.

We reject Andrews' other arguments. While Andrews questions the unsigned Air Force inspection report, we have no basis for questioning it. The Air Force Legal Services Agency, which submitted the administrative report for Andrews' claim to this Office, accepted the inspection report as valid and used it to make their determinations. We will therefore not question its validity. Furthermore, Andrews would not be relieved of liability even if no inspection had been performed. American Van Services, Inc., B-249834.2, Sept. 3, 1993.

With regard to preexisting damage, the Air Force's administrative report indicates that the Air Force inspector compared the damage noted on the inventory with the damage observed after delivery and determined that the damage after delivery was greater or of a different kind than that noted on the inventory. Andrews is properly liable for the refinishing cost, even though some preexisting damage is thereby repaired. Interstate Van Lines, Inc., B-197911.2, Sept. 9, 1988.

With regard to a chrome-plated table and chairs, the inventory indicated scratches and rubs. After delivery it was noted that the chrome plating was coming off, and consequently the items were replated. Andrews argues that such damage was not transit-related but offers no evidence to rebut its prima facie liability. It is therefore liable. See Interstate Van Lines, Inc., B-197911.2, supra.

For the items in question which required refinishing and replating, the Air Force offered to settle for less than the full amount it collected from Andrews to allow for some preexisting damage. For the items in question, other than item 123, the offer

amounted to $365.75. We deny Andrews' claim except for $165.00 for item 123, plus the amount offered by the Air Force.

Andrews' claim should be handled accordingly.

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