Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Swiftmode Forwarding Company

File: B-261108

Date: May 2, 1996

DIGEST

Once the shipper has established a prima facie case, carrier is liable for lost items when the carrier has failed to establish that they were not tendered. Items were listed on the original inventory and not identified as missing on the rider at the time the carrier received the goods. Although member was unable to identify the items by number at the time of delivery, member gave timely notice of missing items. Carrier's refund claim is denied.

DECISION

Swiftmode Forwarding Company, Inc., through its agent, National Claims Services, requests review of our Claims Settlement Certificate Z-2862336.7, Mar. 23, 1995, denying it a refund of $444.00 set off by the Army from funds due Swiftmode for loss and damage to the household goods of an Army member, John D. Stephens. We affirm the Settlement Certificate.

Swiftmode picked up the shipment of the member's household goods from nontemporary storage in Oakland, California, and delivered it to Fort Stewart, Georgia, on January 31, 1992. Two missing items are at issue in this case, a dining room table and a futon mattress.[1] Both were identified by the shipper as missing at the time of delivery.

At the time of delivery, the member's wife noted on the DD Form 1840 (Joint Statement of Loss or Damage at Delivery) that a dining room table and accompanying leaf were missing from the shipment of household goods. The words "not on inventory" are found on the Form 1840, next to the listing of the dining room table. However, the member subsequently filed a timely DD Form 1840R

[1]A futon mattress is a large cushion-like mattress which covers a frame. Often, one side of the frame folds up or down and the combination of the mattress and frame is used as a bed or couch.

(Notice of Loss or Damage) indicating that item 23 on the inventory was in fact the dining room table which had not been delivered.

The record shows that the dining room table was tendered to the storage company. The original inventory lists the dining room table and leaf as inventory item Nos. 22 and 23. It also lists a small round table as inventory item No. 37 and an oval table as No. 56. Thus, three tables were tendered to the storage company.

At the time Swiftmode picked up the household goods from nontemporary storage, Swiftmode inventoried the shipment and a rider or exception sheet was prepared. The rider is used to note shortages, overages, damages, and other discrepancies between what is written on the inventory and what the carrier receives when he picks up the shipment.

Swiftmode's rider states that "GOODS WERE RECEIVED AS NOTED ON INVENTORY EXCEPT AS FOLLOWS." A number of items are listed on the rider, including two tables. Item No. 56, the oval table, is listed with specific damage in excess of the damage described on the inventory. Another table, with no inventory number, is described as an end table, also with more damage than that which is listed on the inventory. It is tentatively identified as "maybe #23."

Swiftmode argues that since the table identified as "maybe #23" was clearly an end table, and since no dining room table is listed on the rider, the dining room table was not tendered. We are not persuaded by this argument. The fact that the unnumbered table was identified by Swiftmode as "maybe #23," does not establish the fact that the dining room table and leaf were missing when Swiftmode picked up the shipment.

Clearly, two small tables were tendered to Swiftmode and were identified on the rider with preexisting damage. However, there is a third table that was tendered to Swiftmode, namely the dining room table and leaf, which, if missing at the time Swiftmode picked up the shipment, should have been listed on the rider as missing. Thus, we find that the table and leaf were tendered to Swiftmode.

At the time of delivery, the member also listed a queen-size futon mattress and cover as missing. On the DD Form 1840R the futon is listed as item "41?" Swiftmode states that inventory item No. 41 was a four by six carton which holds full-sized king and queen-sized mattresses which was not missing at the time of delivery.

Swiftmode claims that the futon mattress was another item not listed on the inventory and therefore never tendered from the storage facility. It appears, items 41 and 42 were in fact a mattress and box spring, not involved in this case. The shipper apparently erred in tentatively identifying the futon mattress as "41?"

The Army, in its administrative report notes that item No. 58 on the original inventory is described as "fountain cush." The inventory provided to this Office describes item No. 58 as "fountoun cush." This description appears to be a reasonable attempt to phonetically spell out futon cushion.[2] No. 59 is identified as "frame" which appears to be the frame for the futon mattress.

We also note that the condition of the "fountoun cush" is consistent with a description of an item made of cloth or other material. The inventory appears to describe the item as soiled and faded. In contrast, the frame is described as scratched, rubbed and unfinished which is consistent with an item such as the futon frame, usually made of wood or metal.

As with the dining room table, the futon cushion is listed on the original inventory but is not listed on the rider as missing at the time the goods were tendered to Swiftmode. In addition, there is nothing on any document in the file to suggest that anything else in the shipment fit the description of this item. The shipper tentatively gave Swiftmode the wrong inventory number. This is not evidence that the items were not tendered. Thus, we find it reasonable to conclude that the futon mattress was listed as item No. 58, and we conclude that the futon mattress was tendered to Swiftmode.

Despite the shipper's errors regarding the inventory numbers, the shipper gave timely notice to the carrier of the missing items via the DD Form 1840R. A prima facie case of carrier liability for loss/damage is established by showing that the shipper tendered the goods to the carrier in a certain condition, that the property was not delivered by the carrier or was delivered in a more damaged condition, and the amount of the loss/damage. The shipper in this case has established a prima facie case of liability through personal statements, inventory sheets, and claim forms.

We find that the carrier's argument that neither item was tendered, unsupported by the facts. Both items appear to be listed on the original inventory and neither is listed on the rider to indicate that they were missing at the time Swiftmode took possession of the member's goods.

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[2]We note that the word "futon" is Japanese in origin, and is pronounced in a number of ways in American usage.

Accordingly, the Claims Settlement denying Swiftmode's request for refund of $444.00 is affirmed.

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