



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: All-Ways H & S Forwarders, Inc.

File: B-252197

Date: June 11, 1993

DIGEST

When the value of a lost item is in question, a prima facie case of carrier liability is established where the shipper provides substantive evidence to support her allegation that a blanket lost by the carrier, which had been listed on the inventory only as "blankets," was an antique of considerable value.

DECISION

All-Ways H & S Forwarders, Inc., requests review of our Claims Group's settlement denying its claim for a refund of \$4,000, which the Air Force set off for an antique Navajo blanket lost during the shipment of a service member's household goods. We affirm the settlement.

The lost blanket was related to the inventory listing of a 4.5 cubic foot carton of blankets. The member claimed that she had received the blanket as a gift, and that it was an antique valued between \$4,000 and \$6,000. She furnished both a statement about the blanket's origin from the person who gave it to her, and a post-loss appraisal from an antique dealer based on the member's hand-drawn sketch and description. The amount set off is the lower estimate provided by the dealer.

The Claims Group found that there was sufficient evidence to show that the blanket was tendered to All-Ways and that the value was between \$4,000 and \$6,000 (which was within the carrier's contractual liability). In requesting review, All-Ways complains that the dealer's appraisal was made after the loss, based only on the member's description. All-Ways maintains that if the item in fact was of exceptional value, the shipper should have notified the carrier before tender, as was done with other antique items delivered in the same shipment.

To establish a prima facie case of carrier liability for loss, a shipper must show that the property was tendered to

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the carrier but was not delivered, and the amount of the loss. The burden of proof then shifts to the carrier to establish that it should not be held responsible. Missouri Pacific Railroad Co. V. Elmore Stahl, 377 U.S. 134, 138 (1964). Where the value of a lost item is in question, the member must furnish some substantive evidence on the issue, like a detailed statement by the shipper or others. Suddath Van Lines, B-247430, July 1, 1992.

We are aware of no requirement that a member advise a carrier that a shipment will include an antique like the blanket in issue here. On the other hand, the evidentiary standard for valuation where a valuable item is claimed lost is high. Thus, for example, Note 1 to the Depreciation Guide that accompanies the Military-Industry Memorandum of Understanding on loss and damage rules provides that "[s]ince there is usually a wide variance of opinion as to the value of antiques, clear and convincing evidence of the same must be presented to justify payment [by the carrier]." See also Air Force Regulation 112-1, ¶ 6-25 (Aug. 31, 1990), addressing a member's claim against the government for a valuable item shipped with household goods.

Here, the shipper provided a detailed description of the antique blanket, an appraisal from an antique rug dealer valuing the blanket at \$4,000 to \$6,000, and a statement from the original owner of the blanket that described the blanket's color, age and size and specified that the shipper received the blanket as a gift in 1985.¹ (She did not provide a before-shipment appraisal or any photographs of the blanket.) Although we recognize that the appraisal was made after the loss, it includes the statement, "if the facts presented are accurate the values are quite realistic and precise notwithstanding the hypothetical manner in which the values were derived." Moreover, included in the record is another after-loss appraisal conducted for the shipper's insurance company, USAA, valuing the blanket at \$2,500 to \$3,500. That appraisal is based on the same information, and includes a similar statement; USAA paid the shipper \$3,000 based on that appraisal.

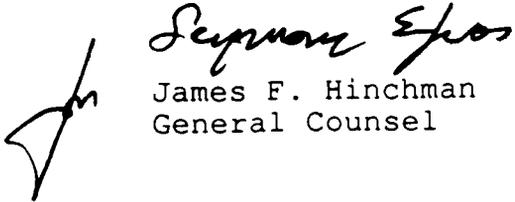
In these circumstances, we think the record is adequate to support the set-off of \$4,000 against All-Ways.² In this

¹"[A] Navajo rug, dated circa 1875 and thought to be a child's blanket . . . in July 1985. The measurements were approximately 32" x 48" and the color pattern was black, red and white."

²Where the government recovers more from the carrier than the shipper recovered through insurance, the government
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regard, the record shows that the Air Force knew of the USAA appraisal before the set-off, but chose to rely on the appraisal furnished by the shipper. In view of the imprecise nature of antique appraisals, and since the Air Force set off the lower end of the appraisal's range (which is, in turn, close to the upper end of the USAA range), we see no reason to object to that decision.

The Claims Group's settlement is affirmed.



Seymour E. Hinchman

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General Counsel

²(...continued)

reimburses the insurer and pays the excess to the shipper. See Fogarty Van Lines, B-235558, B-235558.6, July 5, 1991.