



Comptroller General
of the United States
Washington, D.C. 20548

22029

Decision

Matter of: American Vanpac Carriers

File: B-249929

Date: September 3, 1993

DIGEST

In measuring a carrier's liability for transit loss or damages to upholstered furniture in a shipment of a service member's household goods, an agency should not ignore the possibility of depreciation during periods of nontemporary storage.

DECISION

American Vanpac Carriers requests review of our Claims Group's settlement denying it a refund of \$1,408.71 that the Air Force set off from receivables otherwise due to the company for transit loss and damage to a service member's household goods.¹ We reverse the settlement in part and return this matter to the Air Force for further consideration.

The record indicates that American obtained the shipment from a nontemporary storage contractor on July 10, 1989, and delivered it to the member later that month. The shipment had been in storage since July 1986.

American disputes the amount of damages it owes with respect to a crushed overstuffed living room chair (inventory item 463). The Air Force adjudicated damages at \$279.97: replacement costs of \$399.95 depreciated by 5 percent each year except for time in storage. American accepts liability but contends that under the military-industry Depreciation Guide² the chair should be depreciated by 10 percent per year including the 3 years in storage.

¹The shipment moved under Personal Property Government Bill of Lading TP-007,202.

²The Guide is an adjunct to the Joint Military/Industry Memorandum of Understanding, which sets out loss and damage recovery rules.

FILE COPY COMP GEN

In setting off for item 463, the Air Force relied on our decision in National Forwarding Co., Inc., B-238982, June 22, 1990, for the view that the government never has to consider depreciation during nontemporary storage. However, in our recent decision in Fogarty Van Lines, B-248982, Aug. 16, 1993, we explained that National Forwarding stands for the proposition that in appropriate circumstances, and consistent with the common law and the Depreciation Guide (which essentially supplements the common law principles of carrier liability where the shipment is a service member's), a carrier's liability may be calculated without including depreciation for time in nontemporary storage.³ We further explained, however, that the decision does not mean that an agency can simply ignore the possibility of depreciation in such circumstances.

As in Fogarty Van Lines, it appears that the Air Force did not consider depreciation in this case as a factual question; accordingly we remand this matter to the Air Force to reconsider depreciation in its calculation of damages with respect to item 463. While it is not determinative, we also note that the Guide advises a depreciation rate of 10 percent each year (to a maximum of 75 percent), as American points out.

American also disputes any liability for a missing stethoscope and four malfunctioning appliances. We will not consider those items, however, since the carrier did not raise them in its appeal to our Claims Group of the Air Force settlement. The Air Force thus has not had the opportunity to comment on American's liability in an administrative report, nor has the Claims Group had the opportunity to adjudicate liability for them. American should initiate a claim through the Air Force on these items (if otherwise timely).

We are returning the matter to the Air Force for findings of fact on item 463 consistent with this decision.

J. Hinchman
 James F. Hinchman
 General Counsel

³The items involved in National Forwarding, a post-hole digger and a fishing rod, were stored in an environment in which, according to the Army, they should not have been subjected to normal wear and tear reflected in the Depreciation Guide's rates. The items in Fogarty Van Lines were a sleeper sofa and matching loveseat.