

CMR carrier not liable for theft of tobacco products from trailer

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A Danish tobacco manufacturer (A) contracted a Danish road carrier (T) for the road carriage of tobacco products from Denmark to Spain. The products were loaded in Assens, Denmark on 13 October 2016 to be delivered to the consignee (B) in Leganes, Spain. In its booking order, A instructed T that it should "remember to book a slot time at the consignee".

On this basis, T requested B to provide a slot time and was advised that it would be 20 October 2016.

T subcontracted the transport to a sub-carrier (T1). It was set out in T1's booking order that:

- the consignment was high-value tobacco; and
- the driver should park in a secured space and not leave the trailer unattended during transport.

T1 commenced the transport without having been informed by T of the 20 October 2016 slot time. As a result, T1 arrived at B at midday on 18 October 2016 where the delivery was rejected. T1 parked the trailer overnight at a service station at Leganes to wait for the designated slot time. The service station was fenced and illuminated. During the night between 18 and 19 October 2016, tobacco products were stolen from the trailer.

A brought legal proceedings against T. A claimed that T was liable for the theft under Article 17 of the Convention on the Contract for the International Carriage of Goods by Road (CMR) and should also reimburse A for the excise duties that were due. A referred to the fact that T1, for which T was liable, had arrived too early at B. As a result, delivery had been rightfully rejected and T was therefore liable for the theft that had occurred. T brought third-party proceedings against T1 and submitted that T1 should indemnify T for any amount that T was ordered to pay to A. T1 rejected liability and submitted that it had not been advised that delivery could not take place until 20 October 2016. As a result, the decision to park at the service station overnight had been made due to T's omission to provide details of the slot time.

Decision

The Maritime and Commercial Court decided that although T was liable for the theft, T1 was free of any liability to indemnify T. The court referred to the fact that T had failed to agree with T1 that delivery should take place on 20 October 2016. The court stated the following:

When T1's attempt to deliver the goods on 18 October 2016 was rejected by B, T1 had to, whilst adhering to the drivers remaining allowed driving-time, find a place to park during night. T could have wanted another parking place for the trailer during night, but the parking place in question was chosen on the basis of being proposed to T by T1. The place

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was, in T's view, a good place to park. In T's e-mail of 2 November 2016 the parking place is referred to as the most the secure parking place in the area. It is stated in the survey-report that the parking place is fenced and lit up and that there are CCTV-cameras directing towards the gas-dispensers. Against this background, and with reference to that no specific facts relating to the parking or the behavior of the driver has been provided which may result in a different result, T1 is found, in relation to T, to have lifted the burden of proof required to be exempted from liability, cf. the CMR-regulation (Art 17, subsection 2).(1)

Comment

According to the judgment, T1 had had the consignment in its custody at the time of the theft. The carriage that T1 should have performed was thus not considered to have ended when the driver attempted delivery to B on 18 October 2016. However, the court found that T1 had shown that it was not liable for the theft under Article 17(2) of the CMR. The court's decision was the result of its assessment that the loss due to theft had been caused by circumstances for which T was responsible, as it had failed to advise T1 that delivery to B could not take place until 20 October 2016, which had resulted in the need to park overnight at the service station. When parking overnight became necessary, T1 had, in the court's view, chosen the best available location considering that the driver had had a limited allowed driving time in accordance with the rules on driving and resting.

For further information on this topic please contact [Jesper Windahl](mailto:jw@wsco.dk) at [Windahl Sandroos & Co](http://www.wsco.dk) by telephone (+45 3525 3800) or email (jw@wsco.dk). The [Windahl Sandroos & Co](http://www.wsco.dk) website can be accessed at www.wsco.dk.

Endnotes

(1) Maritime and Commercial Court judgment of 22 June 2018 (Cases H-91-16 and H-15-17).

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