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Road carrier liable for temperature damage to cargo despite no instructions on transport temperature

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The Copenhagen Maritime and Commercial Court recently considered a case concerning liability for damages caused by a cargo of frozen fish being transported at the wrong temperature.[(1)]

Facts

On 28 June 2018 a Danish exporter of fish food (FE) booked transport via a contracted carrier (T) for 20,840 kilos of frozen cod from Lemvig, Denmark to a buyer in Monteprandone, Italy.

T issued a consignment note stipulating that the transport was to be performed with trailer BP 7061 and that the transport temperature should be -20 degrees Celsius.

T subcontracted the performance of the road portion of the transport from Lemvig to Padborg, Denmark to a Danish haulier (H). The consignment note was not presented to H. The instructions given by T to H were sent via an SMS message to H's driver. The SMS message read as follows:

> *Tomorrow. GF 8157 from TX to delivery at EGt 0700, from there you take BF 3345 and drive to [FE] where you load a consignment to Paonessa + 2 GR.c, drive to EGt deliver and take over from EGT BB 7061 to loading also at FE (load to foods IQF).*

The transport from Padborg to the consignee in Italy was sub-contracted by T to a German railway operator. It followed from the contract agreement between T and the railway operator that the trailer was to be transported from Padborg, Denmark to Verona, Italy. No conditions in relation to transport temperature were set out in the agreement.

When H's driver delivered the empty trailer to FE to load the fish products on 29 June 2018, he set the cooling aggregate to a temperature of two degrees Celsius. The packing list handed to and signed by the driver afterthe trailer had been loaded stated that the cargo was "IQF Lightsalted frozen Cod fillets".

The transport to Padborg and then to Verona was performed at a temperature of two degrees Celsius. When the consignment arrived at Verona on 3 July 2018 it was rejected by the consignee due to temperature damage and it was returned to FE in Lemvig.

FE and T brought proceedings against H and the railway operator before the Copenhagen Maritime and Commercial Court, submitting that the defendants were jointly and severally liable for damage amounting to Dkr442.443,36.

Decision

The Court decided that H was liable for the damage and that there had been no contributory negligence on the part of FE or T. As such, the compensation that H was ordered to pay was not reduced.

The Court stated that the driver:

> *ought to have clarified the temperature at which the trailer should have been set when he received the instructions via SMS which did not mention any transport-temperature or latest when he received the packing-list when the fish had been loaded; he ought further from the packing-list which he had read and signed to have understood that the frozen fish was to be carried at a temperature lower than +2,0°C.*

The Court decided that no obligation stemmed from the contract agreement between T and the railway operator such that the latter had been obliged to check or control the temperature settings of the trailer; no such obligation followed from the booking order issued to the railway operator. Consequently, the Court found the railway operator free of liability for the damage.

Comment

It follows from this decision that H was liable for the transport damage regardless of the fact that it had not been set out in the booking order that the transport was to be performed at -20 degrees Celsius, as the Court found that H did not – without any instructions in this regard – have sufficient basis for setting the trailer temperature at two degrees Celsius. To this end, it was insufficient that the prior transport performed for FE – the instructions for which were included in the same SMS message as the instructions for the transport in question – had been performed with a temperature of two degrees Celsius. Further, the Court highlighted the fact that it followed from the packing list, which the driver had not received until the trailer had been loaded, that the consignment had been "frozen Cod fillets". It should be noted that, in this regard, according to Danish case law, instructions given to a driver in connection with loading a booked cargo – after the transport agreement has been entered into – generally cannot impose further obligations on the driver that do not follow from the transport agreement.

The Court found that the railway operator was not liable, irrespective of the fact that the trailer was transported to Verona at a temperature of two degrees Celsius. The Court emphasised the fact that it did not follow from the railway operator's booking that the temperature in the trailer should be -20 degrees Celsius. The Court did not determine to what extent the railway operator, by accepting to perform the railway transport of the trailer, had been under an obligation to check its temperature settings, had the railway operator been

informed of such a specific temperature need.

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Endnotes

(1) The Maritime and Commercial Court's decision of 25 May 2021 (case BS-59348/2019-SHR).