

September 8 2021

# Time limitation for claims under NSAB 2015 conditions and gross negligence

WSCO Advokatpartnerselskab | Shipping & Transport - Denmark



JESPER  
WINDAHL

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## Facts

A Danish exporter sold six guiderollers for a printing machine to a Japanese buyer on carriage and insurance paid to terms. The purchase price was 285,410 Danish kroner and the weight of the shipment was 85 kilos per waltz. The seller entered into an agreement with a freight forwarder for door-to-door transport of the rollers from Bjert in Denmark to Gotemba in Japan, pursuant to and based on the General Conditions of the Nordic Association of Freight Forwarders (NSAB 2015).

The freight forwarder contracted the handling of the shipment at the airport to an airport operator, which undertook to carry out security checks of the consignment at the airport.

The security check was carried out by the airport operator by drilling holes in the wooden box in which the consignment was packed, and a guideroller in a transport box was damaged. The cargo insurers paid compensation in the amount of 42,325 Danish kroner and filed a lawsuit against the airport operator with a claim for payment of compensation of this amount.

The cargo insurers claimed that the liability for damage caused by the security check carried out did not fall under the NSAB 2015, and, further, that the damage was in any event caused by gross negligence with the effect that the claim, regardless of whether the NSAB 2015 was applicable, could not be limited and had not become time barred, irrespective of the fact that one year had lapsed from the date of damage to the proceedings being brought.

The airport operator claimed that the performance of security control was a commercial service that had been sold by the airport to the freight forwarder and that the service had been delivered in accordance with the NSAB 2015. On this basis, the airport claimed that any liability had become time barred in accordance with section 28(1) of the NSAB 2015, since more than one year had elapsed from the time that the goods had been delivered at the time of the proceedings. Therefore, the limitation period of one year had to be applied, regardless of whether an injury was due to gross negligence. In this regard, the airport operator claimed that section 6(2) of the NSAB 2015 could not be interpreted to the effect that the one-year time limitation did not apply in such circumstances. Section 6(2) reads as follows:

*The freight forwarder may not invoke the rules in these conditions which exonerate him from or limit his liability, or alter the burden of proof, if it is proven that the freight forwarder's subcontractor has wilfully, or the freight forwarder himself or his own employees have wilfully or grossly negligent, caused the damage, delay or other loss, unless otherwise stated in § 2.*

## Decision

The court concluded that the claim was covered by the NSAB 2015 and that the claim had become time barred. The court stated:

*It follows from section 28, para. 1 of NSAB 2015, that a claim against the freight forwarder must be brought within one year, as the claim has otherwise been lost. The time limit runs for deterioration or damage to goods from the day when the goods were delivered to the recipient.*

*As more than one year had elapsed from the date on which the damaged goods were delivered to the recipient, the statute of limitations had thus expired, cf. NSAB section 28, subsection 2. The argument made by [the cargo insurers] that [the airport operator] that S. 28(2) does not apply as a result of NSAB § 6, para. 2, cannot not lead to a different result. The court has [emphasised] that the provision only prevents a freight forwarder from invoking provisions set out in the NSAB which exclude or limit his liability or which change the burden of proof. On this basis and in accordance with the wording of NSAB § 28 and the placement of this provision in the set of rules, the court finds no basis for assuming that § 6, para. 2, precludes the application of the limitation rule in § 28 even in case of gross negligence.*

## Comment

It follows from the judgment that an assignment relating to the performance of security checks, which must be carried out in accordance with public law rules, can be undertaken as a commercial service and as such must be delivered pursuant to the NSAB 2015. The court had to decide whether it was relevant to the question of limitation whether the freight forwarder or the airport could be deemed to have caused the damage due to gross negligence. The court interpreted section 28 of the NSAB 2015 and came to the conclusion that the limitation period of one year for claims cannot be regarded as a provision that "exonerates him from or limits his liability, or alters the burden of proof". According to the NSAB 2015, the limitation period of one year therefore also applies in accordance with the NSAB 2015 in the event of damage caused by gross negligence.

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