

Unloading trailers: who bears responsibility under CMR?

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Facts

A Danish seller sold five pallets of octabins to be used in the pharmaceutical industry to a Swedish buyer on delivered-at-place terms. The seller booked road carriage of the pallets with a Danish carrier which was contracted to perform the transport from Ribe in Denmark to Hörby in Sweden pursuant to the General Conditions of the Nordic Association of Freight Forwarders (NSAB) 2015. The transport was subject to the Convention on the Contract for the International Carriage of Goods by Road (CMR).

Section 5(4) of the NSAB states as follows:

Unless otherwise agreed, it is the customer's obligation to arrange for loading and unloading of the goods and it is the freight forwarder's obligation to arrange for stowing and securing of the goods.

In accordance with the usual practice between Danish shippers and carriers, the pallets were loaded by the shipper onto the carrier's trailer at the shipper's loading ramp and placed onto the trailer where the driver used a pallet truck and moved the pallets to their designated place on the trailer among the other pieces of loaded cargo.

The Swedish consignee had no loading ramp facilities and, on arrival, the driver requested to borrow a pallet truck to move the pallets from the front to the back of the trailer where the consignee had positioned its forklift truck to unload the pallets. When the driver lifted the pallets with the octabins onto the pallet truck and began moving them towards the waiting forklift, he lost control of the truck and the pallets shifted towards the forklift, resulting in the pallets being damaged.

On this basis, the cargo interest instigated proceedings against the CMR carrier and submitted that it was liable to pay compensation in accordance with Article 17 of the CMR. The carrier denied liability and stated that under the NSAB it was agreed that:

- the carrier had not assumed the responsibility to unload the trailer; and
- the obligation to unload the cargo rested with the consignee.

On this basis, the carrier pleaded that it was free of liability for the damage pursuant to Article 17(4) (c) of the CMR, as the damage had occurred during the unloading which should have been performed by the consignee and which the carrier's driver, consequently, was deemed to have performed on behalf of the sender. The carrier argued, therefore, that the driver should be considered the person who had acted on behalf of the consignee and not on behalf of the carrier.

The cargo interest submitted that as the contract of carriage was for general cargo (ie, the transport of single pallets or pieces), the NSAB could not be interpreted to mean that the consignee should have located the pallets inside the trailer and carry them to a point from where they could be unloaded, but rather that the carrier bore this obligation and had to present the pallets on the trailer where the consignee had immediate access to unload them from the trailer in a single operation. Consequently, the cargo interest submitted that the carrier should have had the pallets in its custody when the damage occurred and that the unloading operations performed by the driver could not be considered to have been carried out on behalf of the consignee.

Decision

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The Maritime and Commercial Court concluded that the carrier was liable for the damage pursuant to Article 17 of the CMR. The court reasoned as follows:

The court finds that the agreed term in NSAB 2015, S. 5(4) must be interpreted to mean that the cargo handling manoeuvres which the driver performed whilst the cargo was inside the trailer were carried out when the cargo was still in the care and custody of the carrier. The purpose of the manoeuvres was to present the pallets in order that they could be unloaded by the consignee at the back end of the trailer by use of a fork lift... As the carrier has not demonstrated that the damages caused resulted from circumstances which the carrier could not have avoided, the carrier is liable for the damage.(1)

Comment

The CMR includes no specific regulation with regard to the division of responsibilities of the loading and unloading of cargo from carrying vehicles. Under the NSAB, shippers and consignees must arrange for the loading and unloading of cargo.

On this basis, it may be concluded that a CMR carrier is not liable for damage in connection with the unloading of goods irrespective of whether it was performed by a driver, as drivers in such instances may be deemed to act on behalf of consignees (Article 17(4)(c) of the CMR).

However, it follows from the Maritime and Commercial Court's judgment that with regard to the carriage of general cargo, Section 5(4) of the NSAB cannot be interpreted to mean that the consignee must locate its goods among other cargo and unload them from where they have been stowed on the trailer, but rather that the carrier must present the goods for unloading in such a manner that the consignee has immediate access to unload them from the trailer.

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Endnotes

(1) Maritime and Commercial Court judgment of 27 March 2020 (Case BS-18712/2019-SHR).

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