



OTIF



Bulletin of International Carriage by Rail

**Intergovernmental Organisation
for international Carriage
by Rail**

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Bulletin of International Carriage by Rail

**Quartely publication
of the OTIF**

119th Year

Intergovernmental Organisation
for international Carriage
by Rail

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Lists of lines 1999

Maritime or inland waterway services CIM

(published on 1 July 2006)

Following the inclusion of the new shipping company Black Sea Ferry & Investments LLS in addition to the shipping company Anship LLC, which is already included, and a further service operated by DFDS A/S, which is also already included, the chapters Russia and Germany have been re-issued. (See COTIF 1999, art. 24 § 1, 3 - 5).

Secretary General's circular No. 8 dated 20 July 2011 can be downloaded from the following website:

www.otif.org/fileadmin/user_upload/otif_verlinkte_files/07_veroeff/07_liste_CIM/A_70-02_501_2011_20_07_2011_fde.pdf

Beatrice Moser ■

Official Communications concerning COTIF

For the time being there are none



References

Kunz, Wolfgang: *Railway Law*

(Systematic collection with explanations of the German, European and international requirements, loose-leaf work with supplements)

The collection is in four volumes and covers all areas of the law that applies to the rail sector. Apart from the provisions of national German law (three volumes), it also contains provisions of European Union law. Under the heading “International Law” can be found, inter alia, COTIF 1999, as published in the German Federal Law Gazette in 2002, a previous version of SMGS and some bilateral agreements.

Commentaries by around 20 authors cover some of the provisions published in the collection. The 29th supplement contains a new version of the commentary by Kühlwetter/Kramer on the amended 2009 version of Germany’s Rail Transport Administration Act.

The systematic “Railway Law” collection is a practical aid to the work of railway specialists. The well thought-out separation into different headings helps the user find the information he requires quickly and reliably.

(only available in German language: , ISBN 3-7890-3536-X, Nomos Publishing, Baden-Baden, 29th supplement; June 2011)

Eva Hammerschmiedová ■

Catharin/Gürtlich: *Railways Act*

(Commentary together with Economic and Legal Foundations of the Railways, as at 1.10.2010)

In 2006 the two authors, senior officers in the Austrian Federal Ministry for transport, innovation and technology, had for the first time presented the Austrian railways act in a comprehensive format, with a commentary, together with the economic and legal background (see Bulletin 1/2007, p. 14).

Case Law

Court of Cassation in Belgium

Ruling of 10.06.2010

(Source: European Transport Law/Europäisches Transportrecht/Droit européen des transports No. 6-2010, p. 623/624)
(Nr. C.09.0524.N)

Claim without an estimated amount of the damage

Headnote:

It is not required that the written claim referred to in Article 32 para. 2 of CMR should calculate the amount of the claim. It is sufficient that the data mentioned in the claim and in the documents attached thereto allow the carrier to judge the nature and extent of the damage so that he can respond appropriately to the claim.

See Article 32, para. 2 of CMR. Article 48 § 3 of CIM contains a similar provision. According to these provisions, the consequence of a written claim is suspension of the period of limitation.

Eva Hammerschmiedová ■

Commercial Court of Créteil

Ruling of 21 September 2010

(Source: Bulletin des transports et de la logistique (Bulletin of Transport and Logistics), Paris, No. 3351/2011, p. 76/77)

“Forum shopping”

Headnote:

A declaratory judgement action brought by the carrier for a ruling (in the Netherlands) that the carrier could not be declared liable and that subsidiarily, the carrier’s liability should be limited in accordance with the CMR, does not correspond to a “pending” action within the meaning of Article 31, para. 2 of the CMR and, consequently, does not constitute an obstacle to an action in warranty and does not give rise to ordering that ruling in another country be suspended (France).

Cf. Article 31 of the CMR. Article 46 of CIM contains a similar provision. Cf. also the ruling of the Federal Court of Justice in Germany: Bundesgerichtshof I ZR 294/02, 20.11.2003, www.bundesgerichtshof.de.

Grounds:

Thereupon, the court, with regard to the application to **suspend judgement:**

– Whereas on 17 and 18 June 2009 the insurance company Covea Fleet brought an action against the companies Cargotech International Express and Helvetia Compagnie



Now after four years, an updated and one-third expanded 2nd edition has been published. This is probably due to the positive reception of the first edition among the public and the further significant developments in European and Austrian railway law. In European rail passenger transport in particular, the impact of regulations (EC) 1370/2007 on public passenger transport services and (EC) 1371/2007 on rail passengers' rights and obligations had to be taken into account.

But the area of railway safety and interoperability also needed to be adapted, especially with regard to the requirements relating to drivers. Unfortunately, interim developments in terms of COTIF did not play a role, because Austria had made a declaration in accordance with Article 42 not to apply the new Appendices to COTIF (E (CUI), F (APTU) and G (ATMF)), which entered into force on 1 July 2006. Nevertheless, the comprehensive comments on § 22 (fares, timetable), as well as the new § 22a (compensation conditions), together with §§ 78a and 78b (arbitration body, invalidity of compensation conditions) would seem to be of particular value and interest to the "international" reader. As in the 1st edition, two sections precede the commented text of the railways act, which are aimed at everyone interested in more than the mere application of the law, in the role of the railways in the context of economic and transport policy and in the whole complex of railway law and the historical background.

The attached updated list of the legislation on railway law also provides important guidance, and it is to be welcomed that this maintains the user-friendly format of the 1st edition. The

Suisse for their liability, as the freight forwarders and insurers, for the theft of a load loaded on 18 February 2009 by De Wit Transport Hillegom BV.

Whereas on 16 July 2009 the companies Cargotech International Express and Helvetia Compagnie Suisse d'assurances brought an action in warranty against De Wit Transport Hillegom BV.

- Whereas on 24 February 2009 De Wit Transport Hillegom BV brought a declaratory judgement action before the Haarlem Court (Netherlands) to apply for a ruling that the carrier could not be declared liable and that subsidiarily its liability should be limited in accordance with the CMR.

- Whereas De Wit Transport Hillegom BV requested suspension of judgement pending the decision of the Haarlem Court, stating that the purpose, parties and grounds were the same.

- Whereas the Court pointed out that by bringing a declaratory judgement action in the days following the theft, De Wit Transport Hillegom BV had clearly wanted to apply to the court which it thought would be the most favourable to it, that this practice, referred to as "forum shopping", was discouraged by the various European jurisdictions.

- Whereas contrary to what De Wit Transport Hillegom BV claimed, the parties before the two instances were not the same, that in the Dutch proceedings, the companies De Wit Transport Hillegom BV and Nationale Nederlanden Schadeverzekering Maatschappij brought an action against the companies Ceva Freight Holland, Cargotech International Express, X-Trans, Comtrade and Jumbo Marchandises Portages, while in the French proceedings, it was the companies Cargotech International Express and Helvetia Compagnie Suisse d'assurances that brought an action in warranty against De Wit Transport Hillegom BV.

- Whereas in a ruling of 2004 the Court of Justice of the European Communities upheld that the claim for damages (brought in France in this case) suggested that the defendant, i.e. De Wit Transport Hillegom BV, was liable, while the aim of the claim for limitation of liability (brought in this case by De Wit Transport Hillegom BV in the Netherlands) was to ensure that if this company were liable, liability would be limited; therefore the claims in the two instances did not have the same purpose.

- Whereas Article 31-1 of the CMR provides that when claiming damages, the plaintiff may bring an action in any court or tribunal on the territory of the place designated for delivery, i.e. this court, as is the case in this instance.



volume can therefore be warmly recommended to practitioners and railway theorists who are aware of the problems and are interested in international comparisons.

(only available in German language: ISBN 978-3-7073-1421-2 Linde Verlag Vienna, 728 pages, 2011)

Gustav Kafka ■

Publications & interesting links

Bulletin des transports et de la logistique, Paris, n° 3370/2011, p. 371/-372 - Aérien voyageurs. La force majeure en voie d'extinction ? (B. Colette)

Idem, n° 3375/2011, p. 452/453 - Voyageurs/Force majeure. La Cour reçoit sa copie (B. Colette)

Idem, n° 3377/2011, p. 483 - Nullité du contrat. Une sanction dangereuse (M. Tilche)

Idem, n° 3379/2011, p. 518/519 - CMR. Un voiturier bloqué (M. Tilche)

CIT-Info (Comité international des transports ferroviaires / Internationales Eisenbahntransportkomitee / International Rail Transport Committee, CIT) www.cit-rail.org, édition/Ausgabe/édition 3/2011, 4/2011

Zbornik Pravnog Fakulteta u Zagrebu, Zagreb, No. 3/2011, S. 869-896 - Ograničenje odgovornosti željezničkog prijevoznika za štete na robi (N. Radionov)

Eva Hammerschmiedová ■

- Whereas Article 31-1 of CMR only allows the carrier to bring an action in the event that he is requesting the payment of carriage charges, whereas this is not the case in this instance.

- Whereas it is not therefore established that the action brought by De Wit Transport Hillegom BV corresponds to a "pending action" within the meaning of Article 31-2 of the CMR.

- Whereas in addition no claim was brought before the Haarlem Court which could give rise to a conviction which would be carried out in France.

- Whereas according to Article 28 of Council regulation 44/2001, "Where related actions are pending, any court other than the court first seised may stay its proceedings" and this is not required in this case.

As a result, the Court will say that there is no need to order that judgement be suspended.

Eva Hammerschmiedová ■