



OTIF



Bulletin of International Carriage by Rail

**Intergovernmental Organisation
for international Carriage
by Rail**

OTIF



@

Bulletin of International Carriage by Rail

Quarterly publication
of the OTIF

120th Year

Intergovernmental Organisation
for international Carriage
by Rail

Gryphenhübeliweg 30
CH - 3006 Berne

Tel.: +41 31 359 10 10

Fax: +41 31 359 10 11

Website: www.otif.org

In case of reproduction of essays and
texts translated by the Secretariat of
OTIF, full acknowledgement of author,
publisher and source must be given.
The opinions expressed in essays are
those of the authors.

Secretary General
Stefan Schimming

Chief-Editor

Katja Bürkholz

Media@otif.org

Mobile: +41 799 44 17 45

Summary

Official Part

1

Official Communications concerning COTIF	1
General Assembly elects Secretary General for the term 2013 - 2015	1

Non official part

2

Other Communications	2
Accession of Pakistan	2
Will non OSJD-member states, in future also be able to apply COTIF legal regime to selective corridors?	2

Case Law	3
Naumburg Court of Appeal (D) - Ruling of 09.06.2011	3
Passenger falls over in the train	3

Publications & interesting links	3
---	---

In memoriam	5
Gregor Oberreuter	5



Official Communications concerning COTIF

General Assembly elects Secretary General for the term 2013 - 2015

On 20.09.2012 François Davenne from France imposed himself over co-candidates from Austria and Switzerland and was elected Secretary General for the term 2013 - 2015.

With that decision Member States of OTIF opted for a significant change for the organisation based on the assumptions that the application of the rules and regulations of OTIF must be harmonised and not “compete” with each other in all three groups of Member States (EU-States, being members of OTIF only, EU-States which railway enterprises are members of OSJD and Member States of OTIF outside the EU) and that the higher importance of the European Railway Agency (ERA - Railway agency of the EU states) necessitates a fundamental re-examination and alignment of work within OTIF.

The wish for new orientation of the organisation expressed by the Member States of OTIF is mainly based on two axes:

- To work in even closer partnership with ERA when drafting technical rules, especially to enable non-EU-States of OTIF to follow the development of rulemaking by ERA in earlier stages.
- To render flexibility to the organisation and to broaden contacts to multilateral partner Organisations without differentiating whether they are governmental, like the EU or OSJD or private sector associations as CIT or RailNetEurope to ensure that their expertise feeds into the elaboration of rules, to make them more efficient and acknowledged more widely.

Katja Bürkholz ■



© OTIF 2012



Other Communications

Accession of Pakistan

Will non OSJD-member states in future also be able to apply COTIF legal regime to selective corridors?

Legal barriers are not yet ready to give way for the accession of Pakistan. The use of COTIF as uniform legal regime on the rail corridor running from Islamabad via Teheran to Istanbul is the central motivation for an accession. This corridor covers, after all, 1.900 km on the territory of the Islamic Republic of Pakistan. If no legal solution can be found, leading on the contrary to the submission of the whole of the 7.791 km network to COTIF, the perspective of Pakistan on the costs/benefit analysis would clearly compromise an accession, according to governmental sources in Islamabad.

Unfortunately on 19.09.2012 the General Assembly was not able to reach an agreement on the approval of a solution proposed by the Secretary General for a specific interpretation as to the application of contracts on the carriage CIM and CIV in international traffic. The General Assembly left the matter for further examination to the Revision Committee, which is likely to be convened in 2013.

In addition, the Administrative Committee was instructed to deal with the question as to how the accession procedure of Pakistan to COTIF could be accelerated.

Katja Bürkholz ■



© OTIF 2012





Publications & interesting links

Bulletin des transports et de la logistique, Paris, n° 3420/2012, p. 435/436 - Commissionnaires étrangers. Le forwarder britannique (F. Farhana) ; p. 436/437 - Chauffeur transporté. Quelle situation ? (M. Tilche)

Idem, n°3423/2012, p. 480/481 - Fret aérien. Régime applicable (M. Tilche et O. Lebrun)

CIT-Info (Comité international des transports ferroviaires / Internationales Eisenbahntransportkomitee / International Rail Transport Committee, CIT) www.cit-rail.org, édition/Ausgabe/édition 3/2012

Deine Bahn, Berlin, Nr. 1/2012, S. 49-53 - Eurasischer Güterverkehr. Vom Einheitsfrachtbrief zum Einheitsrecht auf der Schiene

Transportrecht, Hamburg, Nr. 7/2012, S. 269-276 - Die Reform des deutschen Seehandelsrechts - Balance zwischen Rechtsfortbildung und Schifffahrtstradition (R. Herber): Stand der internationalen Seefrachtrechtsvereinheitlichung (S. 271-273); Gemeinsame internationale Rechtsprinzipien (S. 274); S. 278-282 - Godafoss, the applicability of the CMR within multimodal contracts of carriage (M. Spanjaart)

Eva Hammerschmiedová ■

Case Law

Naumburg Court of Appeal

Ruling of 09.06.2011

(No. 2 U 45/11; Lower Court: Magdeburg regional court, Ruling of 25.02.2011, 5 O 1813/10)

(Source: Decisions released for publication (headnotes only))

Passenger falls over in the train

Headnotes

1. A high level of due diligence is certainly required of passengers in local public transport in terms of ensuring their own safety. Nevertheless, there is no general principle derived from experience which says that every fall during a journey is due to negligent breach of the basic obligation to ensure that one is holding tight.

2. If the passenger moves through the carriage to find a safe seat after the tram has started moving and in so doing, holds tight as he moves along, this does not constitute a negligent breach of this obligation.

Comment from the perspective of rail transport

by Professor Urs Kramer (Source: Rail Business, the weekly industry report from Eurailpress and DVZ, Hamburg, No. 18/12, 30 April 2012, p. 8):

"This specific case concerned a tram, but the ruling might also be applicable to most trains that brake less quickly."

To be able to assess the consequences of the ruling and Professor Kramer's comment, the following

Headnote

from present established case law concerning § 1 of the German Liability Act (e.g. Berlin regional court, ruling of 8 February 1995, No. 25.O.298/94, or Frankfurt regional court, ruling of 22 May 2002, No. 2/1 p. 321/00) should be recalled:

"When standing, every passenger must hold tight when the train enters a station owing to the jolting and lurching movements. If the fall occurs because the passenger does not protect himself with due diligence, the railway undertaking's liability in accordance with § 1 of the Liability Act is waived completely."

¹ See www.sachsen-anhalt.de/fileadmin/Elementbibliothek/Bibliothek_Politik_und_Verwaltung/Bibliothek_MJ/gericht/OLG/pdf/2011/OLG_LS_2011-04.pdf



Comment from the perspective of CIV

There is no doubt that an accident involving a passenger as the result of a fall in a braking train must be considered as an accident arising out of the operation of the railway and happening while the passenger is in the railway vehicle. The only question that can arise is whether the carrier can be relieved of its objective liability or not. With regard to liability in the case of death of, or personal injury to passengers, Article 26 § 2 of CIV sets out three grounds for relief from liability, i.e. 1. unavoidable circumstances, 2. fault of the passenger and 3. unavoidable behaviour of a third party². In § 1 of the German Liability Act, circumstances appropriate to these grounds are probably covered by the term "force majeure".

It comes as no surprise that national courts interpret terms used in an international convention, and the legal concepts behind these terms, in the light of legal concepts that exist in national law. As a result, when comparing court rulings in different States, one might reach the conclusion that in some States (e.g. France), a ground for relief from liability, whether it is defined as "force majeure"/"unavoidable circumstances", fault of the passenger or "unavoidable behaviour of a third party", is seldom applied, whereas elsewhere, as the example of Germany shows, there are stringent requirements concerning the self-protection of passengers (see the headnotes quoted above)³.

A strict assessment of whether older, more fragile passengers in particular, who are preparing to get out of or change trains, have complied with the obligation incumbent upon them "to make sure that they hold tight" is very tricky and will not be apparent in all cases.

If present German case law has established the opinion that every fall during a journey has been considered as an accident caused by the passenger himself, because the passenger did not hold on properly, this might change in future. The ruling by the Naumburg Court of Appeal could mean a turning point towards a more differentiated ruling.

Eva Hammerschmiedová ■

² the precise wording, see the OTIF website www.otif.org/fileadmin/user_upload/otif_verlinkte_files/07_veroeff/02_COTIF_99/COTIF_1999_01_01_2011_e.pdf, p. 64

³ With regard to the practice followed by the French Court of Cassation, which has a very restrictive interpretation of force majeure and personal fault on the part of the passenger, see the Article by T. Leimgruber, "Sweeping changes in liability law for railways", under www.cit-rail.org/media/files/public/CIT-Info_EN/2009/CIT-Info4-2009_EN.pdf, p. 6



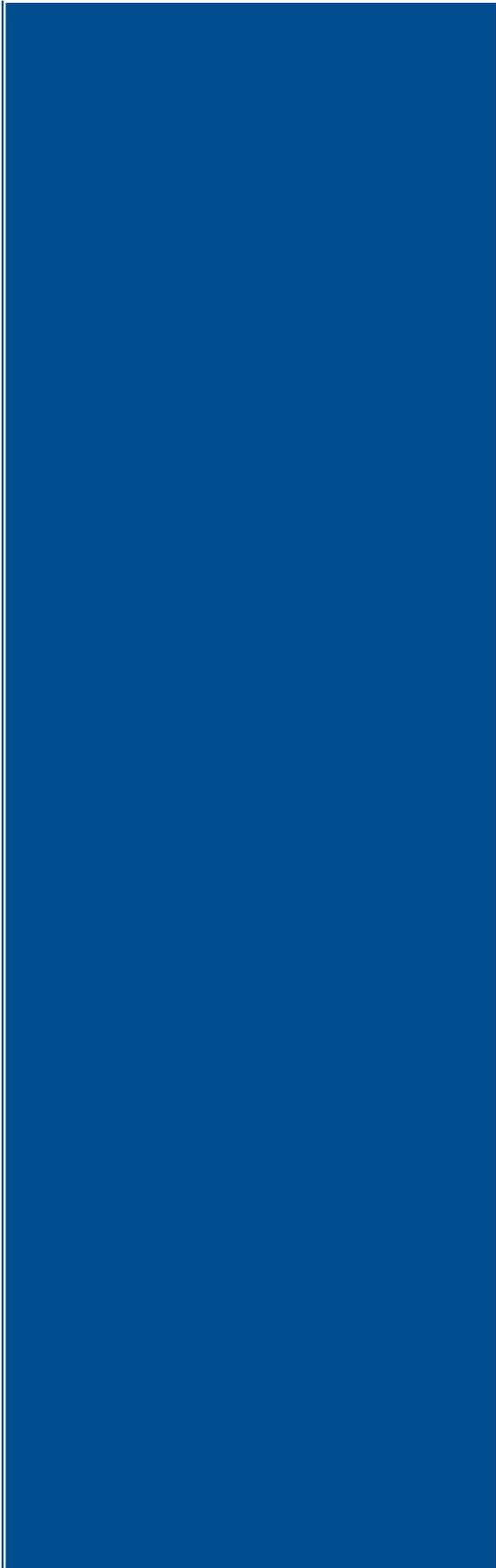
In memoriam

Gregor Oberreuter

Not long after we had the sad task of informing readers that Wieger Johannes Visser had passed away, we received the terrible news that another prominent personality from the community of international dangerous goods experts, Mr Gregor Oberreuter, died suddenly and unexpectedly on 4 July 2012. He was only 59.

Gregor Oberreuter, who came from Deutsche Bundesbahn in 1986 to work in the Transport of Dangerous Goods section of the German Ministry of Transport, had repeatedly to confront some particularly difficult challenges during his many years of international activity in this field. The author of these lines recalls in particular the beginnings of a joint project which, for the first time, attempted to come up with a comprehensive and robust solution to the very contentious problem, which is still the subject of discussions today, of the best way to deal with aquatic pollutants in the law on the carriage of dangerous goods. In recent years, his work was focussed on updating the European Directive on transportable pressure equipment and the parallel alignment of RID/ADR. As the Chairman of various international working groups dealing with these issues, he was very highly regarded by industry representatives as a result of his extraordinary competence.

For many years, Gregor Oberreuter was also Germany's representative in the UN ECOSOC Committees, which developed global model regulations and recommendations on the transport of dangerous goods for all modes of transport and on the classification and labelling of chemicals. Here too, thanks to his linguistic abilities, his great specialist competence and his readiness to work together with others, he was able to contribute to resolving a lot of problems in which areas of conflict between the economic interests of the industry and those of the States in terms of safety and environmental protection played a major role.



Early on, Gregor Oberreuter recognised the problems that would arise for EU Member States in international votes on issues concerning dangerous goods once the European Union had acceded to COTIF. While this problem has not yet been fully resolved, it is thanks to him that numerous EU Member States have taken a position against weakening the RID Committee of Experts.

But everybody who knew Gregor Oberreuter personally will remember him not just as a committed and far-sighted expert, but also as a devoted father, a good colleague and an open and ever helpful fellow human being.

Gustav Kafka ■