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INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL CARRIAGE BY RAIL

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Cour d'Appel de Paris

Ruling of 14 December 2011

Period of limitation if claims are not rejected

Headnote:

Written claims from the consignor and his agent, which have the effect of suspending the period of limitation in accordance with Article 32, para. 2 of the CMR, having been received but not rejected, mean that the action that was brought is admissible, even 9 years later.

Article 48 § 3 of CIM contains a similar provision. International rail transport law also suspends the period of limitation until the carrier rejects the claim by notification in writing and returns the documents submitted with it.

The facts:

On 4 and 5 September 1997, a carrier was entrusted with the transport of packages of textiles from Belgium to Italy. At around 4 a.m. on 7 September, he stopped in the parking area of a service station on the Rome/Naples motorway. It was then that two individuals threatened him with a weapon and gagged and bound him before driving the vehicle away. The loss, which amounted to € 96,336.20, was covered by the insurance to the amount of € 95,440.50

On 3 March 2006 (almost 10 years after the event), the subrogated insurers and the consignor, for the excess it had to pay, summonsed the carrier and the company that covered its liability.

Grounds:

The first question is obviously that of the limitation of actions. It should be recalled that in the CMR, in the case of total loss, the one year period of limitation begins to run from the 30th day after the expiry of the agreed time limit or where there is no agreed time limit, from the 60th day from the date on which the goods were taken over by the carrier. This time had long since elapsed.

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However, the Convention lays down a special reason for suspending the period of limitation: a claim notified in writing, sent to the carrier, which freezes the period until the carrier has rejected it (also in writing) and returns the documents submitted with it. This is a *sine qua non* condition which the French Cour de cassation is particularly keen on.

If the document has to contain a real claim in writing (or any other equivalent process) attributing the damage to the carrier and specifying the approximate amount, this may come from the consignor's agent (e.g. the broker or the duly authorised insurer). Proof of reception which, in French law, is incumbent upon the person entitled or his representative (French Civil Code, Art. 1315, para. 1) is not formalistic and may be demonstrated by any commercial instrument (French Commercial Code, Art. 110-3). In this case, three salvos were fired:

- on 11 September 1997, i.e. the day after he was informed of the theft, the consignor sent the carrier a claim by registered letter with acknowledgement of receipt, together with supporting invoices;

- on 23 December 1997, his agent did the same and attached the CMR consignment notes and packing lists;

- lastly, on 1 September 1998, the latter did the same by fax (which also counts as written notification), but without specifying whether there were any attachments.

It was highly unlikely that the carrier did not receive the various documents and moreover, on 3 September 1998 (at the limit of the "usual" period of limitation), his broker told the agent that he should contact the liability insurer.

As he had not rejected the various claims in any way by returning the attachments, the carrier had let the period of limitation freeze, so that 9 years later, he was still exposed!

Decision:

While the claim for compensation is admissible, it is nevertheless ill-founded. Bearing in mind the fact that with a revolver pointing at his forehead, the driver could only do as he was told, the court notes the inevitable and unavoidable circumstances which relieve the international road carrier of liability (CMR, Art. 17, para. 2). [Similar provision: Article 23 § 2 of CIM].