

OTIF



ORGANISATION INTERGOUVERNEMENTALE POUR
LES TRANSPORTS INTERNATIONAUX FERROVIAIRES

ZWISCHENSTAATLICHE ORGANISATION FÜR DEN
INTERNATIONALEN EISENBAHNVERKEHR

INTERGOVERNMENTAL ORGANISATION FOR INTER-
NATIONAL CARRIAGE BY RAIL

@ Bulletin of International Carriage by Rail 1/2011, p. 5

Cour d'Appel de Versailles

Ruling of 10 June 2010

In terms of the Warsaw Convention, the clause whereby the air carrier reserves the possibility of delivering the goods to someone other than the consignee is null and void.

By delivering the consignments (*grand cru* wines) to the address shown without checking the consignees' capacity to take delivery of the consignment, the air carrier commits an inexcusable fault.

Cf. Article 23, para. 1 of the Warsaw Convention¹

Extract:

- Whereas delivery of the goods is the essence of the contract of carriage and constitutes an essential obligation incumbent upon every carrier, including the air carrier within the meaning of the Warsaw Convention; whereas the litigious clause stipulating that company F. may deliver to a person other than the one indicated in the air transport document, which exempts the air carrier from handing over the goods to the consignee identified in the transport document and authorises the carrier to hand them over to a third party without checking the capacity of the person to whom it hands them over, contravenes this obligation²;
- Whereas Article 23 of the Warsaw Convention says that any provision tending to relieve the carrier of liability ... shall be null and void; whereas these provisions included in Chapter III, "Liability of the Carrier", are of a general scope;

¹ Article 5 of CIM contains a similar provision, according to which a carrier may assume greater liability and more burdensome obligations (but may not limit them).

² With regard to such provisions, or similar ones, Article 5 of CIM is clearer than Article 23 of the Warsaw Convention: from the wording (a contrario) of this Article, it can certainly be concluded that it is not only those derogations from mandatory law that exclude or reduce the carrier's **liability** which are null and void, but also any such contractual agreements which would relax the carrier's **obligations** in any way.

- Whereas in these circumstances, Article 14.2 of company F.'s general conditions of sale, which contractually allow the option of handing the goods over to a person other than the one indicated in the transport document, tend to relieve the air carrier of its liability, so that this clause is null and void.

(Translation)