



Organisation intergouvernementale  
pour les transports internationaux  
ferroviaires

Zwischenstaatliche Organisation  
für den internationalen  
Eisenbahnverkehr

Intergovernmental Organisation  
for International Carriage  
by Rail

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### Case Law

#### (a) Arranged according to the Articles of CIM, CIV and national laws

#### CIM

*Articles 11 §§ 3-5, 20 § 5, Articles 35, 36 §§ 1 and 3, Article 37 § 2, Article 54 § 3 and Article 55 § 3*

- I. In accordance with Article 36 § 1 of CIM, the railway is liable for loss of and damage to goods between the time of acceptance of the goods for carriage and the time of delivery.

There is no relief from such liability merely as the result of the existence of one of the special risks referred to in

Article 36 § 3, including loading of the goods by the consignor ((c) and (d)).

For the benefit of the railway, Article 37 § 2 of CIM establishes the refutable presumption that the loss or damage is attributable to the special risk invoked by the railway.

Consequently, the railway is liable if the interested party can prove that the loss or damage was not attributable to the specific risk because there was no causal link between the risk and the loss or damage.

The proof that in the case in point, the specific loss is not attributable to the risk referred to above also constitutes proof – based on the seals having been affixed – that the loss is attributable to theft.

The above-mentioned rules also apply to unloading operations carried out by the consignee (Art. 36 § 3 (c) and Art. 37 § 2 paras. 1 and 2 of CIM).

- II. If loading is carried out (lawfully) by the consignor, the information the consignor has entered in the consignment note with regard to the mass of the goods or the number of packages does not constitute evidence against the railway.

An exception is if the railway has verified the mass or number of packages and has confirmed this in the consignment note.

If the railway has not carried out a check, the interested party may nevertheless prove the mass or number of packages by other means.

(With regard to the foregoing, see Article 11 § 5, para. 1 of CIM).

As established by Article 11 §§ 3 and 4 of CIM, with regard to the contents of the consignment, the consignment note is not in any case a constitutive element, but a piece of evidence.

Consequently, bringing forward evidence by other means both for the information not entered in the consignment note or entered wrongly, and for the accuracy of the information contained in the consignment note, is not precluded.

- III. The railway of destination is also liable (on the basis of Art. 35 § 2 and 55 § 3 of CIM) if two consignment notes were made out for two different sections of the journey, provided transport was performed in accordance with the relevant entry in the first consignment note with the same wagon, without the goods being accepted by the consignee and transhipped.

- IV. The railway has sole responsibility for the security of the goods during carriage.

The consignor is not obliged – and not entitled – to secure the doors of the wagon with his own locks. Consequently, he cannot be considered as jointly responsible for the loss of the goods.

- V. The consignee is entitled to submit a claim for compensation for the loss of the goods, provided he accepted the goods (Art. 54 § 3 (b) (2) of CIM).

The interested party may (also) submit a claim for compensation against the railway of destination (Art. 55 § 3 of CIM), p. 20.

### III

*Article 20 §§ 2 and 5, Article 36 §§ 1 and 3, Article 37 § 2 and Article 55 § 3*

- I. The railway of destination is liable for loss of and damage to goods in accordance with Article 36 § 1 in conjunction with Article 55 § 3 of CIM, even if the loading in accordance with Article 20 § 2 was carried out by the consignor.

Loading by the consignor only constitutes a "special risk" which, under the conditions of Articles 36 § 3 and 37 § 2, may lead to the railway being relieved of liability.

In particular, liability of the railway is not inherently precluded by the existence of one of the risks listed in Article 36 § 3, including loading carried out by the consignor (paras. (c) and (d)).

The railway which invokes these risks as its plea must prove, in addition to the existence of the risk, that the loss or damage could be attributable to this risk, "having regard to the circumstances of a particular case".

If the railway proves these elements – the aptness of the risk to bring about the loss or damage – it shall be presumed that the loss or damage arose from this risk (Art. 37 § 2 of CIM) – or in other words, that a connection exists between the risk and the loss or damage.

The above is not an absolute presumption. Consequently, the interested party may refute it by providing counter-evidence – if it is assumed that there is no causal connection.

The above-mentioned rules also apply to unloading operations carried out by the consignee (Art. 36 § 3 (c) and Art. 37 § 2 paras. 1 and 2 of CIM).

- II. Article 20 § 5 para. 2 of CIM, which requires that "the consignor shall indicate in the consignment note the number and description of the seals" does not prescribe any particular form for proving the number and description of the seals.

In the same way that for this information, Civil Procedure Act Article 394 § 2, which governs the burden of proof, is thus not applicable, the affixing of seals to wagons counts even less as an act in the law that is subject to the provisions concerning burden of proof.

If the consignment note does not contain information to the effect that seals have been affixed, proof that they were affixed does not constitute counter-proof for the content of the instruction.

- III. The railway of destination is itself liable if it accepted the wagons with seals affixed containing the goods, but on the basis of a second consignment note made out at the intermediate station where the train was re-formed in line with the destination of the wagons, p. 19.

*Article 40 § 3*

"Other amounts incurred in connection with carriage of the lost goods" within the meaning of Article 23 (4) of CMR and Article 40 § 3 of CIM only include such expenses as would also have been incurred to the same extent in carriage according to contract and which would have contributed to the value of the goods at the place of destination, i.e. which have not been incurred as the result of loss, p. 15.

### National law

*French Commercial Code (Code de commerce), Article L – 133-3*

The railway's making wagons available to the transshipment undertaking to carry out marshalling operations in the port area (i.e. placing the wagons on the transfer track before being shunted onto the quay line) does not constitute delivery or acceptance of the goods. Acceptance of the goods being carried only takes place once the wagons are opened, p. 36.

*German General Railways Act (Deutsches Allgemeines Eisenbahngesetz), § 2*

*German Liability Act (Deutsches Haftpflichtgesetz), § 1*

The infrastructure manager in accordance with § 2 of the *Allgemeines Eisenbahngesetz* (General Railways Act) is not an operating undertaking in the sense of § 1 of the *Haftpflichtgesetz* (Liability Act), p. 69.

*German Liability Act (Deutsches Haftpflichtgesetz), § 1 para. 1 and § 13*

If, in a railway accident, a locomotive belonging to a rail transport undertaking is damaged by running over a boulder lying on the track, the railway infrastructure undertaking responsible for operating that section of the line is strictly liable for the damage in respect of the rail transport undertaking on the basis of absolute liability under § 1, para. 1 of the *Haftpflichtgesetz* – HPflG (German Liability Act). Operational risk of the rail vehicle must be taken into account in the context of the consideration to be made in accordance with § 13, para. 1, 2<sup>nd</sup> sentence of the old version of HPflG (which corresponds to § 13, para. 2 of the new version of HPflG), p. 62.

#### (b) Arranged according to subject

*Acceptance of the goods by the consignee*

The railway's making wagons available to the transshipment undertaking to carry out marshalling operations in the port area (i.e. placing the wagons on the transfer track before being shunted onto the quay line) does not constitute delivery or acceptance of the goods. Acceptance of the goods being carried only takes place once the wagons are opened, p. 36.

*Compensation*

– *for damage*

- I. The railway of destination is liable for loss of and damage to goods in accordance with Article 36 § 1 in conjunction with Article 55 § 3 of CIM, even if the loading in accordance with Article 20 § 2 was carried out by the consignor.

Loading by the consignor only constitutes a "special risk" which, under the conditions of Articles 36 § 3 and 37 § 2, may lead to the railway being relieved of liability.

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- III. The railway of destination is itself liable if it accepted the wagons with seals affixed containing the goods, but on the basis of a second consignment note made out at the intermediate station where the train was re-formed in line with the destination of the wagons, p. 19.

#### *Compensation*

##### *– for damage*

- I. In accordance with Article 36 § 1 of CIM, the railway is liable for loss of and damage to goods between the time of acceptance of the goods for carriage and the time of delivery.

There is no relief from such liability merely as the result of the existence of one of the special risks referred to in Article 36 § 3, including loading of the goods by the consignor ((c) and (d)).

For the benefit of the railway, Article 37 § 2 of CIM establishes the refutable presumption that the loss or damage is attributable to the special risk invoked by the railway.

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An exception is if the railway has verified the mass or number of packages and has confirmed this in the consignment note.

If the railway has not carried out a check, the interested party may nevertheless prove the mass or number of packages by other means.

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As established by Article 11 §§ 3 and 4 of CIM, with regard to the contents of the consignment, the consignment note is not in any case a constitutive element, but a piece of evidence.

Consequently, bringing forward evidence by other means both for the information not entered in the consignment note or entered wrongly, and for the accuracy of the information contained in the consignment note, is not precluded.

- III. The railway of destination is also liable (on the basis of Art. 35 § 2 and 55 § 3 of CIM) if two consignment notes were made out for two different sections of the journey, provided transport was performed in accordance with the relevant entry in the first consignment note with the same wagon, without the goods being accepted by the consignee and transhipped.

- IV. The railway has sole responsibility for the security of the goods during carriage.

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- V. The consignee is entitled to submit a claim for compensation for the loss of the goods, provided he accepted the goods (Art. 54 § 3 (b) (2) of CIM).

The interested party may (also) submit a claim for compensation against the railway of destination (Art. 55 § 3 of CIM), p. 20.

#### *Compensation*

##### *– for damage*

The railway's making wagons available to the transshipment undertaking to carry out marshalling operations in the port area (i.e. placing the wagons on the transfer track before being shunted onto the quay line) does not constitute delivery or acceptance of the goods. Acceptance of the goods being carried only takes place once the wagons are opened, p. 36.

#### *Compensation*

##### *– for loss*

"Other amounts incurred in connection with carriage of the lost goods" within the meaning of Article 23 (4) of CMR and Article 40 § 3 of CIM only include such expenses as would also have been incurred to the same extent in carriage according to contract and which would have contributed to the value of the goods at the place of destination, i.e. which have not been incurred as the result of loss, p. 15.

#### *Delivery*

##### *– Time of delivery*

The railway's making wagons available to the transshipment undertaking to carry out marshalling operations in the port area (i.e. placing the wagons on the transfer track before being shunted

onto the quay line) does not constitute delivery or acceptance of the goods. Acceptance of the goods being carried only takes place once the wagons are opened, p. 36.

*Extinction of right of action*

The railway's making wagons available to the transshipment undertaking to carry out marshalling operations in the port area (i.e. placing the wagons on the transfer track before being shunted onto the quay line) does not constitute delivery or acceptance of the goods. Acceptance of the goods being carried only takes place once the wagons are opened, p. 36.

*Grounds for relief from liability for damage due to transport – loading carried out by the consignor*

- I. The railway of destination is liable for loss of and damage to goods in accordance with Article 36 § 1 in conjunction with Article 55 § 3 of CIM, even if the loading in accordance with Article 20 § 2 was carried out by the consignor.

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*Grounds for relief from liability for damage due to transport*  
– *Unloading operations carried out by the consignee*

The railway's making wagons available to the transshipment undertaking to carry out marshalling operations in the port area (i.e. placing the wagons on the transfer track before being shunted onto the quay line) does not constitute delivery or acceptance of the goods. Acceptance of the goods being carried only takes place once the wagons are opened, p. 36.

*Liability of the infrastructure manager in respect of the carrier (the rail transport undertaking)*  
– *Concept of operating undertaking*

The infrastructure manager in accordance with § 2 of the *Allgemeines Eisenbahngesetz* (General Railways Act) is not an operating undertaking in the sense of § 1 of the *Haftpflichtgesetz* (Liability Act), p. 69.

*Liability of the infrastructure manager in respect of the carrier (the rail transport undertaking)*  
– *Concept of operating undertaking*  
– *"Force majeure" as ground for relief from liability*

If, in a railway accident, a locomotive belonging to a rail transport undertaking is damaged by running over a boulder lying on the track, the railway infrastructure undertaking responsible for operating that section of the line is strictly liable for the damage in respect of the rail transport undertaking on the basis of absolute liability under § 1, para. 1 of the *Haftpflichtgesetz* – HPfIG (German Liability Act). Operational risk of the rail vehicle must be taken into account in the context of the consideration to be made in accordance with § 13, para. 1, 2<sup>nd</sup> sentence of the old version of HPfIG (which corresponds to § 13, para. 2 of the new version of HPfIG), p. 62.

*Loss*  
– *partial*

"Other amounts incurred in connection with carriage of the lost goods" within the meaning of Article 23 (4) of CMR and Article 40 § 3 of CIM only include such expenses as would also have been incurred to the same extent in carriage according to contract and which would have contributed to the value of the goods at the place of destination, i.e. which have not been incurred as the result of loss, p. 15.

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- IV. The railway has sole responsibility for the security of the goods during carriage.

The consignor is not obliged – and not entitled – to secure the doors of the wagon with his own locks. Consequently, he cannot be considered as jointly responsible for the loss of the goods.

- V. The consignee is entitled to submit a claim for compensation for the loss of the goods, provided he accepted the goods (Art. 54 § 3 (b) (2) of CIM).

The interested party may (also) submit a claim for compensation against the railway of destination (Art. 55 § 3 of CIM), p. 20.

#### *Production of evidence*

##### – *wagon seals*

- I. The railway of destination is liable for loss of and damage to goods in accordance with Article 36 § 1 in conjunction with Article 55 § 3 of CIM, even if the loading in accordance with Article 20 § 2 was carried out by the consignor.

Loading by the consignor only constitutes a "special risk" which, under the conditions of Articles 36 § 3 and 37 § 2, may lead to the railway being relieved of liability.

In particular, liability of the railway is not inherently precluded by the existence of one of the risks listed in Article 36 § 3, including loading carried out by the consignor (paras. (c) and (d)).

The railway which invokes these risks as its plea must prove, in addition to the existence of the risk, that the loss

or damage could be attributable to this risk, "having regard to the circumstances of a particular case".

If the railway proves these elements – the aptness of the risk to bring about the loss or damage – it shall be presumed that the loss or damage arose from this risk (Art. 37 § 2 of CIM) – or in other words, that a connection exists between the risk and the loss or damage.

The above is not an absolute presumption. Consequently, the interested party may refute it by providing counter-evidence – if it is assumed that there is no causal connection.

The above-mentioned rules also apply to unloading operations carried out by the consignee (Art. 36 § 3 (c) and Art. 37 § 2 paras. 1 and 2 of CIM).

- II. Article 20 § 5 para. 2 of CIM, which requires that "the consignor shall indicate in the consignment note the number and description of the seals" does not prescribe any particular form for proving the number and description of the seals.

In the same way that for this information, Civil Procedure Act Article 394 § 2, which governs the burden of proof, is thus not applicable, the affixing of seals to wagons counts even less as an act in the law that is subject to the provisions concerning burden of proof.

If the consignment note does not contain information to the effect that seals have been affixed, proof that they were affixed does not constitute counter-proof for the content of the instruction.

- III. The railway of destination is itself liable if it accepted the wagons with seals affixed containing the goods, but on the basis of a second consignment note made out at the intermediate station where the train was re-formed in line with the destination of the wagons, p. 19.

#### *Production of evidence*

##### – *wagon seals*

- I. In accordance with Article 36 § 1 of CIM, the railway is liable for loss of and damage to goods between the time of acceptance of the goods for carriage and the time of delivery.

There is no relief from such liability merely as the result of the existence of one of the special risks referred to in Article 36 § 3, including loading of the goods by the consignor ((c) and (d)).

For the benefit of the railway, Article 37 § 2 of CIM establishes the refutable presumption that the loss or damage is attributable to the special risk invoked by the railway.

Consequently, the railway is liable if the interested party can prove that the loss or damage was not attributable to the specific risk because there was no causal link between the risk and the loss or damage.

The proof that in the case in point, the specific loss is not attributable to the risk referred to above also constitutes proof – based on the seals having been affixed – that the loss is attributable to theft.

The above-mentioned rules also apply to unloading operations carried out by the consignee (Art. 36 § 3 (c) and Art. 37 § 2 paras. 1 and 2 of CIM).

- II. If loading is carried out (lawfully) by the consignor, the information the consignor has entered in the consignment



note with regard to the mass of the goods or the number of packages does not constitute evidence against the railway.

An exception is if the railway has verified the mass or number of packages and has confirmed this in the consignment note.

If the railway has not carried out a check, the interested party may nevertheless prove the mass or number of packages by other means.

(With regard to the foregoing, see Article 11 § 5, para. 1 of CIM).

As established by Article 11 §§ 3 and 4 of CIM, with regard to the contents of the consignment, the consignment note is not in any case a constitutive element, but a piece of evidence.

Consequently, bringing forward evidence by other means both for the information not entered in the consignment note or entered wrongly, and for the accuracy of the information contained in the consignment note, is not precluded.

III. The railway of destination is also liable (on the basis of Art. 35 § 2 and 55 § 3 of CIM) if two consignment notes were made out for two different sections of the journey, provided transport was performed in accordance with the relevant entry in the first consignment note with the same wagon, without the goods being accepted by the consignee and transhipped.

IV. The railway has sole responsibility for the security of the goods during carriage.

The consignor is not obliged – and not entitled – to secure the doors of the wagon with his own locks. Consequently, he cannot be considered as jointly responsible for the loss of the goods.

V. The consignee is entitled to submit a claim for compensation for the loss of the goods, provided he accepted the goods (Art. 54 § 3 (b) (2) of CIM).

The interested party may (also) submit a claim for compensation against the railway of destination (Art. 55 § 3 of CIM), p. 20.

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