



Organisation intergouvernementale
pour les transports internationaux
ferroviaires

Zwischenstaatliche Organisation
für den internationalen
Eisenbahnverkehr

Intergovernmental Organisation
for International Carriage
by Rail

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Secretary General’s discussions with representatives of Azerbaijan – Baku, 18.12.2008 – p. 52**At a glance****Rail gauges, p. 23****Case Law****a) Arranged according to the Articles of COTIF and its Appendices, other Conventions and national law****CIM 1980***Article 54*

A claim for damages may be brought against the rail carrier in the absence of a consignment note provided the contractual link between the person entitled and the carrier is established, p. 10.

CIV 1980*Article 26 § 2 (b)*

The elements of the circumstances that have been established – place where the victim fell onto the railway line coinciding with a cross marked on a plan found in his bag and throwing his luggage onto the railway line beforehand, which contradicts an accident hypothesis – constitute serious, precise and corroborative presumptions of a deliberate act, from which it can be concluded that the passenger’s fall was the result of behaviour not in conformity with the normal conduct of passengers, p. 24.

CMR*Articles 8, 17 para. 1 and 5*

1. Where the consignee, at the time of delivery of the goods, enters reservations on the consignment note, and the experts consider that the damage occurred during the carriage, the CMR carrier shall be liable for the damage in accordance with Article 17, para. 1 of CMR. The CMR carrier may invoke a ground for relief from liability, even where he did not enter any reservations at the time of taking over the goods.
2. According to Article 8 of CMR, the carrier by road is not under an obligation to check the manner in which the goods are loaded (or stowed). He is only required to verify the apparent state of the goods at the moment when he takes them over.
3. Bearing in mind that the CMR Convention does not indicate who is responsible for loading and unloading, and that the driver stowed the goods using ropes after their loading by the consignor, liability pursuant to Article 17, para. 5 of CMR is shared between the carrier and the consignor where it is clearly necessary to examine the causes of damage in terms of the manner in which the goods were loaded and stowed, p. 36.

National law*French Civil Code, Article 1147*

The passenger who tried to board the moving train was at fault; however, this fault was not the sole cause of the accident, which occurred at a time when there was no system either to prevent the doors from opening while the train was moving, to see and monitor the whole platform and train, or to provide an audible warning before the train departed; the presence on the platform of a sufficient number of staff or a camera system allowing the whole of the train to be monitored would have prevented the accident from occurring. The carrier, liable without fault towards a passenger, cannot partially relieve itself from liability, p. 25.

French Civil Code, Article 1732

A rail transport undertaking which leased wagons and containers is liable for the loss and damage that occurred during the period of the leasing contract unless it proves that the damage does not result from fault on its part. The rail transport undertaking cannot be relieved from liability on the basis of the contract of use of the wagons (leasing contract) by asserting that the derailment and the damage caused to the wagons and containers happened while the user of the private siding was using these wagons and containers; they were not therefore under the care of the rail transport undertaking. Given that the user of the private siding cannot be con-

sidered as a third party, it has not been proven that the damage is not the result of fault on the part of the rail transport undertaking, p. 53.

b) Arranged according to subject

Contract of carriage

– *Conclusion*

A claim for damages may be brought against the rail carrier in the absence of a consignment note provided the contractual link between the person entitled and the carrier is established, p. 10.

Contract of use of vehicles

– *Liability in case of loss of or damage to a vehicle*

o *Presumption of fault – proof*

A rail transport undertaking which leased wagons and containers is liable for the loss and damage that occurred during the period of the leasing contract unless it proves that the damage does not result from fault on its part. The rail transport undertaking cannot be relieved from liability on the basis of the contract of use of the wagons (leasing contract) by asserting that the derailment and the damage caused to the wagons and containers happened while the user of the private siding was using these wagons and containers; they were not therefore under the care of the rail transport undertaking. Given that the user of the private siding cannot be considered as a third party, it has not been proven that the damage is not the result of fault on the part of the rail transport undertaking, p. 53.

Examination of the load by the carrier

1. Where the consignee, at the time of delivery of the goods, enters reservations on the consignment note, and the experts consider that the damage occurred during the carriage, the CMR carrier shall be liable for the damage in accordance with Article 17, para. 1 of CMR. The CMR carrier may invoke a ground for relief from liability, even where he did not enter any reservations at the time of taking over the goods.
2. According to Article 8 of CMR, the carrier by road is not under an obligation to check the manner in which the goods are loaded (or stowed). He is only required to verify the apparent state of the goods at the moment when he takes them over.
3. Bearing in mind that the CMR Convention does not indicate who is responsible for loading and unloading, and that the driver stowed the goods using ropes after their loading by the consignor, liability pursuant to Article 17, para. 5 of CMR is shared between the carrier and the consignor where it is clearly necessary to examine the causes of damage in terms of the manner in which the goods were loaded and stowed, p. 36.

Grounds for relief from liability in case of death of, or personal injury to, passengers

– *Behaviour of the passenger, fault of the passenger*

The elements of the circumstances that have been established – place where the victim fell onto the railway line coinciding with a cross marked on a plan found in his bag and throwing his luggage onto the railway line beforehand, which contradicts an accident hypothesis – constitute serious, precise and corroborative presumptions of a deliberate act, from which it can be concluded

that the passenger's fall was the result of behaviour not in conformity with the normal conduct of passengers, p. 24.

The passenger who tried to board the moving train was at fault; however, this fault was not the sole cause of the accident, which occurred at a time when there was no system either to prevent the doors from opening while the train was moving, to see and monitor the whole platform and train, or to provide an audible warning before the train departed; the presence on the platform of a sufficient number of staff or a camera system allowing the whole of the train to be monitored would have prevented the accident from occurring. The carrier, liable without fault towards a passenger, cannot partially relieve itself from liability, p. 25.

Grounds for relief from liability for damage due to transport

– *defective loading*

1. Where the consignee, at the time of delivery of the goods, enters reservations on the consignment note, and the experts consider that the damage occurred during the carriage, the CMR carrier shall be liable for the damage in accordance with Article 17, para. 1 of CMR. The CMR carrier may invoke a ground for relief from liability, even where he did not enter any reservations at the time of taking over the goods.
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Liability in case of death of, or personal injury to, passengers

The elements of the circumstances that have been established – place where the victim fell onto the railway line coinciding with a cross marked on a plan found in his bag and throwing his luggage onto the railway line beforehand, which contradicts an accident hypothesis – constitute serious, precise and corroborative presumptions of a deliberate act, from which it can be concluded that the passenger's fall was the result of behaviour not in conformity with the normal conduct of passengers, p. 24.

The passenger who tried to board the moving train was at fault; however, this fault was not the sole cause of the accident, which occurred at a time when there was no system either to prevent the doors from opening while the train was moving, to see and monitor the whole platform and train, or to provide an audible warning before the train departed; the presence on the platform of a sufficient number of staff or a camera system allowing the whole of the train to be monitored would have prevented the accident from occurring. The carrier, liable without fault towards a passenger, cannot partially relieve itself from liability, p. 25.

Liability of the consignor

– *for defective loading*

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experts consider that the damage occurred during the carriage, the CMR carrier shall be liable for the damage in accordance with Article 17, para. 1 of CMR. The CMR carrier may invoke a ground for relief from liability, even where he did not enter any reservations at the time of taking over the goods.

2. According to Article 8 of CMR, the carrier by road is not under an obligation to check the manner in which the goods are loaded (or stowed). He is only required to verify the apparent state of the goods at the moment when he takes them over.
3. Bearing in mind that the CMR Convention does not indicate who is responsible for loading and unloading, and that the driver stowed the goods using ropes after their loading by the consignor, liability pursuant to Article 17, para. 5 of CMR is shared between the carrier and the consignor where it is clearly necessary to examine the causes of damage in terms of the manner in which the goods were loaded and stowed, p. 36.

Plaintiff (Capacity as -)
– *User*

A claim for damages may be brought against the rail carrier in the absence of a consignment note provided the contractual link between the person entitled and the carrier is established, p. 10.

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