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Haulier's CMR liability ceases after handing goods over to rescue service following traffic accident

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Facts

A Danish manufacturer of fish feed sold 48 pallets of fish feed to a Norwegian buyer for 402,624 kroner on delivered at place (DAP) terms. The manufacturer booked transport of the shipment from Denmark to Fin-nangerøya in Norway to a Danish contracting carrier who loaded the pallets in a trailer and subcontracted the performance of the transport to a Danish haulier. Upon taking over the loaded trailer on 19 January 2021, the haulier received the consignment note for the transport, which stated that the shipment included 48 pallets of fish feed weighing 29,300 kilos.

On 18 January 2021, during the transport near Østersund in Sweden, the car and trailer overturned on its side due to slippery roads. The haulier immediately requested rescue assistance, which arrived within 30 to 45 minutes. The rescue company salvaged the pallets from the trailer with a crane, and 34 big bags were driven by the rescue service from the accident site and placed by the rescue service in an open warehouse where they were exposed to snow drifts.

By email on 19 January, the haulier's motor liability insurer informed the carrier that a traffic accident had occurred and that the goods had been salvaged, and called on the carrier to take care of the goods:

> *Hello again, I have just been informed that the goods will be stored at the owner's expense in a warehouse. The address is Furulid 105, Østersund, Sweden. The goods are stored at the owner's expense and risk and according to the information there is a fee of 100 Sec per day for storage. However, I am not sure of the amount, as it is 3rd hand information. As previously stated, I must encourage the owner of the goods to pick up the goods as soon as possible and calculate / document / limit any damage.*

Via a subsequent mail on 19 January 2021, the haulier further notified the carrier of the following:

> *As far as I understand, a car has been sent to pick up the goods. Can you confirm this? It is important that the owner of the goods gets activated as soon as possible their goods insurance so that they can assist in documenting and limiting the damage, as it is the goods owner's duty to do this.*

The information in question was not passed on to the manufacturer by the carrier, and it was not until 9 February 2021 that the carrier informed the manufacturer where the goods were located and how they could be transported home. When the pallets were returned to the manufacturer on 19 February 2021, it was found that the 34 big bags had been destroyed as a result of exposure to snow and moisture. The manufacturer's insurer filed a lawsuit against both the carrier and the haulier. The carrier also filed a claim for exemption against the haulier.

Decision

The court concluded that the carrier was responsible for the damage that had occurred to the sacks during the storage at the rescue service:

> *It appears from the inspection reports of 19 February 2021 that the damage to 9 big bags could partly be attributed to the traffic accident. In addition, the court finds that the damage to the remaining 25 big bags can be attributed to the lack of damage limitation in connection with storage and handling of the goods in the period after the accident, until the goods were sent back to [Manufacturer], which [the carrier] must also be considered to be responsible for.*

The court then ruled that the haulier was not responsible for the damage to the 25 big bags, as these were damaged when stored by the rescue services, which was after the haulier's liability was deemed to have ceased:

> *Regarding the remaining 25 big bags, the court assumes that [the haulier] after the traffic accident contacted his insurance company, which then arranged for the salvage of the goods, which was first placed in a nearby parking place, and then moved to a warehouse consisting of an open building [the haulier] contacted [the carrier] and stated that the transport could not be completed and stated where the goods were stored. [The haulier] called for [the carrier] to collect the goods as soon as possible. [The carrier] replied, however, in this connection that further information from its insurance company was awaited before further action was to be taken with the goods. The damage to the remaining 25 big bags occurred in the period after the traffic accident took place and after [the haulier] had informed [the carrier] about where the goods were left, and after [the haulier] had requested further information about the further course. Having requested instructions, as well as leaving the goods to a third party, which on the present basis was chosen with due care, [the haulier] is hereby acquitted of the claim for exemption made by [the carrier] concerning the remaining 25 big bags.*

Comment

It appears from the judgment, in accordance with the Convention on the Contract for the International Carriage of Goods by Road (the CMR Convention) that a carrier, when a hindrance has arisen for the performance of the transport, can bring its carrier's liability to an end by requesting instructions from the contracting party, awaiting receipt of these instructions, and if these are not given within a reasonable

time, laying up the goods at the risk of the contracting party.

Arrangements may be made by handing over the goods to a third party, and, if the latter is carefully selected, the carrier will not be liable for errors or omissions committed by that third party. It is clear from the judgment that it is a condition for the carrier to be able to bring its CMR liability to an end by carefully following the described procedure, so that the contracting party is given the opportunity to safeguard its interests in the situation that has arisen. As the carrier had not provided information on the whereabouts of the goods and had not requested instructions, the carrier's CMR liability had not ceased. In contrast, the haulier had fulfilled the conditions in the CMR and was therefore not liable for the damages that occurred during storage.

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