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Value Needs to be Declared in Consignment Note Under CMR

United Kingdom-based cargo transport industries insurance specialist, TT Club, is advising that nomination of a "special interest in delivery" for a carriage under the Convention on the Contract for the International Carriage of Goods by Road (CMR) is insufficient on its own.

Citing the judgment of the German Federal Court of Justice of December 17, 2020 (I ZR 130/19), TT Club risk management director Peregrine Storrs-Fox emphasises that instead, it was also "necessary for the value to be declared in the consignment note".

"Where goods are carried under CMR and it is desired to state a 'special interest in delivery', thereby increasing the carrier's liability for loss or damage above the standard limit of SDR [Special Drawing Rights] 8.33 per kilo, the language of Articles 24 and 26 of CMR specifically requires that the declared value or fixed amount be stated in the consignment note," advises Mr Storrs-Fox in a recent *TT Talk – Leagle eagle* post.

"Courts may interpret this strictly, as shown by a recent case before the German Federal Court.

"In this case a work of art was carried with an insured value of EUR200,000 and the carrier deducted an insurance premium based on this amount. The court found that, absent an endorsement on the consignment note, there was no evidence of a mutual agreement between the parties for the purposes of CMR. The court added that no agreement in a framework contract or single transport order would alone suffice. And the insurance premium did not amount to the necessary 'surcharge' for these purposes.

"The Court considered the notes of the working party ('travaux préparatoires') when the CMR was drawn up, and compared CMR with other international conventions. It rejected as without foundation an argument that the strict requirement for endorsement of the consignment note was intended only to protect third parties not party to the agreement, in particular subcarriers.

"This case is important as a warning of the significance of the consignment note for the operation of CMR."

Comment

Mr Storrs-Fox observes that the German court has reviewed the provisions of CMR by adopting a literal interpretation of the language of Articles 24 and 26, which both require any such agreement to be evidenced in the CMR note.

"According to the Vienna Convention on the Law of Treaties 1969 (VC), this is the appropriate manner in which to interpret an international instrument – Art 31 of the VC requires that the 'ordinary meaning' be given to the terms of the treaty, although assistance can be sought from the travaux préparatoires, if the ordinary meaning is unclear or if it leads to an absurd result.

"Most jurisdictions would adopt this approach to interpretation, although the English Courts have often strayed from this and have adopted the 'purposive' approach when interpreting the provisions of CMR,

such as the Court of Appeal in *Ulster Swift Ltd v Taunton Meat Haulage Ltd* (1977) on the meaning of successive carriage and also in *BAT v Kazemier and H Essers Transport* (2015) on the meaning of the jurisdiction provisions of Article 31 (albeit in the latter case the Supreme Court overturned the Court of Appeal and adopted the literal interpretation).

"It is believed that the particular issue in this case has not come before the English Courts, but were it to do so there is the possibility that a purposive approach might be adopted if there was other evidence, outside of the CMR note, which suggested that there was a declared value or a declaration of special interest. Of course, this recent German decision would be persuasive authority, but would not be binding on an English Court."

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