TRANSPORT NEWS

Prepared by transport law expert JUDr. Jiří Lojda, LL.M. EUR., Ph.D., this newsletter presents a brief summary of certain developments in the regulation of transport, especially freight transport. We hope this newsletter will help give you a basic grounding in this area of law and thus contribute to the success of your business, whether you are directly operating or procuring transport or ordering transport carrier services.

We will be happy to discuss any questions you may have.

JURISPRUDENCE

Regional Court in Ostrava: In chain transactions, CMR consignment note only proves transport of goods

Regional Court in Ostrava – branch office in Olomouc, ruling dated March 16, 2021, File No. 65 Af 10/2019

The dispute between the company (claimant) and the Appellate Financial Directorate (defendant) hinged on the additional VAT assessment on the basis of a tax audit on the applicant carried out by the tax administrator that found irregularities in the supply of rapeseed oil from the Czech Republic to Poland. In the defendant's view, the claimant did not sufficiently prove that it had supplied the goods subject to VAT to the persons in Poland to whom it claimed to have done so. Deficiencies in the CMR consignment notes played a significant role in the case. In the proceedings before the tax authorities, it became apparent that the consignment notes submitted did not prove whether the goods had been delivered to another Member State or the identity of the actual consignee, or the consignment note was stamped without a signature and date, or the stamp was in the wrong place on the consignment note, or the consignment note was signed and dated but the stamp was illegible. In addition, the claimant submitted documents headed 'Oswiadzenie' (certificates), which were supposed to prove the delivery of the goods and about which the tax authorities also had reservations.

The court agreed with the tax administrator that the consignment notes had not been properly completed, as the court considered CMR consignment notes to only prove that a transport contract was made, not a contract of sale or any other contract from which it could be concluded that the goods were delivered within the meaning of Section 13 of the VAT Act. The certificates of delivery bore the company's stamp, but with an illegible signature that made it impossible to trace the person acting for the recipient. The court held that the claimant, aware of these deficiencies, should have sought evidence itself that would have clearly established the delivery to the recipients in another country. In a chain transaction, the consignment note itself proves only the transport of the goods, not their delivery.

Supreme Court: Additional grounds for denial of insurance benefits can be agreed in an accident insurance contract

Supreme Court, ruling dated March 2, 2021, File No. 32 Cdo 3172/2020

The insured and the insurer had a dispute over the payment of an accident insurance claim in the amount of CZK 62,893. The cases before the lower courts proved that the damage to the

vehicle had been caused in a different manner than that alleged by the injured party. The insurance contract allowed for the refusal of insurance benefits if the insured knowingly provided false or grossly distorted information concerning the extent of the insured event or concealed material information concerning the event when claiming insurance benefits. The question was whether these grounds for refusal of insurance benefits could be negotiated, even though Section 2809 of Act No. 89/2012 Coll., the Civil Code ("CC") does not provide for this possibility. Like the lower courts, the Supreme Court concluded that neither Section 2809 of the Civil Code nor other provisions of the Civil Code exclude this possibility and that Section 2809 of the Civil Code is therefore dispositive.

Municipal Court in Prague: The carrier is not a party to the proceedings conducted by the ÚPDI on the plan for limiting railway operation

Municipal Court in Prague, ruling dated April 13, 2021, File No. 8 A 54/2018

This case centred on whether the carrier could bring an administrative action against the decision of the Office for Access to Transport Infrastructure (ÚPDI) before an administrative court. According to Section 21(1) of Act No. 266/1994 Coll., on Railways, the basic requirement for a railway (infrastructure) operator is to ensure the operation of the railway. Situations may of course arise where a railway operator cannot comply with this requirement for reasons beyond its control. However, the restriction of railway operation constitutes a formalised process whereby the railway operator has to submit a plan for the restriction of railway operation to the ÚPDI and, if it is approved and needs to be amended, the railway operator has to ask the ÚPDI for re-approval. This proposal can only be granted for reasons on the exhaustive list of permitted grounds.

That was the case here. The railway operator (Správa železnic, s.o.) requested a change in the plan for restricting railway operation, but the ÚPDI did not grant its request, since the permitted reasons do not include the poor technical condition of the railway, which the railway operator gave as its reason. České dráhy, a.s., as the passenger transport operator on the railway in question, lodged a remonstrance, which was rejected, followed by an administrative action before the Municipal Court in Prague. This court dismissed the action because, in its view, not only did the contested decision not affect the company in respect of its public subjective rights and obligations, but, since the decision of the ÚPDI only ruled on the rights and obligations of the company indirectly, it is also a matter of dispute whether the company should have been a party to the proceedings before the ÚPDI in the first place. With that interpretation, the Municipal Court in Prague had to dismiss the action.

Municipal Court in Prague: Even Česká pošta, s.p. must properly mark the parcels submitted to it

Ruling 6 A 158/2018, Municipal Court in Prague, dated March 18, 2021

This case involved contesting a decision of an administrative authority, namely the Czech Telecommunications Office, which imposed a fine on Česká pošta s.p. for breach of an obligation under (then) Section 34(10) of Act No. 29/2000 Coll., on postal services (today it is Section 34(12) of the same Act). Česká pošta, s.p. allegedly committed this offense by failing to mark some of the items submitted to it with the logo and name of the operator. Česká pošta, s.p. defended itself by arguing that the provision in question is intended to ensure that

its postal network is not abused by other postal service operators, and since Česká pošta, s.p. itself cannot abuse its postal network, the objective aspect of the offence is absent. However, the Municipal Court dismissed the case, pointing out that the interpretation of Česká pošta, s.p. was too broad and the law does not imply any such restriction. Therefore Česká pošta, s.p. is required to mark parcels properly.

The District Court for Prague 9 inadvertently raised the issue of the nature of a framework contract for forwarding services

Ruling No. 18 C 222/2020, District Court for Prague 9, dated March 10, 2021

This dispute involved the freight forwarder's remuneration due for services provided to its contractual partner on the basis of a framework agreement, which the latter failed to pay. What is interesting about the judgment is that the court of first instance referred to the framework contract as a freight forwarding contract. Although it would not have changed the outcome of the dispute, in the author's view only orders for the transport of a specific shipment between specific locations can be considered to be forwarding contracts within the meaning of section 2471 of the Civil Code. In the author's view, a framework contract cannot be considered a forwarding contract because it usually does not clearly identify the specific shipment and the places of dispatch and delivery.

OLG Nürnberg: Fire leading to the destruction of the entire load is not in itself a reason for the application of Article 29 of the CMR

OLG Nürnberg Ruling No. 12 U 1833/18, dated March 24, 2021

The case involved the transport of decorative material (inflatable balloons, helium, etc.) packed on 19 pallets from Germany to the UK where the truck caught fire when parked in a car park in the UK and the entire load was destroyed. The haulier was sued by the insurer, to whom the claim passed upon payment of the insurance claim. The court found that the carrier had not been given instructions as to which car parks to park in (secure or unsecure etc). The carrier had chosen a parking lot that was well lit where there had never been a truck fire, but unfortunately it had parked outside the range of security cameras, which complicated the fact-gathering process. The preliminary police report mentioned the fire being started by a third party, and there was also speculation in the proceedings that the fire may have occurred due to a defect in the vehicle or from a gas cooker the driver used to prepare food. However, the OLG Nürnberg, as the court of appeal, did not see grounds for applying Article 29 of the CMR, since the claimant had failed to show that there was at least some probability that there were grounds for doing so. The fact that there was a fire is not sufficient in itself. In the present case, therefore, the injured party was entitled to limited compensation (in this case approximately half the amount) and full reimbursement of the transport fee from the carrier.

CORONAVIRUS AND FORCE MAJEURE IN CONTRACTUAL RELATIONSHIPS

AMENDMENTS

Regulation affected	Parliamentary press and status	Essence of the change
Act No. 273/2008 Coll., on the Police of the Czech Republic, Act No. 17/2012 Coll., on the Customs Administration of the Czech Republic	Press No. 983/0 After discussion in parliamentary committees, the second reading is pending	The Police of the Czech Republic and the Customs Administration of the Czech Republic are to be given the power to require drivers of vehicles at a road check to pay an overdue fine imposed on the driver or operator of the vehicle for an offence under the Road Operation Act, the Act on Roads or the Road Transport Act and the penalty for this offence was imposed by or is being enforced by the Customs Administration as the general tax administrator. The driver of the vehicle will not be obliged to make the payment, but if they fail to do so, they may be asked by a police officer or customs officer to follow them to a place where the vehicle can be parked. Then the registration plates will be removed from the vehicle and impounded, or the vehicle will be secured to prevent its departure.
Act No. 266/1994, on railways	Press No. 912, discussed by the guarantee committee, third reading upcoming	Addition of the legal definition of railway vehicle holder, new regulation for issuing and changing data in the railway operator's certificate, new regulation for issuing and changing the carrier's certificate, new regulation for operating and approving vehicles on the railway
Act No. 266/1994, on railways	Press No. 1074/0 After discussion by the parliamentary organizational committee, awaiting first reading	Proposal to move the headquarters of the Railway Office and the Railway Inspectorate from Prague to Pardubice.

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