



THE BURDEN OF PROOF: A LITERATURE STUDY

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Abstract- This research paper describes the burden of proof to claim the shipping charge. Also the case with the claims officer carries the burden of proof in this regard; the application will be familiar with this topic. This article is about the rights and duties of the incumbent carriers in both the transmitter and receiver will be discussed.

Key words: Burden of proof, charge carrier

INTRODUCTION:

If the charge carriers due to damage, file a lawsuit against the consignor must prove that the damage was the result of new orders, the shipping charge is. Also, if the sender against the charge that carries the possibility of contentious orders him to plead, the burden of proof of compliance with the new rules implemented by the incumbent carrier and the sender will be. The first thing that the sender must provide a reason, air waybill image to deliver superior handling, with new orders. In the absence of such evidence, concerning the sender should be dismissed because the officer has a duty to carry only cargo delivery to the person named on the bill of lading. In addition to offering the changed image consignor air waybill to the court must be able to prove that the chargecarrier obeys the orders of his new.[1] This is proved by the testimony of an expert in transport is achieved. If the charge carriers obeyed the orders of the new station, he claims to have been damaged during transportation shall appeal against the charge, the burden of proof for his claim. The sender must prove that the officer is carrying an irrational behavior. In one case, the sender can send a number of cameras from Brazil to Argentina. During shipping, handling charge ordered goods returned to the sender. Following this order, the charge transport plane landed in Brazil, Commodities return flight to the next, as discharged, Brazilian customs officials due to shipments of documents match, the Brazilian customs regulations, and compliance with regulatory

duty on Argentine goods confiscated. In this regard, the court stated that the officer acted reasonably portable and can not be blamed because he obeyed the orders of the sender. It is unfair that the burden of proof is on both the sender's responsibility to:

1- First- do the new rules was not impossible,

Second-new orders have not been done to damage others. Although no cases have been reported in the case, but lawyers for the alleged reason that the sender must be carefully proved both categories.[2] If this relationship is short, it may be the first case to be difficult. If it is not possible to implement the new rules, the report shall be official experts. The sender can also prove that he was never in charge of carrying out the lack of new orders is not aware, while transporting officer should immediately notify the sender that the lack of new orders. How to prove that a change in the old order and the new order, which does not harm to third parties, subject to the conditions and circumstances of each case.

Article 13 of the Convention provides:

1-1-with the exception of the cases mentioned in the previous article, receiver has the right goods to the goods arrive at their destination, the incumbent will carry the air waybills and goods against payment of the relevant fees and compliance with the conditions set forth in the bill of lading, air transport him to surrender.



1-2-transport operator is required upon receipt of goods than to inform the recipient, unless otherwise is agreed.[3]

3- if the agent accept delivery of the goods being lost, or if the goods up to 7 days after the expiration date is not the destination, rights of the transported goods is authorized receiver against the incumbent carriers to implement these plans. Like Article 12 describes the consignor's rights, article 13 of the Convention on the rights articulates the receiver of the goods. Receiver who is good at forward air has been named by the title of his and he is remembered mostly as the designated recipient. Generally, the recipient is the only person who is qualified to receive the goods at destination. Under Article 12 of the consignor in case of change orders, the right to delivery will change. Recipient of goods under Article 13 is entitled:[4] 1-once the goods reach their destination will be informed

2-The goods to be delivered,

3-second version (of the tree original version) of the air waybill consignor submits to be delivered to the shipping charge. Recipient of goods is required to pay all expenses listed in the air waybill. Transportation officer also must comply with the conditions of the air waybill, the goods available to the client leaves. For example, if an air waybill is required by the goods recipient has to pay certain fees, Charge carriers can ask him to pay the costs, although the cost is paid by someone else.

3-Transport operators to comply with the provisions of Article 13 and the air waybill, any support would be, If the judicial investigation concerning the accuracy of deliveries, the air waybill conditions, not responsible. If the air waybill is silent on payment of fees, in exchange for goods to be delivered to its recipient, commodity prices, transport costs and customs duties to pay (paragraph 1 of Article 13). If the incumbent carriers to violate any of the terms contained in the bill, such as the delivery of goods to the client without receiving any money, in that case, the sender shall be responsible for the shipping charge. As long as the conditions set forth in the bill of lading freight operator obeys, he will not be responsible. Thus, for example, if the officer has probable person transport other than the recipient

designated in the bill of lading the goods are received, he has the absolute right to deliver the goods to the recipient specified in the bill of lading.

4- So if the third party to pay the costs associated with transport operators, he does not require the goods have been delivered to the person named on the bill of lading.[5] If the item delivered does not match the number of terms the air waybill, carrying charge, will be held responsible. In one case, the charge transport consignor five package was delivered. He subsequently stated that only one of the incumbent carriers to deliver packets to receivers. Transport operator error every five packets delivered to the recipient. Receptor, which then was bankrupt, unable to pay the cost of the package. In court records, the charge transport due to non-compliance with the new directive, the recognition.[6] Sometimes when end rights recognize the sender, referred to in article 12, and started to receive shipments of goods receptor rights under Article 13, it is difficult. The courts are nearly unanimous in this regard that when the goods are delivered to the recipient, senders rights are deemed terminated.[7] According to this view, even without physical delivery of goods is made, the mere transmission of relevant documents or payment price of goods, considered as delivery of goods. Recipient of goods does not own rights against incumbent to expire seven days from when the goods arrive, to enforce. However, if the incumbent carriers acknowledge that the goods are lost, the receiver can immediately enforce their rights (paragraph 3 of Article 13).

5-This is causing problems within seven days. There is usually a short period of time to allow for the missing during a protest memorandum to the officer carrying the goods offered. This is in contrast to article 26, in respect of damage to goods or delay in delivery of goods or passengers, and the deadline is not included. Article 26 requires that for damaged goods and personal effects, respectively, seven days and 3 days for 14 days to give notice of delay in delivery complaints there. Under the general rule set out in article 29 of the Convention, can only be a two-year deadline for a loss litigation concerning the transportation of goods considered, provided,



however, that more time is not specified in the contract of transportation. Probability that the two-year deadline to be considered include:[9]
1- the start of a two-year period beginning when the incumbent carrier has accepted the goods have been lost.[10]

2- Deadline is two years, counting from the time the goods have reached the destination.
3- two years and seven days after the goods have reached the destination in case of *Schwimmer v. Air France*, part of the cargo reaches the destination in October 1971, but on December 18, 1973 No litigious missing the rest of the cargo was not filed. The court decided that the lawsuit within two years of the date on which the goods were destined to be reasonable plus seven days will be filed.[11] So long as a reasonable amount of time to achieve the added assumption goods within seven days, the court will calculate the two-year period. In this case, the court, but did not specify a start date for calculating the two-year deadline but concluded that the December 18, 1973, later than a reasonable time plus seven days and therefore fights plan after two years, was untimely.[12]

6-Article 14 provides:

1 - transmitters and receivers can goods to their rights under articles 12 and 13 of them awarded to citation, whether it's for their own benefit or the benefit of others do, provided that the obligations stipulated in the transport contract to run. It requires that sender or the receiver can determine the air waybill in articles 12 and 13 of the Convention on the rights granted to them to run. Litigation under this article, the legal limit is only 12 and 13 are caused by the material. This material may not be used to determine a person that entitled to file a complaint regarding damage to or loss of their goods or personal belongings of passengers (Article 18) or delayed delivery (Article 19) is. That can be claimed for damage to or loss of goods in accordance with articles 18 and 19 of that litigation, according to article 30, not article 14. However, in some cases that have been documented to article 30, Court proceedings for determining the persons entitled to institute legal proceedings have reference to articles 12 to

14. Sometimes the right person for litigation, dispute and conflict is created.

7- In France, it is generally accepted that air waybill can only transceivers specified in the action plan in case of damage to goods that are lost or delayed delivery, the only exception is that in French law, the insurance paid the damage claim is successor.[13] This principle has been followed in the United States. In the real owner of the goods can not be prescribed to fight the plan.

Thus, a person who has an ownership, or subsequent to delivery or possession of a person who has found it, Or the person who has paid the price of the goods or the agent of the sender or recipient, can not none of their litigation.[14] This exception has been approved in the United States that Insurance that pays damages to the plaintiff, his deputy was to be appealed against incumbent carriers.

In Park's case, the court case brought by a company that was named in the bill of lading, was, although the company did not set a good receiver.[15] Another court recently raised the idea that Only the sender or receiver of the air waybill, can be appealed to. Representative Leon was not the case by the sender, litigious against incumbent carriers to compensate for damages to be filed. Incumbent carrier's

8- Objection to the trial, he argued that the claims should not be subject to article 14, It is not right to take legal action. The court rejected the argument that the incumbent carrier, said, Convention shall not be construed to be narrow, so that may violate the rights of the real owner.[16] It seems that the courts of New Zealand have seen this issue with more tolerance. Tasman's case alleges that the owner of the cargo, but none of the senders or recipients were specified in the air waybill. The officer claimed that the owner of the goods can not be shipped to the lawsuit. New Zealand court on this issue required that the rights to the articles 12 and 13 of the Convention, only the sender or receiver appointed overseer of lading are, but This does not mean that the owner of a copyright lawsuit against the incumbent carrier, the provisions of the common law are excluded. In articles 12 and



13 of the Convention, only a responsibility that carries a charge of violating the commands listed in the bill of lading is air.

9- Accordingly, if the incumbent carrier has complied with the conditions contained in the air waybill, can be blamed, even if the bill he is set inappropriately.[17]

However, the charge transport may cause other materials Convention, such as article 18 (due to damage) and article 19 (the delay) will be held responsible. When the shipment is sent, delivery charge according to the articles that you need to obey the orders of the whom.

Even where canceled orders due to the receiver in the air waybill, the goods will be delivered to any other person sending the command, the receiver (the first receiver), the litigation will continue. In Belgium, only one name as someone in charge of transportation shall notify him of the receipt of goods, not seeking justice for him.[18] For example, in the case of air waybill provides that: "The company, America Express IBC will inform the company Globus Intl Anvers". After receiving the damaged merchandise, the company Globus has appealed against the incumbent carriers. The Court stated that the clause contained in the air waybill, he delivered the borrower does not, even if he was entitled, the formal declaration of goods to be delivered to him. Thus, the court did not entitle the company to make a fight. In addition to Belgium, France and Japan in the circumstances ruling. In Japan's case, the court stated: If the freight is paid by the consignor, the goods can not be appealed to the supplier.

10- Article 15 provides:

1- articles 12, 13 and 14 no harm will be entered into between the transmitter and receiver and relationships with third parties whose rights are derived from the sender or receiver.[19]
2- conditions that are contrary to the provisions of articles 12, 13 and 14 must be explicitly stated in the bill of lading. Article 15 again, the ingredients just right transceiver 12 to 14 are the charge carriers. This articles may not regulate the relationship between the

sender and the receiver. Articles 12 to 14 on the relations of third parties whose rights are derived from the receiver and the sender, do not affect. However, the parties can agree between themselves to each other to adjust accordingly, this agreement should be stated in the air waybill.[20]

11- Article 16 provides:

1- the sender to the receiver before delivery, the information and documents required for customs formalities and duties of police officers to carry and attach documents to the airwaybill. From the charge carriers responsible for any damage that the lack of a defect or anomaly information and documents related to, except that the resulting damage to the shipping agent or agents to be his fault.
2 -the operator is not required to carry about the accuracy or adequacy of information and documents to the inquiry. Under Article 16, the consignor is required necessary documentation for the passage of goods through customs and police authorities and provide control. It is the responsibility of the recipient of goods, in this case, the document or provide evidence. Shipping charge is also a commitment that the evidence presented in the investigation. In case of any problems with these documents, that evidence, irregular or incomplete documents, the sender will be responsible for the shipping charge. However, if the error or fault handling agent or broker in this case the damage occurs, the sender will be liable. Pursuant to paragraph 5 of Article 6, it is assumed that the incumbent carriers, air waybill to the transmitter has completed. Also, under article 10, the sender is responsible for the accuracy of the content of lading.[21] However, compared to other documents, such an assumption does not favor the incumbent carriers, but the result may be the same on all documents. The case, receptionist carry typing typist air waybill, cargo weight by mistake instead of 6kg, 60kg, was typed. Due to a mistake made, Argentinean customs, shipment delays in permitting a transferee that this delay will cause damage.

Therefore, your compensation transferee, litigious proceedings against the incumbent carriers. The court rejected the incumbent carries responsibility required



that according to article 6, where incumbent broker will carry a complete air waybill, It is assumed that such an application has been made consignor. Under Articles 10 and 16. The sender is responsible for the accuracy of the information contained in the air waybill. Although the bill is completed by the sender or agent responsible for delivery is, However, in cases where the officer has completed the transport carrying other documents may be blamed him. According to this article, where the operator carries passengers to correctly value the contents of your load is not mentioned, is responsible for. In case, a passenger in a regulatory statement, the value of time with his three million eight hundred and fifty thousand francs be evaluated, while it is true that the value of gold and crystal, and six million two hundred and fifty thousand francs, respectively. In this case The court stated that Article 16 only to the sender and the customs officer handling applies.

II. CONCLUSION:

The result of this is that carrier, sender and receiver have the same rights and obligations that do or not to do a different position in relation to the rights and duties are established.

Warsaw Convention defines the rights and duties are. Burden of proving that sometimes the shipping charge, sometimes the sender and the receiver sometimes. Also have an important role in this context refers to a bill of lading. As long as the conditions set forth in the bill of lading freight operator obeys, he will not be responsible.

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