The carrier's liability for failure to vehicles to transport cargo

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Abstract. According to Russian law the carrier is liable for failure of vehicles to transport cargo. At the same time, it should be noted that the transport charters and codes governing the relations arising from the contract of carriage, there is no uniform approach to the issue of liability of the carrier for breach of the obligation for submitting the vehicle for transportation.

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Introduction

Not all transport charters and codes of the Russian Federation (hereinafter - the RF) has a special rule which would establish the basis of liability of the carrier and the amount of the fine for failure to vehicles carrying cargo. Thus, in the Merchant Shipping Code of the Russian Federation (hereinafter - MSC) (Art. 176), there is one general rule, according to which the sender and the charterer is responsible for damages caused to the carrier, unless they prove that the losses were caused not by their fault or not fault of persons for the acts or omissions which they are responsible. Any special rules on the liability of the carrier and shipper for failure to perform or improper performance of obligations under the supply vessel and its loading in the appropriate section MSC dedicated responsibility of the carrier, shipper, charterer (§ 8 Ch. 8 MSC), no [1]. There are no rules about such relationships in the Air Code of the RF.

Thus, the carrier's liability for failure to vehicles only installed in the Code of Inland water transport (hereinafter - KVVT) (Article 115), the Charter of Railway Transport of the Russian Federation (hereinafter - UZHT) (Article 94) and the Charter of Road Transport of the Russian Federation (hereinafter - UAT) (Article 34).

Grounds for liability of the carrier for failure to vehicles to freight is non-fulfillment of the highest carrier applications. Some authors [2] believe that the relationship developing between the consignor (consignee) and the carrier at the application stage shipper and its acceptance by the carrier have a contractual nature. For example, G.A. Yeldash writes: "Application shipper includes all the essential terms of commitments to supply vehicles and their use, and meets all the requirements of the offer. The adoption of the proposal (offer) the carrier may qualify as an acceptance. Thus, the obligation to supply vehicles and delivery of cargo for shipment and use always arises from the contract: volume contract or of a contract concluded by the adoption of carrier applications shipper, in any case, not of "organizational prerequisites" or "ties for freight process" [3]. As can be seen, G.A. Yeldash believes that, upon the request arises volume contract. Different point of view lead A.N. Antyuhina and A.I. Goncharova, who say that, in accordance with paragraph 1 of Art. 791 Civil Code of the Russian Federation (hereinafter - Civil Code) carrier is obliged to submit the consignor for loading within the period prescribed application accepted from him (the order), the contract of carriage or volume contract, serviceable vehicles in a condition suitable for the carriage of cargo. Following the logic of the legislator could reasonably conclude that the application of the sender, and the power and volume contract bases are independent of any carriage of goods. In fact, the emergence of any carriage of goods precedes a complex legal structure, where the application volume contract and the actual delivery of cargo for shipment, with appropriate document sender are separate elements of this composition.

Also, be aware of the theoretical qualification of a contract of carriage as real and as true notes A.V. Rasulov "activities related to the organization of transport (for example, feed wagons), are in fact an obligation upon presentation of shipping and supply vehicles, which occurs in the pre-contractual stage and thus not covered by the contract of carriage subject to specific cargo having a real character. Consequently, Statutory responsibility for violation of these obligations is irrelevant to the issues of liability for breach of contract of carriage of goods train"[5], that is will be a pre-contractual.

There are other points of view on the value of claims and their legal nature.

1. Some authors believe that applying unilateral requirement is independent of the shipper, which by its nature is a unilateral legal transaction [6].

2. T.E. Abova notes that the adoption of the carrier to the shipper application execution is tantamount to their attainment of an agreement on supply of vehicles for transportation of goods by the carrier and use the consignor.

3. According to V.T. Smirnov, K.F. Egorov, admit an application transaction - so give her uncharacteristic lawmaking value, since the application in respect of freight traffic plays the role of operational regulatory document that provides for the organization of cargo transportation [7].

A similar position was expressed and E.A. Sukhanov which indicates the following. Sometimes filing and acceptance of an application for cargo not considered as transactions entailing the emergence of civil-law obligations, and as organizational conditions of the contract of carriage, or some kind of stage " ties of the transport process." Meanwhile, from the specified legal fact arises typical civil obligation which can not appear any of the " organizational prerequisites," nor of " ties for freight process," since such grounds of civil rights and obligations of civil law does not know. In other words, by filing and acceptance of the application between the carrier and the shipper is a contract containing all material terms of commitments to supply and use of vehicles (articulated in the received carrier application) [8, 9, 10].

In our opinion the application is an offer coming from the shipper, since it is based on the received carrier applications arise from the parties rights and obligations set out in this application, or legislator. For example, the carrier from the moment he accepted the application of the duty to submit the vehicle for cargo transportation within the period prescribed application. Thus, the application adopted by the carrier, is a contract. This is also confirmed by the fact how the legislator has formulated regulations on the application (Article 791Civil Code) and the carrier's liability for failure of vehicles in accordance with the application (Art. 794 Civil Code). In particular, in Part 1 of Art. 791 Civil Code states that the carrier must submit the consignor for loading within the period prescribed application accepted from him (the order), the contract of carriage or volume contract, serviceable vehicles in a condition suitable for the carriage of cargo. Thus, the legislator puts a request in line with the contract of carriage and the agreement on the organization, giving it the same legal nature as the contract. Of Part 1 of Art. 794 Civil Code implies that the carrier for failure to vehicles to transport cargo in accordance with the application (order) or other agreement... In this case also shows that the legislator identifies a request (order) and contract.

The most detailed and carefully regulated relations on filing and acceptance by the carrier UZHT. The actual composition of violation of the obligation enshrined in Art. 94 UZHT. Illegal actions of the rail carrier can be expressed:

1) Failure to submit a vehicle for loading in accordance with the carrier and agreed with the owner of the infrastructure application;

2) in applying for loading faulty vehicles ;

3) applying for loading vehicles not suitable for carriage of a particular cargo [11].

Should pay attention to the wording of the norm, which is devoted to automobile liability carrier. Thus, Article 34 UAT indicate that the fault for Failure to take cargo carrier under the contract of carriage, the carrier shall pay to the shipper fine equivalent to twenty percent of a card installed for shipping, unless otherwise provided by the contract of carriage of goods. Thus, UAT does not differentiate conditions the carrier's liability, but rather unifies them, equalizing each other, and allocates only one point having a legal and actual value, namely Failure to take cargo to the carrier's fault cargo. It should be noted that this provision of this article is dispositive, allowing parties on the transport relations to increase or decrease the amount of responsibility, apparently depending on the economic and other, non-legal factors. Also, in Part 2 of Art. 34 UAT installed carrier's liability for failure to vehicles on the charter contract that is new to the transport regulations and codes of the Russian Federation.

Besides, adopted in 2007 UAT stepped far beyond any of the current transport regulations and codes and found that for late submission of vehicle, container, provided by the contract of carriage, the carrier must pay a fine in addition to on-demand shipper caused him damages in the manner prescribed legislation of the Russian Federation. It should be noted that the legislator provides limited liability of the carrier for the non- cargo, or for delay in delivery, due to which this rule does not contradict the Civil Code.

Moreover, it appears that Article. 794 Civil Code should also include a similar provision that would establish full financial responsibility for failure of the carrier vehicles for transport.

Drawing a parallel with the existing regulations in this area and UZHT KVVT I.A. Strelnikova indicates the following. So, Art. 115 KVVT, providing the carrier's liability for failure or towing vehicles, the shipper or sender towed object for non- vehicles, establishes financial responsibility only to a fine. Given this, it seems reasonable, according to I.A. Strelnikovoj, supplement Art. 115 KVVT indicating the possibility of recovery of damages. Since Art. 94 UZHT also establishes

liability for failure to load and failure to vehicle as the exclusive legal penalties in the form of fines, it seems appropriate to add to this article the norm as follows: " The consignor and the carrier in addition to the penalty for failure to set the highest bid is also entitled to recover from the obliged party damages caused as a result of such failure, in accordance with the legislation of the Russian Federation [12]." At the same time, in our opinion, the responsibility of the carrier and the shipper's liability should not be equivalent, as the carrier is a commercial organization, which is at your own risk, entrepreneurial activity, and operates under a state license, and, accordingly, should exercise her professionally in their field. In turn, the consignor - a natural or legal person who uses the services of the carrier or to meet personal needs or to achieve what - or, including commercial, a positive result, while not being a professional in the field of transportation.

Is tantamount legal status of the carrier and the shipper requests for failure can be seen in all transport charters and codes. Pursuant to art. 94 UZHT, art. 115 KVVT, art. 166, 176 KTM, art. 35 UAT size sanctions applied at default application (order) for transportation of goods, put both sides - the shipper and the carrier - on an equal footing. As the shipper and the carrier for the offense apply equal sanctions [13].

Thus, in our opinion, the responsibility of the carrier (and primarily the responsibility of the rail carrier, which is a natural monopoly) and the shipper must be differentiated.

Perfection legal regulation of responsibility of carriers in the Russian Federation demands the account of experience of some foreign countries [14, 15, 16, 17, 18, 19].

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