

Appeal court decides carrier was liable for the theft of container contents after all

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A Finnish appeal court has found in favour of a marine cargo insurer who claimed that a carrier was responsible for some of the contents of container which appeared to have been stolen while in transit.

The decision overturned an earlier judgment by the Helsinki Maritime Court which, based on CCTV and cargo security experts' evidence, found that the carrier's liability did not cover the theft.

The case involves a container of electronic devices, with a third of its contents missing when opened at its final destination in Russia.

While the insurer indemnified the loss, it sued the shipping line on the basis that the container's seal was reported missing at the port of discharge in Finland. "The pilferage must have taken place during the sea carrier's liability period", according to Finnish law firm Hammartrom Puhakka Partners.

After the Finnish terminal operator notified the shipping line that the seal was missing, the shipper instructed Finnish Customs to attach a new seal and the container was then trucked to Russia, where it was opened.

In response to the claim, the shipping line argued that it could not be proved that the seal had been intact at the in-gate at loading port, located on mainland Europe, as CCTV footage at the gate did not show a seal.

It further argued that, in the terminal yard, the container was placed in an upper tier of a stack "with its doors against other containers" to stop them from being opened during storage. However the terminal's CCTV footage which might have shown this had been erased.

The line also said that the box was loaded in a cell guide in the vessel, which made it technically impossible to open the doors.

"Further, the carrier argued that had the container weighed in at one-third less than its original weight, Russian Customs would have observed this at the border," the law firm argued.

Additional evidence was provided to the Helsinki court by its permanent maritime expert, who said that storage of containers at the port of loading was "sufficient", and the court found in favour of the shipping line, judging that "a carrier's duty to examine containers does not cover the examination of seals".

It said: "The Maritime Code stipulates that where the goods have been delivered in a container or similar article of transport, the carrier is not obliged to inspect it internally, unless there is reason to suspect that the article of transport has been packed in a faulty manner."

However, the appeal court has overturned that decision, concluding that the theft had taken place during the carrier's period of liability. This was on the basis that since the person who had analysed the CCTV footage had not been cross-examined, "the judgment could not be based on the findings of the maritime expert's experience".

Hammarstrom Puhakka Partners' Matti Komonen and Herman Ljungberg said: "The appeal court appears to have neglected to assess the carrier's liability. The fact that the loss was found to have taken place during the carrier's liability period does not automatically mean that the carrier was liable. The liability is not strict. A carrier can relieve itself from liability if it proves that neither its fault or neglect, nor the fault or neglect of anyone for which the carrier was responsible, caused or contributed to the loss."

Finland's Supreme Court has not granted the shipping line with right to appeal the final decision.