

ACC

10000/142/1028

ITALIAN ARMY 0  
JAN. 1944

10000/142/1028

ITALIAN ARMY ORGANIZATION, INTERNAL TRANSPORT S/C, (RR)  
JAN. 1944

341/3

## Transport of goods

Art 1675 - General Provisions. By a contract of transport the carrier binds himself towards the other contracting parties to transport persons or goods from one place to another.

Art 1679 - Those who, by the terms of an administrative concession are running a public service for the transport of persons & goods are obliged to accept all requests for transport which are compatible with the ordinary means of their <sup>enterprise</sup> ~~organization~~, which are determined and authorized by the provisions of the act of concession which are brought to the public notice.

In case of simultaneous demands the longer journey will have priority.

Art.  
1683

The sender must inform the carrier of the exact name of the addressee, of the place to which goods are destined, the nature, weight, quantity & number of the articles to be transported as well as any other conditions which may be necessary to perform the transport.

If, other documents are required for the carrying out the transport, these should be handed by the sender to the carrier ~~together~~ upon the act of delivery ~~of~~ the articles to be conveyed.

The sender will be responsible for any damage deriving from the absence of ~~these documents~~ incorrect statements, omission or other irregularities contained therein.



Art 1693 - Responsibility for losses and damages

The carrier is responsible for the loss or damages to the articles consigned to him for transport, from the time he receives them to the time he delivers them to the addressee, if it cannot be proved that the loss or damage is due to fortuitous circumstances, or because of the nature or defects of the articles concerned or their packing or by the fault of the sender or of the addressee.

If the carrier accepts the articles to be conveyed without reserve it is presumed that there are no apparent defects in the packing.

Art 168. at the demand of the carrier the sender is bound to supply a 'Carrier's note' containing all the particulars set out in the previous article and the conditions agreed for the transport:

at the demand of the sender must give him a duplicate of the carrier's note properly ~~signed~~ <sup>signed</sup>, or if no carrier's note has been delivered a receipt with the above mentioned particulars.

Unless otherwise provided, the duplicate of the carrier's note and the receipt ~~may~~ <sup>shall</sup> be given with the mention "to the order" -

HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Administration

244/222

20 January 1944.

In reply  
refer to: ACC 14/312/3.

SUBJECT: Claims against Italian Railways for loss and damage.

TO : Communications Section, A.C.C.

1. Ref your fax/4 dated 2 Dec. 44. I am unable to advise completely on the question submitted in the absence of a copy of the byelaws of the railway service concerned and of further knowledge as to the type and particulars of the consignment notes used, so as to consider for example whether they comply with the requirements of Art. 1863 of the Penal Code and so on. The Minister of Justice informs me that the Ministry of Communications has complete copies of these byelaws and if you will obtain a copy of the byelaws for the particular railway service concerned and further particulars as to exact method of operation, consignment notes, etc. I will consider the matter further.

Without prejudice to the ultimate opinion which may be expressed by this Administration in the light of further information which may be submitted to it, I think it will probably be found that, in view of the peculiar relationship between the Allied Forces and railway services and the terms under which the latter are bound to provide services, no liability under the Penal Code can be established.

2. Whether it is worth conveying this matter further may, however, be debated for two reasons:-

(a) If liability be established and the railway service actually paid the amount of damages from time to time, they would be no in live or A.C.C. line and therefore the transaction would only amount to a bookkeeping entry in the books of the Allied Financial Agency, for the Italian Government are in any event bound to redeem all A.C.C. line issued by the Allied Forces or to provide live for our use.

(b) Directly or indirectly, losses suffered will be included in the bill for costs of occupation when ultimately it is presented.

3. If the real object of pinning liability onto the railway service is to try and make them shudder and to reduce damages then such object is better achieved by bringing direct pressure on the railway service to improve their organization and handling the aid of the Government to this end. Furthermore, even if we pay, there can be nothing to prevent the Allied



TO : Communications Section, A.C.C.

1. For your ref/4 dated 2 Dec. 44, I am unable to advise completely on the question submitted in the absence of a copy of the byelaws of the railway service concerned and of further knowledge as to the type and particulars of the consignment when used, so as to consider for example whether they comply with the requirements of Art. 103 of the Penal Code and so on. The Minister of Justice informs me that the Ministry of Communications has complete copies of these byelaws and if you will obtain a copy of the byelaws for the particular railway service concerned and further particulars as to exact method of operation, consignment when, etc. I will consider the matter further.

Without prejudice to the ultimate opinion which may be expressed by this Subcommission in the light of further information which may be submitted to it, I think it will probably be found that, in view of the peculiar relationship between the Allied Forces and railway services and the courts under which the latter are bound to provide services, no liability under the Penal Code can be established.

2. Whether it is worth carrying this matter further may, however, be doubted for two reasons:-

(a) If liability be established and the railway service actually paid the amount of damages from time to time, they would be so in line with A.M. line and therefore the transaction would only amount to a bookkeeping entry in the books of the Allied Financial Agency, for the Italian Government are in any event bound to reimburse all A.M. line issued by the Allied Forces or to provide line for our use.

(b) Directly or indirectly, losses suffered will be included in the bill for costs of occupation when ultimately it is presented.

3. If the real object of pinning liability onto the railway service is to try and make them stricter and to reduce pilfering then such object is better attained by bringing direct pressure on the railway service to improve their supervision and limiting the aid of the Government to this end. Furthermore, apart from any law, there can be nothing to prevent the Allied Forces from retaining one of their weekly or monthly advances for operating expenses (which are not, I assume, made pursuant to any contract) a sum equal to the losses suffered. But whether this would be operationally sound seems to me doubtful.

G. S. WATKINS, Colonel  
Chief Legal Officer, A.C.C.



332

HEADQUARTERS ALLIED CONTROL COMMISSION AHS/hc/dmd

APD 394

In reply  
refer to: Tn/6/4

2 January 1944

MEMORANDUM TO: Legal Sub-Commission, Headquarters, ACC

SUBJECT : Claims against Italian Railways for loss, damage,  
etc.

1. Attached are the following:
  - a. Message 8860 of 10 November 1943 from AFHQ to FLAMBO.
  - b. Letter ACC Tn/9 of 6 December 1943 to ACC Communications Section.
  - c. Letter ACC Tn/15/3 of 27 December 1943 to ACC Communications Section.
2. Request comments and return to Communications Section.
3. Please expedite in view of enclosure c, above indicated.

*W. H. Stone*

WILLIAM W. STONE  
Capt. U S N R  
Communications Section

3 Incls:  
As listed above

3 Jan

2

340

341/3  
HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee.

GCH/gmf

7 January 1944.

In reply  
refer to: ACC/I/3/1.

SUBJECT: Claims against Italian Railways for loss, damage, etc.

TO : Communications Section, ACC.

1. It is assumed from your report that no contract between the Allied Forces and the Italian Railways will be entered as to carriage of goods at any time.

2. Neither the Italian Civil Code nor any available jurisprudence make any provision for the payment of compensation for loss or damage suffered by articles transported by rail gratuitously.

3. On the contrary, the terms of contract between sender and carrier are very clearly and completely specified in the Code and claims for damages can only be raised against the carrier when all the above referred specifications have been duly complied with.

G. H. URJUN, Colonel  
Chief Legal Officer, ACC.

407

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103