



SMALL CLAIMS TRIBUNAL

Adjudicator: Adv. Dr Christopher Chircop

Today 23rd October 2024

Claim Number: 182/2023CC

Iain Harvey

(Identity Card Number 66069 (A))

Vs

Express Trailers Limited

(C4278)

The Tribunal,

Having seen the Claim filed by the plaintiff on the 18th May 2023 whereby the same, requested the Tribunal to condemn defendant company to pay him the sum of one thousand and thirty six euros (€1,036) for the following reasons:

'On 19th December 2022 my order was successfully delivered to the Ship Low Cost hub in Germany – the delivery note is in pdf attached. By email I was told that it was loaded and leaving for Malta – the packing slip showing the supplier's name, my name and my Ship Low Cost account number is in the email attached, On 24th January I received an email to say that it could not be found and on 25th January I was told that it had been lost and to open an

insurance claim to recover the cost which I did immediately. On 30th January I placed a new order for the same parts, again for delivery to the Ship Low Cost hub in Germany.

On 1st February I was emailed to say that the original item had been found. I contacted the supplier to cancel the second order but was told it had already been dispatched and in order to return it to the hub would need to refuse to accept it. I emailed Ship Low Cost on 2nd February to let them know these instructions. However the item was accepted and for some reason brought to Malta.

I have been in contact with Johann Vella (Director & Head of General Management & Quality Assurance) and Express Trailers Ltd who operate Ship Low Cost to ask for a refund for the cost of the duplicate order, but this has not been accepted. Excuses have been:

- 1. That International shipping regulations allow a 30 day window before an item is declared as lost. But Ship Low Cost decided not to wait 30 days, they decided to declare it as lost and recommended that I open an insurance claim.*
- 2. That the order did not have any labelling. In pdf attached one can see a photo of the label on the original order when delivered and also there is a photo of the onward packing information from ship Low Cost themselves when it was loaded.*

In summary the item was received in Germany, shipped to Malta, then mislaid. Rather than wait, as they could have done, they said it was lost. Their suggesting that the labelling was missing was wrong, on both counts. The cost for the duplicate order was entirely because of their lack of proper processes, or not following the process.'

Having seen the reply of the defendant, filed on the 5th of July, 2023, which states that:

'Agree with the request that is being made or do you want to contest it? If you want to contest it, explain with what you disagree and why.

I do not agree.

We start by making it clear that the most important thing that was lacking was the labelling on the product. The only label that was on the product indicates the name 'LAYHER', which is the name of the German manufacturer and no indication of the consignee in Malta (see attached image). To make it more difficult, the customer's order on our website did not indicate the name 'LAYHER' as the product supplier, but only mentioned 'AMAZON' as the supplier, hence it was even more difficult for the warehouse personnel to make a connection between the two names (see attached order copy). This goes against the conditions that the customer accepts when placing their order on our website, which clearly states, "The Customer shall be responsible for the accuracy and completeness of the particulars inserted in the registration of the shipment and for ensuring that all the packages set out adequate contact details for the shipper and receiver of the package and their contents properly described and classified", it also states "It is the responsibility of the shipper to ensure that all goods have been properly and sufficiently prepared, packed, stowed, labelled and/or marked and that the preparation, packing, stowage, labelling, and markings are appropriate to any operations or transactions affecting the goods and the characteristics of the goods".

These items were consigned in December, which is one of the most demanding months, with hundreds of consignments arriving together, and this was the reason why the process took longer until the legitimate owner was identified. The reason we informed Mr Harvey to start the process to submit a claim was because of his strong insistence that he needs the merchandise immediately and the lack of information we had about the whereabouts of the product. However, at no point did we invite Mr Harvey to reorder the package before the insurance confirmed it would pay for the missing item. He did this out of his own free will. We made every effort to find the items and informed him immediately when this was discovered.

The new order was received at the German Hub on February 1st, 2023, while the customer requested that we refuse the new consignment on February 2nd, which was obviously too late for this to happen. Thereafter, customer chose to request and insist on receiving full compensation from us for the new package, when he could easily have requested the return of the package to the supplier who, on their part, were legally responsible under EU laws that give consumers the right to revoke online purchases within 14 days from receiving the items without giving reasons. We also note that the value of the merchandise indicated by the

customer on the order sent for the package was of €694 with another €32.44 paid for transportation making a total of €726.44 (see attached order copy). Nevertheless, he is now demanding a compensation of €1036.

To conclude on our good will, since we know that the incomplete labelling was not entirely due to our customer's fault, but more of the shipper's, we have offered to refund the full transport cost from Germany to Malta for both the first and the second consignments, however this was refused by the customer who continued to insist on receiving the full value of the merchandise, even refusing to take receipt of the new package”

Having seen that the plaintiff amended his claim to €781 representing as to €694 the price of the second order, as to €33.50c the shipping costs and as to €54.40c the expense of making this claim.

Having seen that during the sitting of the 29th January 2024, the plaintiff declared that he had no further evidence to produce in this case.

Having seen that during the sitting of the 20th May 2024, Johann Vella on behalf of the defendant company, declared that defendant has no further evidence to produce in this case.

Having seen the transcripts of the witnesses;

Having seen all the acts of this present case and the exhibited documents;

Having seen the final submissions of the parties;

The Tribunal considers:

That in support of the claim brought against the defendant, the plaintiff presented the following witnesses and evidence:

1. **Mr Iain Harvey** testified that he had placed an order for delivery to the depot of express trailers in Germany, which was delivered, shipped and loaded.

Express Trailers Limited informed him the item has been lost and he should submit an insurance claim, which he did.

The witness proceeded to order a second item and a few days later Express Trailers informed him that the lost item that had to be delivered to him was found.

Although he tried to cancel the order, it was too late and Express Trailers did not offer a solution to return the item.

Under cross-examination the plaintiff insisted that when his package was delivered to the defendant's company depot in Germany, the package had a label with his name on it and with his account details.

2. **Several correspondence between the plaintiff and representative of the defendant company and several documents.**

In consideration of the claim brought against the defendant company, the defendant company presented the following witnesses and evidence:

1. **Johann Vella** testified and exhibited the label that was found on the package. He also exhibited a copy of the booking receipt showing supplier as Amazon and receiver as Malta Office Service Limited namely Mr Iain Harvey. None of these names were showing on the package. He also exhibited an excerpt from the terms and conditions accepted by the plaintiff Mr Iain Harvey which state that: *'The Customer shall be responsible for the accuracy and completeness of the particulars inserted in the registration of a shipment and for ensuring that all packages set out adequate contract details for the shipper and receiver of the package and their contents properly described and classified'*

2. Several documents.

The Tribunal considers:

That in this case it results that the plaintiff ordered again a product that he had already ordered when he was informed by an employee of the defendant company that his item has been lost and he was advised to file an insurance claim.

It later emerged that the item had been mislaid, not lost, rendering the insurance claim irrelevant.

Therefore the plaintiff is seeking compensation of €781 for the cost of the duplicate item which is still held by the defendant company because the plaintiff refused to collect the new package.

The defendant company is refusing to compensate the plaintiff the amount requested because of improper labelling of the product shipped which contravenes the conditions agreed upon during the order placement which state that customers are responsible for the accuracy and completeness of shipment details, including proper labelling of shipper's name, receiver information, and the unique number provided by the defendant company to the customer, which must be clearly marked on the package and that Mr Harvey demanded full compensation for the new package despite having the option to return the item to the supplier under EU legislation which allow consumers to revoke online purchases within fourteen days without the need of specifying a reason.

The Tribunal considers:

It results that, although the product shipped arrived in Malta with a label which only displayed the name LAYHER without indicating the consignee in Malta or the supplier in Germany, on the 19th December 2022 the plaintiff order was successfully delivered to the Ship Low Cost

hub in Germany and the plaintiff was informed by email, that the product was loaded and leaving for Malta.

The plaintiff exhibited in the acts of this case a copy of the delivery note and confirmation email from Ship Low Cost in which both documents clearly show the name of the producer, plaintiff's name and plaintiff's shipping code.

Therefore, this Tribunal considers that the supplier has put on the package an adequate label. If for some reason or other, while the product was in transit, this label was removed from the package, definitely it's not the plaintiff's fault.

The defendant company also stated that Mr Harvey demanded full compensation for the new package despite the fact that in terms of EU legislation, he had the option to return the item to the supplier and revoke the online purchase within fourteen days without specifying a reason. However, the defendant company in its final submissions clearly stated: ***'It appears that Mr Harvey was unaware of this right'***.

The Tribunal cannot ignore the fact that the plaintiff re-ordered the same product on the 30th January 2023, as a result of the instructions provided by the employee of the defendant company on the 24th January 2023, whereby he was informed that his item could not be found. On the 25th January 2023, the plaintiff was also told that his item had been lost and consequently he was to open an insurance claim to recover the cost.

Then on 1st February 2023, the plaintiff was informed that the original item had been found.

Therefore, the plaintiff was incorrectly informed by the defendant company that his item has been lost and was advised to file an insurance claim.

Therefore, having considered all the circumstances described above, the Tribunal is going to condemn the defendant company to pay the sum of €781 to the plaintiff.

Decision

In the light of the above, the Tribunal proceeds to accede to the plaintiff's request and condemns the defendant Express Trailers Limited to pay the plaintiff Mr Iain Harvey the sum of seven hundred and eighty one euros (€781).

The Tribunal is not awarding interest in favour of the plaintiff since this was not requested and therefore, this Tribunal would otherwise be acting *extra petita*.

Sgn. ADV. DR. CHRISTOPHER CHIRCOP

Adjudicator

Rosanne Piscopo

Deputy Registrar