

BETWEEN

ACK Ltd

FIRST APPLICANT

AND

ACL

SECOND APPLICANT

AND

ZXU Ltd

FIRST RESPONDENT

AND

ZXT Ltd

SECOND RESPONDENT

Date of Order:

17 April 2013

Referee:

Referee A Davidson

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the Applicants' claim is dismissed.

Facts

[1] ACL went on a family holiday to [North Island destination] in February 2009. While there, ACL's trailer broke and so it and the goods that ACL had been using it to carry could not be towed back to [North Island departure city]. ACL contacted TF Ltd and arranged to have both the trailer and goods it was carrying brought to ZXU Ltd's storage yard in [North Island departure city].

[2] The trailer and goods were transported to [North Island departure city] and delivered to ZXU Ltd's yard. When he arrived to collect them, ACL was disappointed to find that both the trailer and the various goods on the trailer were damaged, presumably by goods of some weight having been placed on top of the trailer in the course of them being transported to [North Island departure city].

[3] TF Ltd invoiced ZXU Ltd for the transport who in turn invoiced ZXT Ltd as it had a commercial relationship with ACL's company, ACK Ltd. ACK Ltd was also the owner of some of the goods.

[4] ACL brought the issue to TF Ltd's attention in an email dated 17 February 2009, however he fell ill shortly afterwards and has not pursued the matter since.

[5] ACK and ACL argue that either ZXU Ltd or ZXT Ltd are liable for the damage to their goods because one or other of them was the contracting carrier.

Issue

[6] The issue is whether either of ZXU Ltd or ZXT Ltd were the contracting carrier and, as such, liable for the damage to ACK Ltd and ACL's goods.

Law

[7] The Carriage of Goods Act 1979 provides that the contracting carrier shall be liable for any damage to goods from the point they are accepted for carriage until the time they are collected by the consignee (in this case, ACL). The Act defines a contracting carrier as:

Contracting Carrier, in relation to a contract of carriage, means the carrier who, whether as principal or as the agent of any other carrier, enters or has entered into the contract with the contracting party.

Decision

[8] ACL argued that either ZXU Ltd or ZXT Ltd were the contracting carrier. Firstly, ACL regarded TF Ltd as an agent of ZXU Ltd as he knew that TF Ltd was part of the network of companies that ZXU Ltd used. So although he was talking with TF Ltd, ACL believed he was dealing with a ZXU Ltd agent and contracting with ZXU Ltd. Secondly, by paying TF Ltd's invoice (in the case of ZXU) and invoicing ACK Ltd (in the case of ZXT Ltd) they had each accepted responsibility for the carriage.

[9] Having considered ACL's arguments and the wording of the Act, I find that neither ZXU Ltd nor ZXT Ltd were the contracting carrier. ACL may have believed that he was dealing with TF Ltd in its capacity as an agent; however, in this instance TF Ltd was not acting as an agent, it was acting on its own behalf. ACL contacted TF Ltd directly, made arrangements with TF Ltd and so the contract was with TF Ltd. A contract is an agreement between two parties: if TF Ltd was not acting as ZXU's agent and ACL did not speak to ZXU Ltd directly, ZXU Ltd had no actual or constructive knowledge of the agreement and cannot be said to have agreed to it or to be a party to it. Even if TF Ltd was acting as an agent I note that the definition of contracting carrier in fact encompasses agents as well, which would mean that TF Ltd would still be the contracting carrier.

[10] ACL also argued that ZXU Ltd accepted responsibility for the carriage by paying TF Ltd's invoice and, in ZXT's case, invoicing him. I find that this does not mean that either of them was or became the contracting carrier. The parties to a contract are determined at the

outset, at the point in time where the terms are agreed, and so it is at the outset that the contracting carrier for the purposes of the Act is also determined. It was only later, after the contract had been agreed and the goods delivered that the billing arrangements relied on by ACL arose. And so, while the eventual billing arrangements between the parties may not have been aligned with liability under the Act, it is the Act that prevails in terms of determining liability. The identity of the contracting carrier is determined at the outset and subsequent billing arrangements cannot change who the contracting carrier is for the purposes of the Act.

[11] For these reasons, I find that neither ZXU Ltd nor ZXT Ltd are the contracting carrier and accordingly that neither can be liable under the Carriage of Goods Act 1979 for the damage to ACL's and ACK Ltd's goods. On this basis, ACL's and ACK Ltd's claim must be dismissed.