

Western High Court: Freight forwarder complicit in breach of cabotage rules

Recently, the Western High Court ruled in a case where a Romanian driver in Denmark was found to be in violation of the Cabotage Regulation (EU Regulation No. 1072/2009). The case is remarkable as both the Polish haulier who had rented the driver and a Danish freight forwarder in the same group of companies as the Polish haulier were charged with and found respectively responsible for and contributing to the driver's breach of the cabotage rules.

Many large Danish hauliers will often control a foreign haulier's vehicles and drivers, so the judgment may have far-reaching consequences. However, the judgement seems to have very specific circumstances.

According to the Cabotage Regulation, it is the haulier who has a Community license and has employed the driver for the transport, who is responsible for the compliance with the cabotage rules. However, in this case the Western High Court did not find that a regular employment relationship was necessary.

Based on the general rules on complicity in section 23 of the Danish Criminal Code, the Western High Court found that the Danish freight forwarder who had controlled the vehicle in connection with the haulage was to be fined, as the court specifically emphasised the confusion of the activities of the Polish haulier and the Danish freight forwarder. There was an overlap of people in the management of the companies involved as the director of the freight forwarding company also was in charge of the time management of the drivers of the Polish haulier. In addition, control of drivers' driving time and rest periods was conducted by the Danish freight forwarder's office, which had also established various facilities for drivers and vehicles.



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