## Deadlines for repairs

According to article 19.1 and 19.3 the RU shall arrange for the wagon to be put back to running order in case of damage. If the cost of repairs is more than 850 EUR, the agreement of the keeper must first be sought, except in the case of brake block replacements. If the keeper does not respond after 2 working days (not including Saturdays) the repair work shall go ahead. When the damage does not affect the wagon's suitability to run, but makes its use difficult, the RU may carry out work to make the wagon fit for use again without the keeper's agreement, up to an amount of 850 EUR.

The general idea of these provisions is fine, but the problems stem from lack of any deadline for RU for carrying out the repair. There were numerous situations of a wagon not being repaired for even 2 months from the date of getting the Wagon Damage Report according to Appendix 4. Moreover, it was difficult to obtain any reliable information on the current actions being taken and the provisional date of repair. Such cases were the most frequent in Italy and France. The user of a wagon expects it to be repaired as soon as possible, because there is always a risk of losing contracts or getting fines in case of not delivering goods on time or missing the receiving arrangements. If the wagon keeper receive only the WDR (without request for agreement of the cost exceeding EUR 850 or request for spare parts made by means of Form H/HR), he has legitimate expectations for the repair performed without any unnecessary delay. Currently the keeper has no influence on the process and has to patiently wait for RU to repair the wagon, often without any clue when it is going to be done.

The situation of the keeper and RU is now unbalanced. On one hand there is no time limit for the RU to do the repair, yet the keeper is obliged to deliver spare parts within 20 days under the risk of charges for the period of wagon being out of service or has to accept the RU cost of repair within 2 days with silent consent rule applicable. The keeper has no basis to demand compensation for lengthy withdrawal from service in case of minor damage. The above is of course a problem in the case of keeper’s responsibility for typical exploitation defects such as cracked spring or leaf spring, malfunction of breaking system, etc. The situation in case of RU’s responsibility is covered by the contract and Appendix 6 describing the method of calculation of flat rates in compensation for loss of use.

The other issue is that the contract does not give any rules or conditions for choosing the workshop for repair. There is a tendency to transfer responsibility to the keeper, but according to the GCU the RU is organizing the repair. On the other hand the prices of handling identical defects (minor) are sometimes radically different around Europe and common use of EUR 850 rule might be a problem in cooperation.

## Wheelset value loss

According to the article 23.2 In case of damage to the wagon or its accessories, compensation shall be limited to the cost of repairs. Compensation for loss of use shall be granted in accordance with Article 13.3 and the appendix 6. There is a problem with decrease of the value of a wheelset after the repair (reprofiling). Some of the damage of the wheelset disc/tyre (for example flats or metal inclusions) might be caused by incorrect driver work. Each reprofiling result in loss of part of the wheelset disc/tyre and its “exploitation supply”. The difference of thickness of the material between the new and fully worn out wheel is around 40 mm and one reprofiling may lead to loss of couple or even dozen mm. The fully worn out wheelset could be reused after equipping with new disc/tyre with the use of the original axle, but this equals cost counted in thousand EUR. Not only the cost of the reprofiling should be taken into account, but also the fact that the wheelset after 4 such operations needs new discs/tyres. This loss of the value is not compensated by the RU to the keeper and only the cost of the current repair is borne.

It is worth mentioning that there are RUs (e.g. Green Cargo in Sweden) recognizing the cost of wheelset value decrease in result of diameter reduction and they refund it to the keeper. It is in the keepers opinion the correct understanding of RU responsibility for the damage and they formulate a postulate of introducing an unambiguous provision describing the obligation for such refund and setting the rules for calculating flat rate compensation for 1 mm of wheel diameter reduction.

## Jurisdiction

According to Article 32 unless otherwise agreed between the parties, the competent jurisdiction shall be that in which the defendant is established. As can be seen in the above paragraphs, the conflicts, disputes and contradictions are inevitable. It is therefore worth considering to introduce into the AVV/GCU some kind of arbitration. Each party might address this body requesting the solution of the argument. Sometimes the object of the dispute is of low value (couple of hundred or thousand EUR), but there is no room for agreement within the normal business negotiations. On the other hand, the court proceedings are lengthy and expensive (especially when the seat of the defendant is on the other shore) in comparison to the possible loss refund. There were cases of RU not questioning the claim but refused to pay the compensation, obviously making the right call that the keeper would calculate the costs of trips, accommodation, translations, etc. during the trial and resign from submitting the file. Introduction of an “Arbitration Body” comprised of rail experts (independent from the parties considered) with the power to give binding sentences is for sure an option to be investigated.

## Damage Reporting

According to the Article 18. a copy of the wagon damage report shall be sent to the keeper without delay. Keepers complain that they are sometimes being surprised by getting a file including an invoice for a less than 850 EUR repair and a WDR never seen before and what is important the damage occurred couple of months or over a year earlier. Post factum they get information that some minor damage was handled for a certain amount of money. The invoices are normally rejected in such situations, as the keeper is unable to verify the actual damage and the repair carried out in a proper manner according to the Article 18.4. Afterwards an argument is rising, because the RU is demanding the payment and future cooperation, especially the repairs done by the RU, is in question. It should be cleared whose position in such situation is in line with the GCU and the provisions of the contract should be more precise in this matter in order to reduce the risk of conflicts, as well as impose the RU to obey the obligation of informing the keeper.

According to the Article 22.1 the RU which has custody of a wagon shall be liable to the keeper for any loss of or damage to the wagon or accessories unless it proves that the damage was not caused by fault on its parts. Furthermore, Article 22.2 states that the RU shall not be liable if it brings proof of one of the fault of a third party. In other words, the RU bears the obligation to justify the claim of not being responsible for the loss.

There are some practical problems with the responsibility for loss of removable accessories which are the subject of the WDR. For example an RU 1 is issuing a report with an information on a missing axle-box cap, but claims that the wagon was handed over by the RU 2 with this defect and not providing any evidence to support such statement. The keeper therefore demands covering the cost of repair from the RU reporting the damage/loss, as there is no basis for addressing the RU handing over the wagon (for example a signed protocol of wagon handing over with all the defects listed explicite). The keeper is reluctant to take the risk of own repair without the certainty that the cost is reimbursed by the previous or current user RU and the wagon might be out of service for a long period.

It should be cleared whether a sole statement in the WDR “the wagon was handed over by the RU /name/ with the defect reported” is sufficient to address the previous RU for covering the cost of repair or there should be a written evidence for that, otherwise the current user RU is liable to the keeper for the loss or damage.