



Aviation Claims and Cargo Damage – Time Bars and the New Limitation Figures

The carriage by air of cargo is regulated by domestic law, which gives effect to international conventions. These are agreements entered into by a number of countries, with a view to assisting commercial trade.

In air transportation, the [Warsaw Convention](#) (agreed in 1929) and the [Montreal Convention](#) (agreed in 1999) are both international agreements designed to create a common system of rules for liability when carrying goods, people and baggage air transport.

The Warsaw Convention:

- Primarily established to agree minimum levels of liability and compensation and limits of liability in respect of goods.
- It was meant to develop the maturing aviation market by providing safeguards for carriers and consignors alike.
- Article 22 of the Warsaw Convention limits the carrier's liability for the carriage of cargo to 250 Francs per kilogram.
- However, over the years, the limits of liability, as well as some procedural requirements found in the Warsaw Convention, had become stale and required updating.

The Montreal Convention :

In 1999, the Montreal Convention was adopted to update the Warsaw Convention:

- Intended to provide for a more uniform and all-encompassing liability regime.

- Article 22 of the Warsaw Convention originally limited cargo liability of the carrier to a sum of 250 Francs per kilogram. Over a period of time, this limit has increased to 22 SDRs per kilogram.
- The International Civil Aviation Organization ("ICAO") stated on 18 October 2024 that these limits will increase on 28 December 2024.

New Limits under the Montreal Convention

- Article 22(1) – Delay: The current limit is 5,346 (SDRs). From 28 December, the revised limit will be 6,303.
- Article 22(2) – Baggage: The current limit is 1,288 (SDRs). From 28 December, the revised limit will be 1,519.
- Article 22(3) – Cargo: The current limit is 22 (SDRs). From 28 December, the revised limit will be 26.

Which Convention Applies?

This depends on the departure and destination countries and which Conventions they are both signatories to:

- If the countries of departure and destination have both signed up to the Montreal Convention, then that convention applies.
- If neither country is signed up to the Montreal Convention, but both have signed up to the Warsaw Convention, then the Warsaw Convention applies.
- If one country has signed up to both conventions, but the other has only signed up to the Warsaw Convention, then the Warsaw Convention applies.
- Contract terms state which convention applies.

Time Bars Under the Warsaw and Montreal Conventions

Under the Warsaw and Montreal Conventions, there are time bars within which claims must be made for loss, damage, or delay in the transit of goods.

Claims regarding damage and loss to air freight cargo are subject to a two-year time bar from the date of arrival at the destination, or from the date on which the aircraft should have arrived, or from the date on which the carriage was stopped.

Article 29 of the Warsaw Convention also states, "any action must be brought within two years of the date of arrival, the date on which the carriage was to have been made or the date on which the carriage otherwise ceased". The Montreal Convention establishes a two-year time bar for claims in Article 35.

An "action" means a legal action has to be started.

If the action is not brought within a period of two years, the right to compensation ceases to exist. This is absolute, there are no exceptions..

Checklist of Steps to Ensure Time Bars Are Not Missed

- When dealing with regular shipments both carrier and consignor must keep a strict track of delivery dates and delivery conditions.
- If the freight forwarder or a third party is dealing directly with a carrier – it is imperative they keep the consignor aware of the time bars.

Time Bar Considerations for Perishable Goods

- Air transport is the most challenging mode for perishable goods like flowers as they are time-sensitive and can be damaged if not handled and delivered quickly.
- Surveyors from both carrier and consignor should attend to inspect damaged cargo as soon as possible. A carrier should always be invited to send a surveyor if they choose not to attend.
- The carrier must be informed immediately if any damages are visible, which is essential for enabling a claim to be filed.
- Prompt inspection preserves evidence and allows the processing of claims within necessary time bars.

Timeliness of Claim Documentation:

For items that may go bad within a few hours of delivery, waiting too long to file a claim can compromise the evidence and relevant damages more difficult to substantiate as having occurred in transit. However, the timely filing of claims within the time bars preserve the right to claim compensation while enhancing chances for success.

Watch Those Time Bars

Parties should keep close to a two-year period for time bar under the Conventions. Careful documentation of the shipment timeline, including the temperature at the time of delivery to the carrier, as well as noting any delays or temperatures outside of the acceptable range, is critical to making a timely claim.

Engagement with Legal and Logistical Teams:

For businesses that deal with perishable items of high value, it would be ideal to have the coordination of legal and logistical to navigate the intricacies of the time bars as well as meeting compliance on the dot.

Need Assistance with Air Cargo Liability and Compliance?

At [LA Marine](#), we understand the complexities of air cargo law, including liability limits, time bars, and international conventions like the Warsaw and Montreal Conventions. If you're dealing with high-stakes shipments or need guidance on claim documentation and compliance, our team is here to help. Please contact us at online.enquiries@LA-law.com.