SUPREME COURT OF NORWAY

J U D G M E N T

given on 8 May 2025 by the Supreme Court composed of

Chief Justice Toril Marie Øie
Justice Wilhelm Matheson
Justice Ingvald Falch
Justice Kine Steinsvik
Justice Knut Erik Sæther

HR-2025-823-A, (case no. 24-144137SIV-HRET)
Appeal against Borgarting Court of Appeal's judgment 4 June 2024

Schenker AS	(Counsel Tage Brigt Andreassen Skoghøy)
v.	
Grieg Seafood Sales AS	(Counsel Jan Magne Isaksen)

(1) Justice **Steinsvik:**

Issues and background

(2) The case concerns a claim for payment of air freight for a completed shipment of salmon to China. The question is whether the obligation to pay has wholly or partially lapsed due to the sender's right to retroactively cancel the air carriage contract.

(3) Grieg Seafood Sales AS (Grieg) is a Norwegian-registered company and part of the Grieg Seafood group. The company is engaged in the production and sale of seafood aimed at domestic and international markets.

(4) Schenker AS (Schenker) is a Norwegian-registered freight company and part of the German Schenker group. The company operates a divisions specialising in the transport of seafood from Norway to various markets, mainly outside Europa.

(5) During the Covid-19 pandemic, the demand for Norwegian salmon in China was high. Due to infection control measures and limited cooling capacity at Guangzhou Baiyun International Airport (CAN) in China, it was challenging to have the fish delivered there.

(6) Schenker and Grieg had an ongoing dialogue regarding transport capacity, and Schenker explored the air carriage market to meet Grieg's transport needs. Since February 2021, Schenker has undertaken more than 170 assignments on behalf of Grieg to facilitate the international transport of salmon.

(7) On 13 September 2021, Schenker contacted the sales agent Air Trade Support (ATS) to discuss an arrangement for the transport of salmon to CAN via Ethiopian Airlines (ET).

(8) The offered transport capacity exceeded the cooling capacity at CAN. However, the plan was for the recipients to collect the fish shortly after arrival, thereby eliminating the need for on-site cooling. As part of the arrangement, ATS was tasked with establishing a dedicated "China team" to ensure prompt handling upon arrival.

(9) Schenker communicated the transport plans to Grieg. Subsequently, on 15 September 2021, the parties entered into an oral agreement under which Schenker assumed the role of contracting carrier for the transport 76 tonnes of salmon on behalf of Grieg, from Liège Airport in Belgium (LGG) to CAN in China. The agreed consideration amounted to just over NOK 3 million.

(10) The parties agree that the premise for the contract was that the salmon would be delivered to Grieg's customers shortly after arrival. Grieg also retained the right to cancel the air freight up until the point of departure from Belgium, should delivery prove to be difficult.

(11) On the same day as the contract with Schenker was concluded, Grieg entered into sales agreements for a total of 76 tonnes of salmon with four different customers in China, for a combined sales price of NOK 9,263,086. The sales price was paid in advance. Following this, Grieg slaughtered the salmon in Norway and transported it by lorry to Belgium.

(12) The fish was sold under Incoterms CIP (Carriage and Insurance Paid), meaning that Grieg, as the seller, paid for freight and insurance up to the point of delivery at CAN, while the risk was transferred to the individual buyers already upon delivery to Schenker at Liège Airport.

(13) Up until the departure on 23 September 2021, there was ongoing communication between Schenker and Grieg regarding the details of the freight arrangement. Schenker was also in contact with its agent ATS, which – prior to departure – was more reserved than earlier about its responsibilities and ability to influence how Chinese authorities would handle the goods at the airport. It is undisputed that Grieg was not informed of this communication.

(14) Following the arrival at CAN, there was a delay of four days before the salmon could be delivered to Grieg's customers, due to imposed infection control measures. The lack of cooling capacity at the airport resulted in the fish being left outdoors in warm weather. By the time delivery took place on 28 September 2021, a significant portion of the shipment was spoiled. According to the information provided, the damage is not covered by either party's insurance.

(15) On 30 September 2021, Schenker issued an invoice to Grieg for air freight and the service fee. Grieg disputed the claim.

(16) Schenker brought an action for payment in Oslo District Court. In its judgment of 16 May 2023, the Court ruled in favour of Grieg and awarded it legal costs. The Court found that Grieg was entitled to cancel the carriage contract retroactively and was therefore not responsible for the freight charges.

(17) Schenker appealed to Borgarting Court of Appeal, which – on 4 June 2024 – ruled as follows:

> "1. The appeal is dismissed.
>
> 2. Schenker AS is to pay Grieg Seafood Sales AS NOK 854,489 in costs before the Court of Appeal within two weeks from the service of the judgment."

(18) The Court of Appeal likewise found that Grieg was entitled to retroactively cancel the carriage contract, thereby releasing itself from the payment obligation. The Court proceeded on the basis that the shipment of salmon was "completely spoiled", that the purpose of the freight had been substantially frustrated and that Schenker had acted negligently.

(19) Schenker has appealed to the Supreme Court, challenging both the application of law and the findings of fact. For the disputed issues covered by the appeal, the case remains substantially the same as in the Court of Appeal, except that Schenker is now contesting that the shipment was completely spoiled.

The parties' contentions

(20) The appellant – *Schenker AS* – contends:

(21) Grieg cannot retroactively cancel the carriage contract once the transport has been completed and the goods have been delivered to the recipients, who have paid the purchases prices to

Grieg. Under such circumstances, retroactive cancellation is not an available remedy for breach of contract. Grieg therefore remains responsible for the freight charge.

(22) Losses arising from cargo damage during transport are fully compensable under the rules of tort law.

(23) In any event, the threshold for retroactive cancellation is higher than that applied by the Court of Appeal. Cancellation is an uncommon and impractical remedy for breach of carriage contracts. In determining the applicable threshold, reference should be made to the Maritime Code, which does not permit retroactive cancellation unless the goods are "no longer in existence", see section 344. A rule allowing retroactive cancellation of air carriage contracts must, in any case, be reserved for situations involving worthless performance, where the purpose of the transport has been substantially frustrated or where the goods have been completely lost or spoiled.

(24) Grieg received full payment from its customers in this case, and the damage occurred after the risk for the goods had passed to them. Potential, but currently unresolved, claims from the customers do not justify retroactive cancellation of the carriage contract between Schenker and Grieg.

(25) In the event of cancellation, Grieg must return the value of the performed carriage contract. The performance of the contract provided Grieg with the agreed benefit, as it enabled the execution of the fish sales agreements. The buyers had prepaid the purchase price. Potential claims for damages from the customers against Grieg are not relevant to a cancellation settlement with Schenker.

(26) Grieg is also not entitled to a price reduction, as no loss of value has been demonstrated in the freight service. Losses resulting from damage to goods cannot, in a case like this, justify a reduction in the freight charge.

(27) Schenker AS asks the Supreme Court to rule as follows:

> "1. Grieg Seafood Sales AS is liable to pay NOK 3,016,522.20 to Schenker AS with the addition of default interest from 31 October 2021 until payment takes place.
>
> 2. Grieg Seafood Sales AS is liable for costs in all instances."

(28) The respondent – *Grieg Seafood Sales AS* – contends:

(29) The Court of Appeal correctly concluded that Grieg was entitled to retroactively cancel the carriage contract. Accordingly, Grieg cannot be held liable for Schenker's claim for payment.

(30) The cancellation issue must be determined in accordance with ordinary principles of contract law. Under these principles, a party may cancel the contract with retroactive effect if the purpose of the carriage contract has been substantially frustrated, or if there has otherwise been a particularly serious breach of contract by the carrier. Retroactive cancellation may also be justified in cases of gross negligence in the performance of the carriage service.

(31) There is no basis for an analogous application of the provisions in the Maritime Code or other principles of transport law. In any event, these rules lead to the same result.

(32) The conditions for retroactive cancellation are met. The breach occurred already at the outset of the transport assignment and is gross. By failing to communicate that ATS would no longer guarantee prompt handling of the salmon upon arrival, Schenker deprived Grieg of the opportunity to exercise its contractual right to cancel the transport. Had this information been disclosed, the salmon could have been redirected to alternative markets.

(33) The fundamental premise of the contract – prompt handling upon arrival – was also breached. The salmon was completely spoiled due to Schenker's failure to fulfil its contractual obligations. Schenker's negligence must be given significant weight in the overall assessment. Consequently, Grieg's purpose in arranging the transport was substantially frustrated.

(34) In a cancellation settlement, any significant benefits Grieg may have derived from the carriage must be returned. However, this only applies to benefits that are causally linked to the breached contractual obligation, and restitution must be reasonable. The prepayment received from the buyers of the salmon arise from a separate contractual relationship and cannot be taken into account. Furthermore, three out of four customers have demanded repayment, making it unlikely that Grieg will ultimately retain any financial gain.

(35) In any event, the breach of contract entitles Grieg to a price reduction equivalent to the freight charge, thereby extinguishing the claim for payment.

(36) Grieg Seafood Sales AS asks the Supreme Court to rule as follows:

> "1. The appeal is dismissed.
>
> 2. Grieg Seafood Sales AS is awarded costs."

My opinion

The issue

(37) The legal issue in this case is whether an air carriage contract may be retroactively cancelled after the carriage has been performed.

(38) The fundamental legal consequence of cancellation is that the parties' contractual obligations are extinguished. If the contract has been wholly or partially performed at the time of cancellation, the general rule is that each party must return – or restitute – the service received.

(39) For services that, by their nature, cannot be returned, cancellation generally has only prospective effect. However, as I will return to, this is not without exception. In certain situation, cancellation may still be available even where the service, by its nature, cannot be returned.

(40) The parties disagree to some extent as to the legal basis for assessing the cancellation issue in this case. I will therefore begin by addressing that question. I will then consider the

appropriate threshold for retroactive cancellation of air carriage contracts, and whether that threshold has been met in the present case.

Legal basis for assessing whether Grieg may cancel the carriage contract

(41) The oral contract between the parties contains no provisions on remedies in the event of breach of contract. The parties further agree that no standard terms have been incorporated into the air carriage contract.

(42) Chapter X (D) of the Aviation Act contains mandatory provisions on the carrier's liability for goods and delays during air carriage, see sections 10-1, 10-19 and 10-20. Chapter X implements the Montreal Convention of 28 May 1999 for the Unification of Certain Rules for International Carriage by Air. Whether the liability provisions in the Aviation Act apply to aviation involving foreign aircraft outside Norwegian territory depends on whether the conditions in section 1-2 subsection 3 are met.

(43) Neither the Aviation Act nor the Montreal Convention contains provisions on cancellation or price reduction in the event of breach. However, I find it clear that neither the Act nor the Convention provides an exhaustive regulation of remedies available for breach of contract by the carrier. Grieg's claim for cancellation must therefore be assessed under general Norwegian contract law.

(44) Schenker has invoked the provisions in the Maritime Code rules on carriage contracts, providing that retroactive cancellation is generally not an available remedy after the goods have been delivered, see section 264 subsection 1 second sentence. If a part of the carriage has been performed when the contract is cancelled, see section 265 subsection 4 in conjunction with section 341, the carrier is entitled to distance freight for the part of the carriage performed. Cancellation thus only has prospective effect. An exception applies if the shipment is "no longer in existence" at the end of the voyage, see section 344. In such cases, "[f]reight cannot be claimed," unless the loss is a consequence of circumstances listed in subsection 1 of the same provision. Schenker argues that similar rules should be applied to air carriage.

(45) The precise scope of the condition that the goods are "no longer in existence" at the end of the voyage has not been clarified in case law. The corresponding criterion in the former Maritime Code of 1893 was discussed in two older judgments in Rt-1933-769 and Rt-1948-107. However, I find it difficult to see how these judgments clarify the application in a way that would make the current provision in section 344 of the Maritime Code suitable for direct analogous application to air carriage contracts. Nor can it be ruled out that different considerations may apply to shipping and aviation. I therefore will not pursue the issue of whether the provision may be applied analogously in the context of aviation.

(46) The Road Carriage Act contains no provisions on cancellation that may offer guidance. Nor do the General Conditions of the Nordic Association of Freight Forwarders (NSAB 2015) include rules on cancellation that could serve as an expression of industry practice.

(47) Against this background, Grieg's claim for retroactive cancellation must be resolved based on non-statutory principles of Norwegian contract law.

The cancellation issue

The threshold for cancellation of performed air carriage contracts

(48) Cancellation is a severe sanction for breach of contract. Accordingly, strict conditions generally apply for cancelling a binding contract. The general rule in contract law is that cancellation is only permitted in cases of material breach, see Supreme Court judgment in Rt-1998-1510, page 1518.

(49) According to case law, the determination of whether a breach is material depends on an overall assessment of whether the deviation from contractual obligations is such that the injured party – taking all circumstances into account – has reasonable grounds to consider itself released from the contract, see Supreme Court judgments in Rt-1998-1510, page 1518 and in Rt-2010-710, paragraph 43. A summary of typical factors considered in the materiality assessment is provided in Erlend Haaskjold, *Obligasjonsrett, En innføring* [the law of obligations, an introduction], 2nd edition, 2023, page 174:

> "In assessing whether a breach of contract is material, certain typical factors are considered. It is the balancing of these factors that determines whether the breach justifies cancellation. These factors are: (i) the nature and extent of the breach, (ii) the type of contract, (iii) the significance of the breach for the creditor, (iv) the consequences of cancellation for the debtor, (v) the cause of the breach, (vi) the risk of recurrence, (vii) the availability of alternative remedies, and (viii) the interest in avoiding a complex cancellation settlement."

(50) Claims for cancellation where restitution *is not possible* due to the nature of the performance must also be assessed based on an individual overall assessment of whether the party nonetheless has reasonable grounds to cancel the contract. That is the situation in the present case – the air freight has been performed and cannot be reversed. If cancellation is permitted, the settlement must take the form of a purely financial adjustment aimed at restoring the contractual balance.

(51) According to general principles of contract law, stricter conditions apply to retroactive cancellation where, as here, the performance cannot be restituted. A material breach alone is not sufficient. For certain types of contracts, the starting point is also that cancellation only has prospective effect, see Supreme Court judgment HR-2016-219-A, paragraph 37, concerning consumer construction contracts.

(52) To determine the threshold for cancellation of air carriage contracts, I will first examine other legislation on service contracts, and then consider what is stated in legal literature.

(53) Section 15 subsection 2 and section 26 subsection 2 of the Craftsman Services Act, regulate cancellation in cases of delay and defects, respectively, where part of the service has already been performed. The general rule in section 15 subsection 2 is that – where a non-negligible part of the service has been performed – the consumer may "only cancel for the part that remains." However, if "the purpose of the service is substantially frustrated," the second sentence provides that the consumer may cancel the entire contract.

(54) According to the preparatory works, the stricter conditions for cancellation are based on similar requirements found in contracts for the manufacture of goods under the Sale of Goods Acts of 1907 and 1988, see Norwegian Official Report 1979:42, page 111, and Proposition to the Odelsting no. 29 (1988–1989), page 81. These sources emphasise the "far-reaching

consequences" of cancellation where the contractor has performed work that cannot be utilised in other contexts, and that cancellation, therefore, should be "reserved for cases where the defect renders the performed work of little value to the consumer," see Norwegian Official Report 1979:42, page 111. This source also sets out that not every deviation from the consumer's intended purpose justifies cancellation – only a "qualified deviation". In assessing whether the purpose has been substantially frustrated, extraordinary or unforeseeable circumstances on the part of the consumer must be disregarded.

(55) The Financial Contracts Act contains a similar provision in section 3-48, which regulates the customer's right to cancel the contract in the event of breach by the service provider. For financial services that have already been delivered, section 3-48 subsection 1 third sentence provides that even if the materiality requirement is met, the contract may only be cancelled "if the customer's benefit from the delivered service is insignificant and the service provider does not suffer an unreasonably large loss, unless the customer's purpose with the contract has been substantially frustrated as a result of the breach".

(56) In the preparatory works, the Ministry justifies this rule – which is not limited to consumer relationships – by stating that a "common starting point under current non-statutory law is that for services already provided, cancellation is not permitted even in the event of material breach by the service provider", and that "if the customer is to be allowed to cancel a service that has already been provided, more is required than a 'material breach'", see Proposition to the Storting 92 LS (2019–2020), page 221.

(57) The conditions relating to the customer's insignificant benefit and the avoidance of unreasonable loss to the service provider are, according to the preparatory works, intended to prevent "the customer from retaining a benefit from a delivered service and thereby 'profiting' from the service provider's breach." An exception nonetheless applies, where the customer's purpose with the contract has been substantially frustrated as a result of the breach, see the same Proposition, page 221.

(58) I also note that in the preparatory works to the cancellation provision in section 2-12 of the Tenancy Act, it is stated that the tenant, for the period prior to the cancellation notification, must assert other remedies for breach, but that exceptions may be made if the landlord has engaged in "grossly negligent conduct," or where the premises are so defective that they are "entirely unfit for use," from the tenant's perspective, see Norwegian Official Report 1993:4, page 116.

(59) Thus far, I observe that legislation allowing cancellation with retroactive effect – where restitution is not possible – sets strict conditions for such cancellation. These conditions reach beyond the general requirement that the breach must be material. It is difficult to derive a uniform, overarching threshold for retroactive cancellation, as the statutory provisions are tailored to the relevant type of contract. Moreover, several of these provisions are to protect consumer interests, which do not apply in the same way to commercial contracts.

(60) In clarifying the content of non-statutory general principles of contract law, legal literature plays a key role alongside case law and legislation in adjacent areas. I will therefore also examine some central sources in the law of obligations.

(61) In *Obligasjonsrett* [law of obligations] (3rd edition, 2021), Viggo Hagstrøm, with contributions from Herman Bruserud et al., addresses this issue in section 18.5 from page 475. The authors state that a general rule would have to be formulated as "cancellation is only permitted with effect for future obligations". For parts of the contract already performed, the creditor must instead assert other remedies for breach. However, on page 477, they note that "important exceptions" exist. After outlining the rules in the Craftsman Services Act, they write on page 478:

> "These provisions are consistent with what has previously been considered applicable law in other contractual areas outside consumer contexts, thereby strengthening the argument. First, it has been assumed that a contract may be retroactively cancelled when there is gross fault in the performance. This may occur, for example, in tenancy agreements where the landlord has deliberately misled the tenant about the rental object, or in service contracts where the provider has intentionally misled the future contractual party with regard to qualifications or education. In such fraud-like situations, the sanction appears reasonable. Second, it has been held that retroactive cancellation may be justified where the performance itself constitutes a particularly serious breach. For instance, the carrier's right to distance freight in the carriage of passengers or goods (sections 341 and 417 of the Maritime Code) may be lost in cases of particularly serious breach, for example when the vessel is unseaworthy at the time of loading, or in the event of intentional deviation from the agreed route. Similarly, if a service provider completely fails to perform over an extended period, retroactive cancellation may be appropriate from the date the failure began. The same applies if A is hired to dig a trench for B but digs in a location where no trench is needed. For worthless work, there must be a right to cancel *ex tunc*."

(62) Erlend Haaskjold discusses retroactive cancellation in *Obligasjonsrett – En innføring* [the law of obligations – an introduction] (2nd edition, 2023), section 4.7.3 on the legal effects of cancellation. On pages 179–180, he writes:

> "In exceptional cases, cancellation may occur *ex tunc*. Linguistically, *ex tunc* means 'from then on', i.e. from the time the contract was entered into. In such cases, the cancellation settlement is not limited to future obligations but also includes services already provided at the time of cancellation. The most practically significant consequence is that the creditor is released from the obligation to pay for the performance received. Since the debtor's performance cannot be physically returned, the value or utility of the defective performance must be compensated. The settlement thus becomes a monetary one, not a restitution in kind. The value of the received performance must be assessed, potentially based on the benefit the creditor could derive from it. This assessment must be concrete and often involves discretion. Cancellation *ex tunc* is primarily relevant where there is gross fault or where the breach is otherwise particularly serious. According to section 26 of the Craftsman Services Ac, the consumer may cancel the entire contract if the defect means that 'the purpose of the service is substantially frustrated."

(63) This theoretical perspective confirms that, as a general rule, strict conditions must be met for retroactive cancellation to be accepted, and that such cancellation is primarily relevant in cases of severe breach.

(64) In my view, the outline provides a solid basis for the following summary:

(65) An air carriage contract can – once the carriage has been performed – only exceptionally be cancelled with retroactive effect. The conditions are strict and require more than a material breach. The carrier's breach must be so severe that the freight service is either entirely worthless or of only minimal benefit to the recipient, or that the purpose of the service has

been substantially frustrated. Retroactive cancellation is therefore reserved for severe breach, including cases involving gross negligence or wilful misconduct by the carrier. In the overall assessment, as with cancellation generally, it is also relevant to consider whether a restitution settlement would be disproportionately complex, and whether the breach may be effectively sanctioned through other remedies.

Individual assessment

(66) In my individual assessment, I start by examining *the nature and extent of the contractual breach*. The content of the carriage contract is undisputed: The salmon was to be transported by air from Belgium to China and delivered undamaged at the destination. Prior to entering into the contract, both parties were aware that limited cooling capacity at CAN posed a risk, and that the contract was based on a fundamental assumption that the fish would be handed over to Grieg's customers shortly after arrival. Grieg retained the right to cancel the carriage contract up until departure from Liège Airport (LGG), due to the risks associated with limited cooling capacity.

(67) Schenker thus undertook a specific obligation to facilitate delivery in accordance with these assumptions. It is clear that Schenker, in practice, failed to fulfil its contractual obligations upon arrival, resulting in significant damage to large portions of the cargo. It is further undisputed that Schenker is liable for the actions of its subcontractors, including members of the so-called "China team" who were to assist with the arrival process.

(68) It is also undisputed that, prior to departure on 23 September 2021, Schenker received information from its agent ATS that uncertainties remained regarding conditions upon arrival. In an email sent by ATS to Schenker on 23 September 2021 at 19:11, ATS emphasised that their personnel in China were not responsible for customs handling, and that disinfection of the cargo, and any delays in that regard, were "matters that neither ET nor ATS can influence locally in China". This information, which was of fundamental importance to the fundamental assumptions of the contract, was not communicated to Grieg.

(69) Taken as a whole, the contractual breach must objectively be characterised as material, and in my view, the deviation from contractual performance is significant. The freight arrangement was custom-designed for the transport of frozen salmon – a product that imposes strict requirements on handling. It was also clearly *negligent* of Schenker's representative not to forward the information received from ATS prior to departure. Grieg was thus deprived of the opportunity to assess whether to cancel the freight arrangement, a right provided for in the contract. Viewed in isolation, these circumstances suggest that Grieg may have had reasonable grounds to cancel the carriage contract with retroactive effect.

(70) However, beyond the fact that Grieg lost the opportunity to cancel, the remaining *effects of the breach* for Grieg are of a more indirect nature: As a result of the conclusion of the carriage contract, Grieg entered into agreements with four Chinese customers on the same day for the sale of the salmon. These sales were made on CIP terms, and the risk of damage therefore initially passed to the buyers upon delivery of the fish to the carrier in Belgium. The purchase prices were paid in advance. This means that Grieg received full settlement, including for the freight. As opposed to Grieg, I see no legal basis for disregarding the value the carriage contract thus had for the company. The fact that the sales contracts constitute separate agreements with different parties cannot be decisive in this context. Under the terms of those

contracts, Grieg was responsible for arranging transport – and did so by entering into the carriage contract with Schenker. For this reason, it is also difficult to conclude that the purpose of the carriage contract was substantially frustrated, although the assumption of prompt delivery upon arrival failed.

(71) However, Grieg has pointed out that although the company received payment, three of the four customers have submitted claims against Grieg due to the damage.

(72) Damage reports have been presented, documenting extensive harm to the salmon. For two of the customers, the damage was severe that the fish had to be sold as animal feed. For the third customer who submitted a claim, it is unclear how the fish was ultimately handled. The damage report estimates a 50 percent reduction in the value of the fish due to the deterioration. On these grounds, despite the extensive damage, it must be assumed that the fish retained some residual value. The exact residual value is disputed. Based on the damage reports and the contract with the fourth customer – who did not file a complaint – the estimated value was approximately NOK 2.3 million.

(73) It is documented that three customers submitted claims against Grieg in the autumn of 2021. According to information provided, negotiations with these customers are still ongoing and are, among other things, awaiting the outcome of the case at hand. In addition to these customer claims, Grieg has asserted that the company has incurred lost revenue and sustained significant reputational damage among fish importers in China.

(74) It is undisputed that the damage to the fish was extensive, and that Schenker's failure to perform the carriage contract was the cause of the damage. At the same time, the direct financial consequences of the breach for Grieg remain uncertain at this stage.

(75) For Schenker, cancellation with retroactive effect – particularly if the restitution settlement is to include potential indirect consequences for Grieg – could mean that the company would not be compensated in accordance with the contract for the carriage performed.

(76) In the overall assessment, the possibility of addressing the breach through alternative remedies is significant. In a situation like this, where the direct consequences of the breach will only be definitively clarified through ongoing dialogue and potential dispute resolution with the customers, damages represent a far more appropriate and adequate remedy. Lost revenue and reputational harm are also typical elements of a damages claim, which must be assessed under the rules of tort law.

(77) Moreover, given the current unresolved situation, any restitution settlement would necessarily involve considerable uncertainty and complexity, as the benefit Grieg derived from the air carriage is extremely difficult to quantify.

(78) Although the breach, when considered in isolation, must be characterised as gross, I conclude, based on an overall assessment, that the strict conditions for retroactively cancelling the carriage contract are not met.

Grieg's right to a price reduction

(79) In the alternative, Grieg has claimed a price reduction. As the Aviation Act contains no rules on price reduction in the event of breach, this claim, too, must be decided under ordinary contract law principles.

(80) As an alternative to cancellation, a price reduction is often a suitable means of compensating for the economic consequences of a breach and may therefore serve as an adequate reaction to the non-performance. The fundamental condition for a price reduction is that a breach has occurred and that it has resulted in a reduction in the value of the service.

(81) In this case, the same considerations addressed in the assessment of the cancellation claim are also relevant to the evaluation of the claim for a price reduction. Given the circumstances, it cannot be established that the value of the freight service itself was diminished. The carriage was performed, the fish was delivered, and Grieg's customers paid the purchase prices, which included the freight charge.

(82) Any financial losses resulting from the cargo damage must therefore be pursued as a claim for damages against Schenker. Such a claim has not been made in this case.

Conclusion and costs

(83) Against this background, I conclude that neither Grieg's claim for retroactive cancellation nor the claim for a price reduction succeeds. Schenker is consequently entitled to payment of the freight claim, together with statutory default interest accruing from 30 days after the claim for payment.

(84) The appeal has been successful, and in accordance with the main rule under section 20-2 of the Dispute Act, Schenker is entitled to compensation for costs in the Supreme Court. There is no basis for making an exception to this rule under section 20-2 subsection 3. The outcome of the case also forms the basis for the assessment of legal costs in the lower instances, see section 20-9 subsection 2.

(85) In the Supreme Court, Schenker has claimed costs in the amount of NOK 823,300, representing counsel's fees for a total of 181 hours of work. This comprises 103 hours at an hourly rate of NOK 6,100 and 78 hours at an hourly rate of NOK 2,500. The claim does not include VAT. The case was heard over two days in the Supreme Court and raised relatively complex legal issues. I find the costs to be reasonable and necessary, see section 20-5. The claim is upheld.

(86) In the lower courts, Schenker has claimed costs totalling NOK 2,175,575. Grieg has not raised any objections to this claim. Nor do I find any basis for applying the exception under section 20-2 subsection 3 of the Dispute Act with respect to the lower instances. Accordingly, costs are awarded as claimed in both the District Court and the Court of Appeal, see section 20-5.

(87) In addition, court fees for the District Court, the Court of Appeal and the Supreme Court amount to a total of NOK 85,222. The total costs awarded are therefore NOK 3,084,097.

(88) I vote for this

J U D G M E N T :

1. Grieg Seafood Sales AS is to pay Schenker AS NOK 3,016,522 with the addition of statutory default interest accruing from 31 October 2025 until payment is made. The amount is due within two weeks from the service of this judgment.

2. Grieg Seafood Sales AS is to pay to Schenker AS NOK 3,084,097 in costs before the District Court, Court of Appeal and the Supreme Court within two weeks of the service of this judgment.

(89) Justice **Matheson:** I agree with Justice Steinsvik in all material respects and with her conclusion.

(90) Justice **Falch:** Likewise.

(91) Justice **Sæther:** Likewise.

(92) Chief Justice **Øie:** Likewise.

(93) Following the voting, the Supreme Court gave this

J U D G M E N T :

1. Grieg Seafood Sales AS is to pay Schenker AS NOK 3,016,522 with the addition of statutory default interest accruing from 31 October 2025 until payment is made. The amount is due within two weeks from the service of this judgment.

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