



REVIEW

On Some Legal Problems in Postal Administration

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ABSTRACT

With the development of e-commerce, the express delivery industry in China has developed rapidly. In the past, the express logistics service with postal service as the core has gradually developed into a competitive situation among many logistics companies, such as EMS, Shunfeng, and "Four Tong & One Da" (Shentong Express, Yuantong Express, Zhongtong Express, Best Express, Yunda Express). With the rapid development of China's express industry, and the development of e-commerce, the number of online shopping has increased, express has become an important choice for small goods exchanges. As a new industry in China, express service industry greatly promotes the development of social economy. With the rapid development of express industry, China has surpassed the United States and become the largest express country in the world. The proportion of express industry in GDP has exceeded 1%, which is becoming one of the pillar industries in China. At the same time, the development of the industry is not standardized. Due to the difference of service standards and the lack of service quality, the number of consumer complaints is increasing.

1. Introduction

From the case of disputes between consumers and express companies, it is mainly about the damage and loss of express mail. From the perspective of legislation and practice, there are still deficiencies in the provisions on the damage and loss of express mail. The main problem in judicial practice is that people's courts around the country have different understandings on the nature of the compensation liability for damage and loss of express mail, which is easy to lead to cases. There are differences in the treatment results. Therefore, through the analysis of the liability for damages caused by the damage and loss of express mail, the paper introduces the problems discussed by case analysis, expounds the nature of the liability for damages caused by the damage

and loss of express mail, analyzes the problem of liability concurrence, summarizes the main problems existing in the liability for damages caused by the damage and loss of express mail, and puts forward specific countermeasures for the express delivery industry in China. Standardized development provides useful reference. With the development and prosperity of express delivery industry, the after-sales service problems of damages represented by express damage and loss emerge in endlessly. This paper attempts to analyze and discuss the performance, causes and corresponding countermeasures of express damage and loss compensation.

At present, from the perspective of practice, the compensation for the loss and damage of express mail mainly focuses on two aspects.

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2. No or Less Compensation

2.1 No Compensation

Express delivery companies often refuse to compensate for lost or damaged express delivery for various reasons. Common reasons include: force majeure, undeliverable express delivery, over claim period, illegal delivery of goods, etc.

The most typical is the exemption of force majeure. This is the most commonly used excuse for express delivery company to not compensate for the loss or damage of express delivery. Force majeure was originally the exemption clause used when the earthquake, flood, war and a few extreme situations that could not be controlled by express delivery company occurred. But in reality, some express companies expand it arbitrarily, for example, the spontaneous combustion of express vehicles will destroy packages, the vehicles (mainly tricycles) will be seized by traffic police, the vehicles will fall into the water, stolen and so on. Especially in recent years, with the restriction and prohibition of electric tricycle driving on the road in Shenzhen and other large cities, it can be said that it has become a "killer" for the development of express enterprises. Why is there such a huge relationship between the prohibition of express three rounds and the compensation for damage and loss of express? The main reason is that express three rounds has become the most important means of transportation in the last kilometer of delivery from warehouse to customers. In fact, this problem has only appeared in recent years. We know that in the traditional express delivery, the main responsibility for the last kilometer is the car and bicycle. The car has a large volume and regular operation. It is the preferred delivery tool for traditional postal express enterprises, but its disadvantages are also very prominent: the cost is high, and the car is suitable for long-distance and large-scale transportation between provinces and cities. The range of transportation, but because in the last kilometer of distribution, customers are often very scattered, many for residential areas, vehicle parking has become a headache. In particular, fuel burning, stop and go, and the cost of distribution is very high, so at present, in addition to EMS and a few multinational giants in the end of the distribution of cars as a means of transport, other express companies have rarely used.

And bicycles. Most of us should still remember the jingle of a postman's green postal bicycle as a child. Bicycles are small in size, flexible and convenient, and there is no problem of high cost and parking difficulty. They are the first choice for the end distribution of traditional postal express delivery. However, because of their slow speed,

they have disappeared in recent years. Instead of two-wheel electric vehicles, electric bicycles are convenient to Park, cheap and fast, and once became the first choice of transportation tools for express delivery enterprises. It also has a fatal disadvantage: less cargo, especially in recent years, with the rise of online shopping, the number of express mails that each courier needs to deliver has doubled, and the timeliness requires that it is impossible to get a large number of repeated back and forth, so the limitations of e-bikes are clear.

As a result, the electric tricycle is "the whole field of powder and ink". It not only retains the advantages of low cost and convenient parking of bicycles and e-bikes, but also makes up for its short board with small cargo capacity. Once it was born, it won the favor of almost all couriers and became popular in the north and the south. But then the problem came. Is the invert of electric tricycles a motor vehicle or a non-motor vehicle? If it belongs to a motor vehicle, it needs to be licensed, which is a good thing for managers and can regulate management, but for couriers and express companies, it has increased their use costs substantially, and lost their comparative advantages with cars, which is not feasible in reality; if it is classified as a non-motor vehicle, it is convenient for couriers and express companies, but the electric tricycle is fast and heavy traffic accidents are easy to occur due to large volume, so the traffic management department cannot allow it. In addition, the ugly shape of electric tricycles, which stop at random, has seriously affected the city appearance and appearance, so first Shenzhen, then Shanghai, and then other large cities have followed, all of which are forbidden to use electric tricycles on the road. This has led to many express tricycles being seized by traffic police. After the traffic management department seized these express tricycles, it did not treat them as a special delivery vehicle, but treated the express on the tricycle as ordinary goods at will, and the couriers and express enterprises would rather not use the tricycle than pay a high penalty, so in reality, there is a lot of problems. More express, because tricycle was seized and caused by the loss of damage. Therefore, the compensation disputes caused by three rounds of express delivery should be highly valued and studied.

2.2 Less Compensation

There are two main situations of the problem of less compensation.

2.2.1 Noninsured Express

Express enterprises adopt standard terms, and indicate on the back of the waybill that noninsured express shall

compensate according to three or five times of the express tariff, which leads to the serious imbalance between the value of express and the compensation cost. For example, if we send a document, education background or file, it may be worth a few cents or a few Yuan if we only look at the paper value, but its actual value may be as high as hundreds of thousands, or even difficult to measure with money figures. This is a contradiction. When there is a dispute, express companies often use consumers to protect the price for low compensation, which leads to contradiction.

2.2.2 The Amount of Compensation

The amount of compensation for insured express and uninsured express shall be based on the format contract or the relevant provisions of the postal law. If the consumers are dumb, the express enterprises will say, "who told you not to insure?" So, let's guarantee the price of our valuables so that we can have a good rest? Facts are often not as good as you think. It can be said that the compensation disputes caused by the insured express are not less than those caused by the noninsured express. The most important problem is the inconsistency between the declared value and the actual value of the insured object, which brings about the problem of the upper limit of the amount of compensation. For example, if a consumer wants to send an advanced drawing computer worth 30000 Yuan and buys the insured price, the result is damaged. The express company only pays 10000 Yuan. Why? 30000 Yuan is what your consumers say, without proof and evidence. I think after depreciation, it's only worth 11000 Yuan. What about 1000 Yuan? Sorry, the insurance price you bought is 1% of the rate, and the maximum compensation limit is 10000 Yuan. This is a common dispute in the damage and loss of insured express.

3. Compensation for Delay

Compensation for delay also includes two aspects:

3.1 Express Delay

The express delivery was delivered safely and well, but it was a month late. At present, most express companies do not compensate for this. A typical phenomenon is that during the "11.11" period, all shopping platforms have taken a great effort to promote, so that on November 11 and the following days and weeks, the express volume surged, even to the extent that the express enterprises bear the whole park, there was a so-called "warehouse explosion". Every time we arrive at the double-eleven, we can see the express packages piled up in the news media. The

warehouse can't be piled up, and they all pile up on the road. The couriers don't have time to deliver them in turn. The consumers have to come by themselves and look for their express in the "garbage mountain".

3.2 Delay in the Claim for Compensation

After the loss and damage of the express, it is often difficult to get the claim in the first time, and it often takes a while. On the one hand, it is due to the negative response of express companies to claims settlement. On the other hand, it is due to the "7-day" buffer period stipulated by the postal administration department: if there is a dispute between consumers and express companies about compensation for loss or damage of express mail, they should negotiate with express companies first. If they can't be resolved, they can appeal to the postal administration department 7 days later. That is to say, consumers are in trouble. After that, even if the express company has explicitly refused to make compensation, consumers can not immediately "complain" to the postal administration department, and can only "complain" seven days later. This regulation, invisibly makes the express company have the foundation of delaying compensation.

The author thinks that there are three main reasons for the confusion of the loss, damage and compensation of express as mentioned above.

4. Savage Growth of Express Enterprises

The history of express industry in China is not long. The earliest express delivery, EMS, began to appear after 1980s. As for the private express like Shunfeng and "four connections and one arrival", which we are familiar with, it was officially recognized and developed rapidly in this century. Before that, the private express was in a state of illegal for a long time, which violated the legal position of "postal monopoly", so it was called "black express", which was banned and attacked by the state. The most typical one is Shunfeng express, the logo of the enterprise. Vehicles and people clothes are all black. Now few people know that their original meaning is to laugh at themselves—"black express".

Due to the long-term "underground" state, the growth of express industry and enterprises has the serious problems of congenital defect and acquired deformity.

The so-called "inborn defect" is that the development of this industry is spontaneous, from the bottom up, and from the day of birth, it has been labeled as "illegal". Therefore, no matter from personnel, site to vehicles and communication tools, it is necessary to be simple and make do with it. The older postal administration law

enforcement personnel jokingly said that the express delivery enterprise at that time was "123", that is, one telephone, two broken electric vehicles, and three people called one express enterprise. They started to work. The venue was rented to the basement or underground garage of the residential area, and the personnel were some old or idle social personnel. There was no business management or staff training at all. They all played one game. Under the influence of this atmosphere, no one from the boss to the ordinary employees treats and develops the express industry as a new and rising industry, but as a profit-making tool. It is in a gray area where no one cares about it. There is neither top-level design nor capital support. At the initial stage, there are hidden dangers of "irregularity".

The so-called "postnatal deformity" refers to a wave of barbaric and disorderly development after the separation of postal services in 2006, especially after the promulgation of the new postal law in 2009, which legalized express delivery enterprises. When it comes to disordered development, we have to first understand the two business models of express companies.

First, direct operation. In addition to the traditional EMS, large private and foreign-funded enterprises such as Shunfeng, DHL and FedEx adopt this business model. The feature of this mode is that from top to bottom, from total to sub, from personnel to equipment, they are unified, that is, there is only one business entity, no matter how many outlets there are below, they are also built by the headquarters themselves. Each branch and outlet is not an independent legal entity, but a branch of the headquarters. The advantages of this mode are: relatively regular, unified and clear personnel, clothing, vehicles, venue and logo, clear responsibilities, smooth government orders, relatively standardized management, and relatively efficient handling of express loss and damage compensation. The disadvantages are: high cost, especially in the initial stage of the enterprise, a large amount of financial support is needed, personnel should be recruited by themselves, clothing, vehicles, venues, etc. also need to be purchased by the headquarters, with high management cost.

Second, franchising. This is also the vast majority of private express delivery, such as Shentong, Zhongtong, Yuantong, Yunda, etc., all adopt this mode. The characteristics of this mode are: each express delivery outlet pays the franchise fee to the headquarters to obtain the operation qualification; the personnel, vehicles and sites are raised by each franchise outlet, and the headquarters is only for guidance; the business income obtained is paid to the headquarters in a certain proportion; each franchise outlet has an independent legal personality, and can choose to withdraw according to its own wishes; in

the management, the headquarters is more guidance than command and so on. The biggest advantage of this model is that the cost is low, especially in the start-up stage of an enterprise, which can bring great development with a small investment. As the resources such as personnel, vehicles and equipment need to be raised by the franchise outlets themselves, it can be said that the capital pressure of headquarters development has been greatly reduced, the management cost is low, and the income of the franchise outlets is divided into several parts, which means more work, more work, less gain, and no need to work, so as to maximize the enthusiasm of the franchise outlets and create greater profits.

The disadvantages of this model are also obvious: irregular, or even chaotic. Each franchise network is an independent small company, with a variety of personnel, clothing, vehicles, venues and logos. For the illegal operation of each franchise outlet, the headquarters has no substantive means of restriction except for withholding the money. The government order is not smooth, the management is disordered, the interests rush in, the problems are prevarication, the loss and damage of express mail is a common problem of enterprises in this mode, which is also very difficult to deal with. In addition, each franchise outlet can exit freely, there is often a phenomenon of running away, which increases the management cost and restricts the enterprise to become bigger and stronger.

At present, due to the vigorous promotion of the management department and the renewal of the enterprise management concept, many powerful private express enterprises have begun to explore the self-built and self-operated outlets on the basis of the franchise system, which can also be said to be the emergence of a new hybrid system mode of the combination of direct and franchise, which is also the only way for private express enterprises to move towards normalization and standardization.

However, compared with the franchise system, the express enterprises under the direct system can only be called "relative" norms, while the non-standard is the common fault and normal of the express industry. As long as you walk into the operation room of any express outlet, even EMS and some foreign-funded enterprises, disorderly express, wearing all kinds of clothes, dark places, and randomly parked battery cars, it difficult for people to connect all these with the word "standard". Although the postal administration department is unwilling to admit it, but a cruel reality is that express enterprises are not because of the express industry. On the contrary, it is stagnation or even retrogression. Take EMS, the big brother of express industry, for example. More than ten years ago, the distribution vehicles running on the street were all

postal special vehicles, and the operation workshop was a mechanized, assembly line sorting site. Now, the distribution vehicles running on the street are electric three-wheel and two-wheel, and the operation workshop is a sorting site dominated by manpower. EMS is still like this, let alone other private express delivery, many of which are family workshop business models. It is very difficult to find a foothold after entering.

Why hasn't the great development and prosperity of express industry brought upgrading transformation to express enterprises? The reasons are very complex. There are reasons for the imperfection of laws, the lack of top-level design, and the low quality of personnel. But one of the important reasons can't be ignored is that bad money drives out good money. Specifically speaking, the competition in the express industry is very fierce, and the profit space is so large, so in order to survive, all express companies have to desperately compress the cost space. Those who can use three rounds will not use four rounds, and those who can use manpower will not use machinery. In a word, how to save money and how to come is also a main reason for EMS backward standardization. There is also a distinctive feature of express industry, that is, only focusing on results, not on process. For example, consumers only pay attention to whether express delivery can be delivered to them accurately, cheaply and in time. As for whether they use trains, cars or tricycles in the middle, they don't care about this, as long as you are quick. In this way, the cost of standardized enterprises is bound to be high. In the long run, they will be eliminated by the market, so we can only think of ways to reduce costs and save expenses. In this way, the price of express delivery is cheap, and consumers seem to get benefits. But in fact, irregular operation will inevitably lead to the loss and damage risk of express delivery in the middle operation link, and this part of risk cost will ultimately be transferred to consumers.

In addition to the problems caused by the nonstandard business model, the over dependence on e-commerce also intensifies the abnormal development of "acquired abnormal type".

The express industry has been growing slowly and explosively for a long time, or after the emergence of online shopping e-commerce platforms such as Taobao. Before the rise of online shopping e-commerce platforms, express mainly played a role of postal supplement between individuals and enterprises. The scale and volume are relatively fixed, but the export of e-commerce and online shopping. Now, it has greatly changed the positioning and role of express delivery, making it a necessary part of network consumption, which greatly promotes the development of

express delivery industry.

5. Supervision Dislocation of Express Industry

There are no rules, no circles. One of the important reasons for the loss, damage and compensation of express delivery is that the industry supervision has been "misplaced" in the face of the chaos of express delivery industry. The reason why it is said to be "misplaced" rather than "absent" is that its regulatory function has always been, and has been in progress, so it is not "absent". When it comes to industry supervision, everyone is familiar with it. Each industry has its own regulatory department. For example, when it comes to self-employed household supervision, it naturally thinks of the industrial and commercial bureau; when it comes to drug factory supervision, it naturally thinks of the food and drug administration; when it comes to banking supervision, it naturally thinks of the banking regulatory bureau; but when it comes to express supervision, there are not many people who can be exact.

In fact, since the day the express industry was born in China, there have been corresponding regulatory departments - the Ministry of Posts and telecommunications and local posts and Telecommunications Administration. Since the 1970s, under the leadership of the Ministry of Posts and telecommunications at that time, the local posts and Telecommunications Administrations began to perform the industry supervision function. But at that time, the regulatory function was relatively single, that is, to crack down on and ban non post express, that is, "black express". In 1998, the Ministry of Posts and telecommunications was abolished, and the post and telecommunications administration were dissolved accordingly. Its related express supervision functions were replaced by the State Post Office and local post offices. During this period, the express delivery supervision, because the postal sector is still in a strong position, is still to maintain the exclusive postal business, but only in the express goods on the opening, acquiescence in its existence.

The real supervision of express industry began in 2006. In this year, with the separation of government and enterprise, the State Post Office will no longer assume the operation function and become a pure government department, and provincial post administrations will also be established to be responsible for the industry supervision within the jurisdiction of the province. In 2009, the new postal law was promulgated, which clarified the legal status of private express after obtaining express business license, and the supervision of express industry was on the right track.

Originally, with the promulgation of the new postal law, especially the establishment of the prefecture (city) level postal administration in 2012, people had high expectations for the normalization and standardization of the express industry, but in fact, with the passage of time, people are surprised to find that there is a phenomenon of regulatory inversion in the express industry, that is, the enterprise is the "father", and the regulatory department-The door is the "son". There are many regulatory powers written on paper by the express regulatory authorities, which are very perfect. But in reality, they can't be implemented either. Instead, they have to embrace the "thigh" of large-scale express enterprises and become the logistics support department of express enterprises. For example, the tricycle of express delivery enterprises is detained by traffic police. When a phone call comes, the postal administration will immediately call out to coordinate the traffic police release; when the tax revenue is increased, the postal administration will go to the tax department for coordination, so that the express delivery enterprises will pay less taxes; during the double 11, the express delivery enterprises are out of warehouse, and the express cannot be sent out, the postal administration will coordinate the EMS shunting to complete the delivery; And so on and so on.

What more incredible is that in front of many postal administrations, in addition to the signs of this bureau, there are also signs of local express associations. Although the original intention and intention of the postal administration department is good, in order to highlight the purpose of better service for express delivery enterprises, but the common people can't understand these, it is easy to mistakenly think that the postal administration and express delivery association are one unit, two brands, seriously weakening the authority of the regulatory department.

Why does express produce the problem of loss and damage? But there are problems in violent sorting, internal theft, improper transportation and other links. In the final analysis, the operation is not standardized, or there is a standard, but only hung on the wall, not implemented. It also "express delivery". It almost impossible to lose or damage the confidential communication. It the relationship between files that are delivered. If lost, it will cause incalculable loss. Therefore, there is a set of strict operation specifications and they are implemented carefully. If not implemented, they will be severely punished, so no one dares to violate them. For many years, the loss and damage rate of confidential communication is close to zero.

The dislocation of express industry supervision, in addition to the helpless of the postal administration de-

partment, which has to focus on the express enterprises in order to have a place for its own breakthrough, also has many areas to improve in the daily supervision and law enforcement. For example, law enforcement officers do not have law enforcement signs and clothing, law enforcement vehicles do not have signs. They wear colorful clothes and enter the inspection of express delivery enterprises. First of all, the formality is three points lower. They are not formal as industry regulators, let alone the following regulatory objects?

There are also names of postal regulatory agencies, which are also confusing. For example, Beijing Tianzhu post administration, is the word "Tianzhu" the ancient Indian name or the abbreviation of which districts? It's easy for the masses to see jokes. The malposition of the industry supervision of the postal administration department is also manifested in the deliberate demarcation line with the postal companies. After the separation of the postal government and enterprises, the postal enterprises all over the country still retain the name of the "post office" on the

grass-roots outlets at the district and county level. This is not only a historical evolution, but also a conventional name of the old hundred surnames. There is no need to change it deliberately. Moreover, most of the express delivery enterprises. Yu post office and post office are still in awe. This is a glorious history. Deliberately erasing this history and firmly drawing a clear line with the old post office will not help to enhance the management authority, but will make the supervised feel contempt after they understand the truth inside. Oh, there is no relationship between the post office and the post office. It just a piece of money. Express Service Association. In this way, further damage to the prestige of the postal administration, so that express enterprises in the non-standard operation of more unbridled damage to the interests of consumers.

6. It Is Difficult to Implement Laws, Relevant Regulations, Regulations and Industry Self-Discipline Standards

At present, on the legal level alone, the provisions on compensation for loss of express mail have been more detailed, not lack of legal provisions, but lack of implementation. For example, a good way to avoid disputes over the damage of express mail is to sign in for inspection. In practice, there are many problems.

After receiving the online shopping package, would you like to sign for it first or check it first? I'm afraid this is a headache that many people have encountered. According to the common sense, it is necessary to look ahead and sign for it. Is the express in good condition after long

distance transportation? Is it enough? We all want to check and accept first, and then sign for confirmation after confirming that it is complete and correct. But in practice, it very difficult. Because couriers usually don't allow consumers to do this. First, they waste time and earn a cent less if they send a piece less. Second, they are afraid that consumers won't want it after unpacking, so they will bear the loss. In this regard, the shopping website has given tips. If the courier refuses your request for open package inspection, then you do not sign it, so the courier will generally agree with the consumer requirements after weighing.

Laws and regulations are difficult to implement. On the other hand, it is due to the lack of top-level design. The postal administration department is weak and has the heart to implement but is unable to implement. Some other powerful departments have the power to implement but have no heart to find trouble for themselves. Therefore, in the protection of consumers' rights and interests related to express compensation, we should not play ball and shirk responsibility, otherwise it is difficult to solve the current problems.

In addition, the problem of express after-sales, especially the problem of compensation for loss and damage, is frequent, easy to issue and hard to solve. In addition to the above responsibilities of the government and enterprises, the lack of relevant theoretical research is also an important reason. In a reasonable way, the express industry in China has been produced for more than 30 years and developed for more than 10 years, but there are only a few papers on relevant research, even if there are, it has no practical value to discuss the liability of compensation for loss in the legal system before the promulgation of the new postal law. In Colleges and universities, there is no counterpart specialty to cultivate talents in this field. Some people may ask that communication management and logistics management have been established for a long time? In fact, the communication management is postal communication, and the logistics management is logistics industry. Although they are closely related to express delivery, they are not express delivery majors. With the rapid development of express industry, in addition to after-sales problems such as express claim settlement, many urgent problems need to be solved in the development of express enterprises, such as terminal delivery, intelligent express box, express qualification certification, communication and transportation optimization, tax system reform and so on. The reality is that colleges and universities generally equate express delivery industry with low-end industry, which does not belong to the opening of related majors or courses. Such as the famous "four post": North post,

South Post, Chongqing post and West post, and the colleges closely related to postal management, let alone other colleges and universities.

In view of the above problems, the author believes that to solve the problem of compensation for the loss and damage of express mail, we must work together to solve both the symptoms and the root causes.

Let start with the treatment of the symptoms: First of all, we should improve the compensation mechanism of express. According to the relevant provisions of the postal law and the express delivery implementation regulations, the loss and damage of general express delivery is compensated according to three or five times of the express delivery fee, which is obviously a drop in the bucket for valuables and cannot be accepted by consumers. In practice, then, it should be solved by the measure of insuring price. Insuring price is a layer of insurance for the goods in express, which is equivalent to buying a transportation insurance. It is the most direct solution to the problem of compensation for loss and damage of express. As mentioned before, in practice, it is often easy to have the problem of difficult claim settlement or too little amount of claim settlement, or force majeure of express enterprises as an excuse to refuse compensation, or set a compensation ceiling, such as 10000 Yuan. No matter how much the excess part is, it will not be compensated. That is to say, consumers spend more money on the price protection, but actually do not enjoy the corresponding services. To solve this problem, we must strictly limit the scope of force majeure exemption. For example, traffic police check, fire, flooding and so on, the courier is overloaded, does not comply with the traffic laws and regulations, fails to fulfill the duty of guard, neglects his duty and other human factors. We must resolutely clear out the scope of force majeure exemption, which is an obvious overlord clause and has no binding force.

At present, the determination of the actual value of express articles is the focus and difficulty of the insurance issue and dispute. Many of the articles carried by express enterprises are not brand-new or clearly marked, or have original invoices. This is often controversial in the determination of the actual value of express articles. In order to get more compensation in case of an accident, consumers may put the articles. The value goes up, while express delivery companies try their best to reduce the value of goods in order to lose less money. In this way, there will often be different words, and finally when the real danger, there will be disputes. The author believes that the identification of the actual value of the subject matter insured can draw on and refer to some advanced experience of international aviation logistics, that is, the higher the de-

clared value of the subject matter insured is, the higher the premium that needs to be paid by consumers, and the higher the compensation that consumers get when they are in danger. For example, if the declared value of the subject matter is less than 10000 Yuan, the insurance fee will be charged at 1%; if the declared value is 10000 Yuan to 100000 Yuan, the insurance fee will be charged at 2%, and so on. The advantage of doing this is that if the consumer falsely reports the value, he will pay more for the insurance premium accordingly. If the express company reduces the quotation, it will earn less for the insurance premium. In this way, it will avoid the complicated identification of the actual value of the subject matter, achieve the balance of interests of both sides, and the declared value of the article will converge to the actual value. No one will suffer losses. The author believes that this is a feasible and operable improvement plan for the current situation of the one size fits all of the express price and insurance rate.

Secondly, the insurance market should break the interest hedge. At present, there is another problem in the insured express. After the loss and damage of the express, the express company will push all the claims to the insurance company. As for the other losses of the customers, they will not pay any compensation. This is obviously unreasonable. To solve this problem, it is better to completely open up this part of the insured insurance market and hand it over to the market to solve it. As we all know, the competition in the domestic insurance market is very fierce, and it is impossible to be unmoved for the big cake of Express insurance price, but for various reasons, the insurance market is still relatively closed, closure leads to relative monopoly, which seriously hinders the sound development of the insurance market. Relevant departments should strengthen the top-level design, show courage and wisdom, and thoroughly carry out market-oriented reform of the insurance price. Public bidding can be carried out and unified procurement by the government; express delivery associations can also be organized, but it must be joined by a third party to avoid monopoly of interests. For the insurance companies that win the bid, it is also necessary to establish an exit mechanism, to be able to go up and down, to ensure that they are independent of the interests of the insured express companies and to ensure that the interests of consumers are maximized. If necessary, the CIRC and the people Bank of China may be invited to participate in the formulation of relevant rules, and professional matters shall be handed over to professionals.

Finally, the issue of compensation for mental damage should keep pace with the times. Let's take a look at a case first: Liu worked in Shenzhen for many years. Before

2008, the company had to settle some employees. Therefore, Liu family took Liu household registration file out of the archives department and sent it to Shenzhen Personnel Bureau by air express. However, the file was damaged in the process of transportation, causing Liu to miss the opportunity of settling down, so they filed a lawsuit in the court. In the court, both sides of the prosecution and the defense had a heated debate about whether to calculate the compensation for mental damage and the compensation related to the loss and damage of express delivery.

In the trial, the prosecution and the defense mainly debated whether the applicable postal law or the contract law and the civil law. Here is a point to emphasize that the traditional academic circles have different opinions on whether to apply postal law or other laws such as civil law, contract law, aviation law to the compensation for the loss and damage of express mail. In fact, since the promulgation of the new postal law in 2009, it has been clear that all express enterprises, including non-postal private enterprises and foreign-funded enterprises, are subject to the postal law. In other words, as long as it express delivery, it all under the jurisdiction of postal law, no matter air, water, land, private or foreign, without exception. As this paper discusses the compensation for the loss and damage of express mail, it is obvious that it should all be included in the discussion of postal law.

Back to the case. In the court trial, the prosecution claims to apply civil law and contract law, while the defense claims to apply postal law. Both sides of the prosecution and the defense consider that if applicable postal law is used, the compensation can only be made according to three times of the postage, which is obviously beneficial to the defense, but seriously detrimental to the prosecution.

Is it true? Obviously not. Even in accordance with the old postal law, the act of airmail delivery of Liu household registration files mentioned in this case seriously violates the legal provisions of the postal law that official documents and archives should be exclusively operated by post, and its legal consequence may be the direct ban of business qualification. When the air express company realizes this serious consequence, it will no longer dispute the problem of paying more and paying less. Instead, it should quickly obtain the understanding of customers with money compensation to avoid the fate of bankruptcy.

Unfortunately, due to the particularity or indifference of the postal law, it is very difficult for ordinary lawyers to conduct in-depth study on its provisions and lose the opportunity to strive for a larger amount of compensation for the plaintiff.

And the root cause: The problem of compensation for

the loss and damage of express delivery is fundamentally whether the operation and after-sales service of express delivery enterprises are standardized. It is impossible for the disordered express industry to solve the problem of frequent loss and damage of express mail. If the problem of frequent loss and damage of express mail is not solved, the problem of liability for damages will always be at the forefront of the wave, and it is difficult to find a comprehensive solution.

First, improve and perfect the "12305" complaint mechanism. In essence, the problem of express damage and loss is also a problem of after-sales service, so it should be the meaning of the problem to unblock the complaint handling channel. At present, the main problem of express service complaint hotline "12305" is still the "7-day waiting period". That is to say, "12305" is not a complaint hotline, but consumers can only appeal to the postal administration department if they fail to reach an agreement with the express delivery company on the relevant compensation liability within 7 days. This virtually increases the time cost of consumers, which is inconsistent with the original purpose of the hotline.

The low awareness of "12305" is also a real problem. Most consumers know the "12315" complaint hotline, while "12315" does not accept express service complaints. "12305" is a complaint hotline specially set up by the postal administration to deal with express service disputes. Due to the shortage of personnel in the postal administration, the Department is in a weak position, so even if there is a good desire to help consumers deal with express service disputes, sometimes there is more than enough. With the explosive growth of the express industry, the disputes on compensation for loss and damage have increased sharply, and this kind of contradiction is becoming more and more serious.

Therefore, relevant departments need to strengthen the top-level design. Either to provide more resources and human resources for the postal administration department to improve its weak position relative to the express enterprises, or to share the pressure of the postal administration department with other powerful departments, such as industry and commerce, quality supervision, public security, transportation, in order to better safeguard the interests of express consumers.

This contradiction can be alleviated by the help of "12345" hotline or "12315" to expand the scope of accepting complaints. In reality, there is an interesting phenomenon. When postal administration personnel come to express companies to deal with complaints from relevant consumers, express companies always greet each other with cold faces, ignore them, or even speak ill of each

other. When industrial and commercial departments, tax departments, public security departments and other departments come to inspect express companies, the boss will greet each other with a smile, be respectful, and listen attentively, not because of the power of enterprises, however, the industrial and commercial departments hold the power of life and death of express delivery enterprises. If an enterprise fails to fulfill or timely rectify any requirement, it will be severely punished. Therefore, it is necessary to strengthen the linkage and information sharing among law enforcement departments, and bring the enterprises that often have after-sales compensation problems into the blacklist of local dishonest enterprises, so that they can be considered as a strategy in terms of loans, bids, financing, etc.

7. Promote the Standardization of Terminal Delivery Vehicles

The reason why we need to send the end delivery vehicle, that is, the electric tricycle, is because it is so important! People who know the express industry know that the three rounds of express delivery can be called the lifeblood of the courier and the guard style. If this seemingly corner problem is not solved well, it will be seized by the traffic police on the way all day, then can the express not be damaged or lost? Therefore, the importance of terminal delivery vehicles cannot be overemphasized. In fact, the State Post Office has also attached great importance to this issue. It has sent people to Shenzhen for many times to investigate with the local postal administration department in order to come up with a proper solution. The reason why Shenzhen first came to Shenzhen is that Shenzhen was the first city that banned electric three-wheel driving. It is the national wind vane. Other big cities are also starting at Shenzhen and imitating it at any time.

After discussion, the personnel of relevant departments first put forward two alternatives: (1) to replace the electric tricycle with the electric bicycle; (2) to replace the electric tricycle with the express car with the unified logo.

After discussing these two schemes with express companies, express companies think that they are not feasible. When they replace them with electric bikes, the load is too small, and the couriers have to go back and forth to the outlets many times a day, increasing the cost of time; when they replace them with cars, the cost is too high to use. Finally, I think that only electric tricycle is the most suitable delivery tool for express delivery. Therefore, the postal administration can only consult with the traffic management department. The result of the consultation is that the electric tricycle cannot go on the road in the urban

area, which is the principle. But in the outer suburbs, it can be properly liberalized.

8. Implement the Real Name System

After the telephone real name system, express delivery also began to implement the real name system. Users must show their ID card and register their real name to send the express.

The introduction of this provision can be said to provide a good guarantee to solve the problem of compensation for loss and damage of express mail.

In the past, users didn't need to show their identity documents or register their real names when delivering or sending express mail. It seems convenient and ensures information security. In fact, it is a green light for illegal and criminal acts through express delivery channels, and the interests of ordinary consumers are ultimately damaged.

In recent years, the illegal and criminal activities through express delivery channels have shown a high growth trend, mainly in the delivery of drugs, guns, controlled knives, psychotropic drugs and illegal cigarette products.

For example, the traditional way of drug trafficking is through land transportation. Drug dealers themselves bear the huge risk of being seized by the public security department on the way. Now, with the express channel, drug dealers only need to disguise drugs as other ordinary express mail and give them to express. In order to make more money, express companies are also constrained by the lack of detection equipment, so they do not seriously open the box for inspection, which acts as a means of transport for crime.

Now through the implementation of the real name system and the strict implementation of the open package inspection system, the express industry has drawn a clear line with the criminals, that is, to improve the image of the express so as to better serve consumers.

When express delivery enterprises lose, damage or express delivery, there is another saying: the goods sent by consumers belong to the illegal goods prohibited or limited, and the loss or damage of illegal goods cannot be compensated. A typical example is cigarettes. "Tobacco monopoly law" clearly stipulates that cigarettes belong to tobacco monopoly products, and no more than two cigarettes can be mailed at a time. This regulation is mainly aimed at preventing cigarette dealers from transporting illegal cigarette products through express delivery channels and damaging the tobacco monopoly market system. However, ordinary consumers generally do not know this rule. Cigarettes purchased or delivered online often exceed the limit, and even are seized by tobacco monopoly

departments. Express companies refused to pay compensation because the express was seized by the relevant departments and the articles sent by consumers were prohibited or restricted.

Now, the real name system and strict implementation of the acceptance and delivery inspection system require the express companies to perform the open package inspection of express packages, otherwise the express companies should be responsible for the problems, so that the express companies can no longer shirk their responsibility for failing to seriously perform the acceptance and delivery inspection system, but put the responsibility for sending prohibited and restricted articles on the consumers, which greatly guarantees the consumer claim right in case of loss or damage of express mail.

9. Conclusion

To sum up, as long as we take the opportunity of the 19th National Congress of the Communist Party of China and vigorously promote the standardized construction of express industry, we can solve the problem of compensation for damage and loss of express, better serve the society, people livelihood and consumers.

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