Journal of Air Law and Commerce

Volume 38 | Issue 2 Article 2

1972

Introduction - Emerging Patterns in Aviation Policy: New Issues and New Problems

EMERGING PATTERNS IN AVIATION POLICY: NEW ISSUES AND NEW PROBLEMS

THE AVIATION industry has passed from infancy into adolescence. Concomitant with this maturation has been the emergence of new problems that, like those problems of aviation's formative years, require creativity and ingenuity to solve. Moreover, the national response to these unique problems, which span the broad stream of law, has involved continuous legislative activity and an ever-increasing resort to the power of the federal judiciary. These efforts must balance the conflicting rights and demands of injured passengers and defendant aircraft owners; the emerging conscience for consumer protection; and the multitudinous intra-industry relationships, such as between labor and management. Only recently, however, have policy makers—legislative, administrative and judicial—begun to recognize the necessity of molding this emerging body of law into patterns that directly respond to the needs of the aviation industry.

Not all efforts to resolve these problems have resulted in legislative enactments. Because of the essential role the aviation industry plays in the transportation scheme of the nation, some believe that the courts should fill the legislative lacunae. While the propriety of judicial activity in the absence of legislative guidance cause reasonable men to differ, the fundamental issue forming the underpinning of the dispute is the power of the federal courts to fashion a federal common law for the aviation field. Similarly, it has been suggested that the policy of *Erie R.R. Co. v. Tompkins* be re-evaluated as it applies to aviation problems.

The Congress, however, has not been entirely inactive and has provided several new methods enabling the federal courts to administer remedies that meet current problems. The most notable of these solutions is multidistrict transfer of mass disaster cases. There has been much written concerning the strengths and weaknesses of this fresh approach to complex litigation. In addition, debate con-

tinues over the power of the Judicial Panel for Multidistrict Litigation, the value of transfer itself under section 1407 and the current methods by which the statute is applied by the courts. Multidistrict transfer has been criticized on the one hand for increasing time and costs of litigation, and praised on the other hand for its success in handling of mass disaster cases; there are those who even favor its expansion into other areas of responsibility. In a more pragmatic sense, some have argued for changing the procedures of the Panel to eliminate practical problems of litigating under section 1407. A frequent objection to litigation under the section has been the attempt by the courts to make the procedure work more efficiently to achieve the desired conservation of time, costs and judicial resources at the expense, and perhaps in contravention, of the spirit and letter of section 1407.

To fulfill many of the peculiar needs of aviation litigation, many of the established methods of federal practice must also be adapted and modified. Problems of choice of law, discovery and multi-party practice are even more profound and difficult to solve in aviation litigation than in other less complex suits. The concept of class actions as a means of affording more adequate representation in mass disaster aviation cases is likewise uniquely and fundamentally challenged. These procedural difficulties must not only be individually resolved, but also must be effectively combined and coordinated if the federal system is to administer efficiently the increasing volume of aviation litigation.

The growing conscience for consumer protection in recent years has also had its effect upon the aviation industry. This consumer consciousness and its attendant effect on costs and expenses, has raised significant questions concerning the administration of regulation of the rates of commercial airlines.

An essential consideration in any discussion of aviation law is the area of labor law. In view of the political and economic changes that have occurred in American society since the inception of modern labor laws over forty years ago, there is a significant area of concern for revision of the administration of these labor laws, which is needed to stay abreast of the demands placed upon the relationship of labor to the aviation industry.

Even from this thumbnail discussion, it is apparent that the scope of these problems is vast. In March 1972, THE JOURNAL OF AIR

LAW AND COMMERCE held its Sixth Annual Symposium entitled "Federal Practice and Aviation." Because of the comprehensive analysis of the topics, the articles arising out of the Symposium will be divided into two issues.* These issues of the JOURNAL attempt to examine the more significant developments in aviation law on the federal level and to assess their implications in light of recent judicial decisions. The articles in the Symposium issues suggest an emerging common policy that encourages changes in the law and in its administration that is essential if the pace of the development of the aviation industry is to be preserved.

THE EDITORS

*Issue 38:3 will contain the concluding Symposium articles on the topics of choice of law, discovery, multi-party practice and class actions and will be completed in the immediate future.

Federal Common Law