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DIGEST OF RECENT U.S. CASES

CONSTITUTIONALITY OF NEW JERSEY ABSOLUTE LIABILITY STATUTE

Prentiss v. National Airlines

Gizzi v. American Airlines

112 F. Supp. 306 (D.C. N.J. May 13, 1953)

The question presented is the constitutionality of a New Jersey statute which imposes absolute liability upon the owner of aircraft for injuries to persons or property "caused by ascent, descent, or flight of the aircraft . . . whether such owner was negligent or not, unless the injury is caused in whole or in part by the negligence of the person injured, or of the owner or bailee of the property injured." [p. 308, citing *N.J.S. c. 237, §1* (1946)] It was argued on behalf of the airlines that making owners absolutely liable for damage caused by their aircraft, in effect, takes their property without due process of law.

The district court points out that the underlying purpose of the statute "was to place the cost of the damage of the enterprise upon the industry itself . . . rather than upon a completely innocent third party . . ." [p. 310] This liability applies only "to persons or property on the land or water beneath," not airline passengers, and "is recognized today as due process of law." [p. 310, citing *Crowell v. Benson*, 285 U.S. 22 (1932), and *City of Chicago v. Sturgis*, 222 U.S. 313 (1911)] The court indicates that New Jersey was justified in imposing absolute liability upon the airlines because of their "ultrahazardous" operations and because of the difficulty a plaintiff would have in showing the cause of an airplane crash and thus proving negligence on the part of the airline. [Citing *E. C. SWEENEY, IS SPECIAL AVIATION LIABILITY ESSENTIAL?*, 19 *J.A.L. & C.* 166, 167 (1952)]

The court also rejects the contention that this statute in any way constitutes an invalid restraint upon interstate commerce; its effect, says the court, "is indirect and casual." [p. 314]

GOVERNMENT GRANTED TAXI MONOPOLY AT ALASKA AIRPORT

Patton v. Administrator of Civil Aeronautics,

112 F. Supp. 817 (D.C. Alaska June 17, 1953)

Plaintiff, operator of a bus service for tourists who come to Alaska, sought to enjoin the enforcement of a regulation issued by the Administrator of Civil Aeronautics, which regulation gave the Yellow Cab Company the exclusive right to pick-up passengers at the Fairbanks International Airport. Plaintiff contends that this regulation creates a monopoly for the Cab Company and violates Section 1 of the 14th Amendment of the United States Constitution.

The district court granted the Administrator's motion to dismiss the petition for want of jurisdiction, because the Administrator, said the court, did not exceed his authority in issuing this regulation. The monopoly created here is legal, and Section 1 of the 14th Amendment is no bar to the exercise of the rule-making power delegated by Congress in regard to property belonging to the United States.

CAB ORDER PLACING LIMITATIONS UPON DISMISSAL
ALLOWANCES AND SETTING UP ARBITRATION
PROCEDURE

Danielson v. CAB,

204 F. 2d 266 (CCA 2nd Cir. May 8, 1953)

This action arose on a petition of the Secretary of the Association of Air Navigators to the CAB in regard to a merger between Pan American and American Overseas Airways. The Board had provided as a condition of its approval that PAA must compensate those employees adversely affected by the merger. The Air Navigators' representative sought: 1) a Board order compelling PAA to pay dismissal allowances to 9 former AOA navigators, and 2) a finding that in computing dismissal allowances of 30 other AOA navigators, overtime pay earned during the period for which dismissal allowances were payable should not be deducted. The Board refused to grant either request.

The 9 AOA navigators for whom the Association requested dismissal allowances were on furlough at the time of the merger, and the Board ruled that although they were entitled to protective benefits, they must first show that they were adversely affected by the merger. The Board established an arbitration procedure by which they could establish their loss. This procedure is still available to them and is, the court held, an adequate means for them to establish their claims for compensation.

In regard to the deduction of overtime pay from the dismissal allowances of 30 other former AOA navigators, the Board's order was not intended, said the court, to give them as much pay or as good a job as they would have had if the merger had never occurred. They were to continue receiving a monthly income "equal to that which [they] had received prior to the acquisition;" thus other income earned during the period for which dismissal allowances were payable should be deducted. [p. 268]

MANDAMUS AGAINST DISTRICT COURT — CONSPIRACY
AMONG AIR FREIGHT COMPETITORS

American Airlines v. Forman

Slick Airways v. American Airlines

204 F. 2d 230 (CCA 3rd Cir. April 8, 1953)

Plaintiff (Slick Airways) alleges injury caused by a conspiracy among its competitors to drive it out of the air freight business. The defense raised, by way of motion to dismiss, was that the district court could not adjudicate this case on its merits without encroaching upon the primary jurisdiction of the CAB. The district court denied the motion "without prejudice to its renewal after answer and the more precise framing of the actually contested issues through appropriate pre-trial procedure." [p. 231] The defendants appealed this order and filed a "'Petition for Writ of Certiorari or Mandamus or Prohibition'" seeking to have the district court restrained from going on with the anti-trust action. [p. 231]

The court of appeals held that although the district court refused to stop the proceedings at this stage, that court made it clear that the jurisdictional issue could be raised again "after pre-trial clarification of the issues." [p. 232]

Mandamus or prohibition, said the court, is sought here as another way of obtaining immediate review of an interlocutory order which can be reviewed as effectively by appeal from the district court's final decision in the

suit. In order to justify resort to an extraordinary writ such as is sought here, "the challenged assumption or denial of jurisdiction must be so plainly wrong as to indicate failure to comprehend or refusal to be guided by unambiguous provisions of a statute or settled common law doctrine." [p. 232]

BREACH OF EMPLOYMENT CONTRACT AND INDUCING
A BREACH AS SEPARATE CAUSES OF ACTION
FOR DIVERSITY PURPOSES

Allison v. American Airlines,
112 F. Supp. 37 (D.C. Okla. April 14, 1953)

Plaintiff sues airline and one of its employees, Anderson, charging the airline with breach of a contract of employment, and Anderson with inducing the breach and interfering with plaintiff's business relations. Plaintiff now moves to remand the case to the state court since both the plaintiff and Anderson are citizens of Oklahoma.

The district court held that the ultimate decision as to whether there is a cause of action against Anderson can be deferred, since jurisdiction can be sustained on another ground. Two distinct causes of action were pleaded here: a) breach of contract, and b) inducing a breach of contract, and this case was properly removed, said the court, under 28 USCA §144 (c). An employee may be justified in inducing his employer to breach a contract if in good faith he believes that to do so would be in his employer's best interest. Such a defense would not be available to the employer who breached the contract.

EXHAUSTION OF ADMINISTRATIVE REMEDIES PROVIDED BY
EMPLOYMENT CONTRACT BEFORE SUING CIVILLY
FOR DAMAGES — MISSOURI LAW

TWA v. Koppal,
73 S. Ct. 906 (June 1, 1953)

A TWA employee was suspended "on a charge of abuse of sick leave provisions of his contract," and given a hearing in accordance with the grievance procedure in his contract. [p. 907] He was asked to resign and did so under protest, but instead of appealing the adverse ruling in accordance with the contract procedure, he brought action in a district court for damages. The district court set aside a favorable jury verdict and dismissed the complaint for failure to exhaust administrative remedies as provided in the employment contract.

The Supreme Court held that the Railway Labor Act "does not deprive an employee of his right to sue his employer for an unlawful discharge . . ." [p. 910] The Adjustment Board does not have exclusive jurisdiction over an employee's claim that he has been unlawfully discharged. But since Missouri law, applicable to this contract, requires a showing that complainant has exhausted his administrative remedies, an employee who fails to do so must have his complaint dismissed. The district court's judgment was affirmed, and that of the court of appeals (which reversed the district court) reversed.