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DIGESTS OF RECENT U.S. CASES

IMMIGRATION ACT OF 1917 — DETENTION EXPENSES

Pan American World Airways, Inc. v. United States

122 F. Supp. 682 (Ct. of Claims, July 13, 1954)

Plaintiff airline seeks recovery of charges collected by the Immigration and Naturalization Service for detention of American citizens, passengers of plaintiff, whose eligibility for entry into the United States had to be determined. The Immigration Act of 1917 authorizes the Service to exact payment from air carriers for detention expenses of "aliens." In its finding for the Government, the court construed "aliens" to include citizen passengers whose detention was necessary to verify their citizenship. Since the citizenship of plaintiff's passengers was a fact which had to be investigated, charges for their detention were lawfully imposed. A dissenting opinion disapproved of this construction of the Immigration Act, stating that air carriers should not be assessed for detention of persons who claim to be American citizens and are shown to be citizens.

DEATH ON THE HIGH SEAS ACT — ADMIRALTY JURISDICTION

Higa v. Transocean Airlines

124 F. Supp. 13 (D. Hawaii, Oct. 1, 1954)

Deceased, resident of Hawaii, was killed in the crash of a plane owned by defendant airline while enroute from Wake Island to Hawaii. His administrator brings an action at law in a federal district court under the Death on the High Seas Act. Defendant's motion to dismiss for want of jurisdiction was sustained without prejudice to plaintiff's filing of an appropriate suit for damages in admiralty. Under the Death on the High Seas Act, actions for maritime wrongful deaths must be brought exclusively in admiralty in the federal district courts. Since the remedy is purely statutory, plaintiff has no action at law.

FLIGHT TIME REGULATIONS — BOARD POWER — COURT REVIEW

Air Line Pilots Association International et al. v. Civil Aeronautics Board

215 F. 2d 122 (2d Cir. July 8, 1954)

Application is made for an interlocutory stay of the Special Air Regulation issued by the CAB, temporarily relaxing the maximum eight hour flight rule for pilots so as to permit continuance of the existing type of non-stop transcontinental flights, pending the outcome of a general rule making proceeding initiated by the Board. Under Title VI of the Civil Aeronautics Act, the CAB is empowered to prescribe and revise from time to time "Reasonable rules and regulations governing, in the interest of safety, the maximum hours or periods of service of airmen. . . ." Absent a clear showing that the Board has acted beyond its powers of otherwise improvidently, the court decided it should refrain from interference with the expert judgment of the CAB. Specifically, since the Board conformed to rule-making requirements in issuing the Special Air Regulation and since no showing was made that flight safety would be impaired, the stay application was denied.

BAILOR OF PLANE — LIABILITY FOR DAMAGES

D'Aquilla et al v. Pryor et al.

122 F. Supp. 346 (S.D.N.Y. June 29, 1954)

A plane owned by the defendant, a New York resident, crashed in front of plaintiff's home in Connecticut. In a suit for damages, it was shown that the plane had been rented from the defendant by a duly licensed and qualified pilot for the latter's personal flight and that the plane, when rented, had been inspected and equipped as required by the Government. Neither the law of New York nor the law of Connecticut imposes absolute liability upon the bailor of a plane for any possible negligent operation by a bailee pilot. Recovery was denied since the defendant was not negligent in renting an airworthy plane to a duly licensed pilot.

WARSAW CONVENTION — STATUTE OF LIMITATIONS

Nicolet v. Trans World Airlines, Inc.

2 CCH Aviation Law Rep. 17,427 (1954)

(U. S. Dist. Ct. S.D.N.Y. June 17, 1954)

Article 29 of the Warsaw Convention imposes a two year statute of limitations upon suits for deaths and injuries which occur in international air flights. Decedent, who had been injured while a passenger aboard defendant's plane, instituted a damage suit for injuries within the period of limitations. Subsequently, while this suit was still pending, but beyond the period of limitations, decedent died from the same injuries. The instant suit for wrongful death was commenced within two years of decedent's death but more than two years after the plane crash. The court held that the suit for wrongful death was not barred by Article 29.

TARIFF LIMITATION ON LIABILITY — PERSONAL PROPERTY

Wadel v. American Airlines, Inc. et al.

2 CCH Aviation Law Rep. 17,421 (1954)

(Texas Ct. of Civil Appeals, June 4, 1954)

Defendant airline filed with the CAB a tariff which provided that the total liability for the loss of, injury to, or delay in delivery of any personal property "accepted for transportation as baggage . . . or otherwise delivered into the custody of the carrier shall be limited to \$100.00 for each passenger . . . unless the carrier has accepted a greater liability." In an action for property damages, plaintiff, husband of decedent, sues for loss of jewels, furs, and other items of personal property on her person when she was killed in a crash of defendant's plane. Decedent had made no declaration of value of the property nor had she paid the additional charges for excess valuation. The court held that defendant's liability was limited to \$100.00, stating that the term "baggage" in the tariff was broad enough to include property worn or held by passengers. While a carrier may not exempt itself from liability for negligence, it may limit its responsibility for loss in the manner here. Also, a tariff on file with the CAB becomes part of the contract under which passenger and baggage are carried, regardless of the passenger's ignorance of the tariff and of the carrier's failure to inquire as to the value of the baggage.

EMPLOYEE DISCHARGE — COURT REVIEW OF
ADJUSTMENT BOARD

Bower v. Eastern Air Lines, Inc.

214 F. 2d 623 (3rd Cir. June 21, 1954)

An employee, discharged by defendant airline, appealed to the Eastern Air Lines Pilots' System Board of Adjustment which was established, under authority of Title II of the Railway Labor Act, pursuant to an agreement between defendant and its pilots that the Board of Adjustment's decisions should be "final and binding upon the parties." After a full hearing, the Board of Adjustment sustained the discharge. In a suit by the employee for wrongful discharge, a federal district court held that the plaintiff, having received full and fair consideration by the Board of Adjustment, was bound by its decision. The court of appeals affirmed, stating that the plaintiff chose the administrative remedy of the Board of Adjustment instead of the alternative court procedure and could not now obtain a judicial consideration of the merits. Plaintiff was under no compulsion to procure an administrative determination first, which, by its terms, was final and binding. Judicial review, the court concluded, was confined to the fairness of the hearing.

PILOTS' TESTIMONY — IMMUNITY FROM SUSPENSION

Lee, Administrator of Civil Aeronautics v. Brubaker

CAB Docket No. SR-2168 (Decided August 2, 1954)

Lee, Administrator of Civil Aeronautics v. Olsen

CAB Docket No. SR-2169 (Decided August 2, 1954)

Brubaker and Olsen were pilot and co-pilot respectively of an airplane which was involved in a midair collision. At a formal investigatory hearing before the CAB, each claimed his privilege against self-incrimination and was granted immunity conferred by Section 1004(i) of the Civil Aeronautics Act, the compulsory testimony provision. Subsequently, the Administrator filed complaints with the CAB charging lack of vigilance and asking for the suspension of their airman certificates. The CAB dismissed the complaints with leave to the Administrator to file amended complaints, holding that Section 1004(i) immunized the pilots against any suspension imposed purely as punishment for violating regulations. Suspensions necessary to protect the public from an unqualified pilot, however, are not barred, even though testimony has been compelled. Since the complaints here did not expressly allege these pilots to be unqualified, the CAB concluded that merely a disciplinary suspension was sought.