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DIGEST OF RECENT CASES

FEDERAL v. STATE REGULATION—CARRIAGE OF INTERSTATE PASSENGERS WITHIN STATE

Civil Aeronautics Board v. Friedkin Aeronautics, Inc.
2 CCH Aviation Law Rep. 17,457 (S.D. Cal. Sept. 16, 1954)

Defendant airline operated wholly within the state of California. However, numerous passengers were carried whose journey either began or ended outside of California. The CAB filed an action alleging failure to obtain a certificate of public convenience and necessity. The court, recognizing that this was a case of first impression, refused to be bound by cases from the field of bus and railroad transportation, and looked solely to the Civil Aeronautics Act and the intent of Congress. In spite of language in the act defining air commerce and transportation as that which directly *affects* interstate air commerce, the court found the intent of Congress in the field of economic regulation to be to leave regulation of carriers operating wholly within the state to the states. Although Congress has the power to preempt the entire field, as it has done in safety regulation of airlines, the legislative history shows that it did not so intend. Since the defendant was not engaged in interstate air transportation, the action was dismissed for lack of jurisdiction.

TORTS—CONTRIBUTORY NEGLIGENCE

Kenty v. Spartan Aircraft Co.
276 P. 2d 928 (Okla. Oct. 12, 1954)

Plaintiff was severely injured in a crash resulting from running out of fuel while flying from Tulsa to Dallas. Previously, Plaintiff had instructed defendant aircraft company to service his plane for the flight but defendant had mistakenly serviced the wrong plane. Plaintiff had neglected to check the fuel supply and to check the number on the service ticket which would have shown the mistake. The court held that an instruction to the effect that the defendant had no right to expect the plaintiff to check the gasoline supply was properly refused. Instructions on contributory negligence are merely to define the term, not set out facts which do or do not constitute contributory negligence.

SALVAGE OF SEAPLANE—DISMISSAL OF SUIT—AWARD OF COSTS

Lambros Seaplane Base, Inc. v. M/S Batory
125 F. Supp. 23 (S.D.N.Y. Oct. 21, 1954)

While the transatlantic liner, Batory, was proceeding to England, a seaplane was sighted. The pilot of the plane circled the ship and shouted that he was lost and without gas or compass. This was later proved to be untrue. The pilot was taken aboard and the plane hoisted on the ship and transported to England. The owner of the plane demanded its return which was refused until transport charges were paid. When these were not paid, the plane was sold at public auction. The owner of the plane filed a suit for damages and the owner of the ship filed one for salvage. The lower court consolidated the suits and dismissed the salvage claim of the ship owner. The upper court dismissed the plane owner's claim but made no provision for costs in the lower court. In the present action, recovery of costs was denied to the plane owner since the salvage suit was not a nuisance action but raised serious questions of law. Because both claims were dismissed, each party had to pay his own costs.

AIR CARRIER LIABILITY FOR CHARGES FOR EXAMINATION OF ARRIVALS FROM FOREIGN PORTS

Air Transport Association of America v. Brownell
124 F. Supp. 909 (D.D.C. Oct. 11, 1954)

Acting under a statute authorizing him to set extra compensation for employees of the Immigration and Naturalization Service who perform overtime service in connection with planes arriving from foreign ports, the Attorney General fixed such compensation for airplanes arriving from Hawaii, Alaska, and Puerto Rico. The court recognized the desirability of applying the statute to arrivals from these parts, but nevertheless held they were not foreign ports, but rather part of the United States. Plaintiff airlines were held entitled to a declaratory judgment to this effect because of the possibility of a multiplicity of suits and mounting interest charges in case they should be held liable for the extra compensation.

WORKMAN'S COMPENSATION—ACCIDENT ARISING OUT OF COURSE OF EMPLOYMENT

Scott and McMillan Mortuary v. Rhyan
275 P. 2d 891 (Ariz. Nov. 1, 1954)

Decedent was employed by defendant to drive his ambulance and administer oxygen, including the answering of emergency calls. On the day of the accident, decedent had driven a small child suffering from poliomyelitis to the airport to be flown to Phoenix, Arizona. No arrangements had been made by the parents for a nurse to operate the oxygen equipment during the flight, so decedent accompanied them for this purpose. The plane crashed shortly after take-off killing all aboard. The court held that although the decedent's act was unusual, it could still be in the course of his employment. Emergencies may expand the course of employment and in this case, it was foreseeable that an emergency might require administering oxygen in places other than the ambulance. If the conditions of employment create a "zone of special danger" compensation may be granted. The court was also influenced by the fact that the employer was at the airport and made no objection to the decedent's subjecting himself to the risk of the flight.

TORTS—ABSOLUTE LIABILITY

Boyd v. White
276 P. 2d 92 (Cal. App. Nov. 12, 1954)

Defendants rented a plane to an instructor to be flown by a student pilot. During a solo flight the plane crashed into Plaintiff's home, allegedly causing her fright and mental suffering in addition to damaging her real property. Plaintiff brought suit on the theory that an aircraft owner renting to a student pilot is absolutely liable for damages resulting from a crash. Under a statute providing that the owner of a plane is liable for damages caused by a forced landing "as provided by law," the court held that liability is to be determined by the normal rules of bailments, respondeat superior and negligence. The court felt that the operation of an airplane today is not such a dangerous activity that it can be ultrahazardous and the owner thereby subjected to absolute liability. Neither would the court impose absolute liability upon all who rent to student pilots since these pilots are not, as a matter of law, incompetent. The Plaintiff's argument that, as a matter of public policy, the owner of aircraft should insure themselves against the risk of damage by student pilots was said to be a consideration for the legislature and not for the courts.

TEMPORARY MAIL RATES—TRANSPORTATION OF FIRST CLASS MAIL TO WEST COAST

American Airlines Inc., et al.

CAB Docket No. 6901 (Nov. 30, 1954)

The CAB has issued an order setting a temporary rate of 18.98 cents per ton mile for air transportation of first class mail to West Coast areas. The final rate will be retroactive to the time the service is inaugurated. The Board felt it could not fix a final rate because of the lack of evidence on the experiment on the East Coast. However, it felt justified in establishing the temporary rate because the fixing of the final rate would require a long time during which the airlines would be performing services. The Board pointed out that the fixing of a temporary rate is not a condition precedent to the inauguration of the service.

Although the railroads were given permission to intervene only in the determination of the final rate, two issues raised by them were considered. The Board found that it did have authority under the Civil Aeronautics Act to fix rates for the non-obligatory transportation of mail on a space available basis. In answer to the asserted violation of Federal law by the Postmaster in this action, the Board ruled that the violation was not so clear, and, even if it were more obvious, the Board would not interpret and apply a statute in the Postmaster's realm of activity.

ACQUISITION OF LOCAL AIR CARRIER BY TRUNKLINE CARRIER

Continental—Pioneer Acquisition Case

CAB Docket No. 6457 et al. (Dec. 7, 1954)

In departing from its long policy of keeping trunkline and feeder services separate, the CAB allowed a trunkline carrier to acquire the assets of a local carrier because the substantial similarity of the two did not breach the underlying reasons for the rule. In finding that the acquisition would not jeopardize other carriers, the Board ruled that the possibility of route restrictions being removed in the future was not material. The Board was further influenced by the reasonableness of the price, the resulting efficiency and improvement of service to the public, and the reduction in the amount of subsidy. On the other hand, the Board had no interest in whether the proceeds were used to pay off debts or were distributed to shareholders, thus ignoring the assertions of a "bank bail out." Likewise immaterial was the fact that Continental had previously sought a certificate to operate in the acquired territory. In regard to labor provisions, approval was made conditional upon the acceptance of the terms of the *Flying Tiger—Slick Merger* case. Finally, the Board ruled that it would not offset the profit under the acquisition against the mail subsidy of Pioneer for the practical reason that such action may prevent the acquisition and for the legal reason that when the profit is realized, Pioneer would no longer be an air carrier with a need for subsidies.