Journal of Air Law and Commerce

Volume 24 | Issue 1 Article 9

1957

Digest of Recent Cases

DIGEST OF RECENT CASES

JUDICIAL REVIEW OF CAB ORDER — "FINAL ORDER" REQUIRED — LIMITATION ON APPLICATION OF ASHBACKER RULE

Eastern Air Lines, Inc. v. CAB

5 CCH Aviation L. Rep. 17,126 (D.C. Cir. Dec. 6, 1956).

Eastern Air Lines had filed an application for an extension of one of its existing routes. In the interim between filing the application and the time it came on for prehearing conference, several other airlines had filed applications covering most of the United States. In order to expedite hearing these applications, the Board set up area hearings and consolidated for hearing and disposition all the pending applications within a particular area. Eastern then filed amendments to its application and moved in the alternative either that its original application be considered in a separate hearing or that its new amendments be consolidated into the proceedings. From a denial of these motions Eastern petitioned for review. In affirming the CAB's order, the United States Court of Appeals for the District of Columbia Circuit held that an order denying consolidation is not a "final order" and therefore cannot be reviewed. The order in this case did not foreclose consideration of Eastern's amendments in appropriate proceedings. Furthermore, although Eastern contended that since its amendments sought mutually exclusive routes, it was entitled to consolidation under the rule in *Ashbacker Radio Co. v. FCC,* the court held that there must be some limitations on the *Ashbacker* rule when applied to air routes. Otherwise, *Ashbacker* could be availed of for the sole purpose of tactical maneuvers, and unlimited application of that rule could translate any proceeding on an application for an isolated route segment into an examination of the entire national air-route structure. If the Board was not unreasonable in the limitation placed on the application of *Ashbacker,* a court should not interfere.

JURISDICTION — WRONGFUL DEATH ACTION FOR DEATH OCCURRING IN AIRSPACE OVER HIGH SEAS — FEDERAL DEATH ON THE HIGH SEAS ACT — WARSAW CONVENTION

Noel v. Linea Aeropostal Venezolana

5 CCH Aviation L. Rep. 17,125 (S.D.N.Y. Nov. 29, 1956).

The plaintiff's decedent had died while a passenger on one of defendant's aircraft which crashed into the ocean. Plaintiff's original complaint, as amended, alleged that the decedent had been killed when the plane on which he was a passenger crashed at sea, and asserted claims for damages based on both the Federal Death on the High Seas Act (41 Stat. 537, 46 U.S.C. §§ 761-767 (1952)) and the "Warsaw Convention." The United States District Court for the Southern District of New York, in dismissing the original complaint, held that the Federal Death on the High Seas Act gave the plaintiffs only a cause of action in admiralty, rather than a civil cause of action. Therefore, the court said, not only could there be no civil cause of action under the Federal Death on the High Seas Act, but neither could a suit be sustained under the Warsaw Convention. In their second amended complaint, plaintiffs alleged that their decedent's death occurred in the airspace over the ocean, and contended that this allegation placed their claim outside admiralty jurisdiction and gave them the right to bring a civil action under the Warsaw Convention. The court held that the new

allegation did not distinguish this complaint from its predecessor, and therefore this complaint was also dismissed. The fulfillment of the jurisdictional requirements of the Federal Death on the High Seas Act is not to be governed by a determination of such an elusive fact as whether a person died above, on, or in the sea.

CONDEMNATION — LAND LYING CONTIGUOUS TO, BUT OUTSIDE CONDEMNED AREA — DENIAL OF PETITION TO INTERVENE

Goodyear Farms v. United States

5 CCH Aviation L. Rep. 17,228 (9th Cir. Dec. 3, 1956).

Owners of land lying contiguous to an Air Force base had petitioned to intervene in a condemnation proceedings involving other land. These owners asserted that the take-offs and landings over their land would constitute an appropriation, for which they were entitled to compensation. While approving of the "before and after" test for measuring compensation, and holding that an owner, if he held land both within and without the condemned area, would be entitled to compensation for damages suffered by the whole tract, the United States Court of Appeals for the Ninth Circuit upheld the trial court's denial of certain motions for intervention. It was the court's opinion that the rights of persons owning land lying completely outside the condemned area could not be adjudicated in the condemnation proceedings. Furthermore, even as to those persons owning land partially within the condemned area, the court held that the petition for intervention was properly denied. These persons were already defendants in the condemnation suit and could appeal from a final judgment if they had not been awarded compensation for all of their rights taken or damaged. In addition, the court upheld the denial of a petition by easement holders for intervention. Although these petitions presented a justiciable issue, the easement holders were defendants in the condemnation proceedings and all the rights destroyed by the condemnation must be compensated in that proceeding.

The court also held that an order denying a motion of certain easement holders to amend their answers was not appealable. The judgments each contained a reservation for future consideration of matters relating to the petitions for intervention and were, therefore, not final orders. Although these judgments were based upon compensation for the fee simple title, in order to meet the requirements of the fifth amendment, any final order would have to award compensation for all property rights taken or destroyed. Hence, in order to be final as to the easement holder, these judgments would have to either grant or deny compensation for the claimed easements.

INTERSTATE COMMERCE — COMPANIES SERVICING AIRLINES — APPLICABILITY OF FAIR LABOR STANDARDS ACT TO EMPLOYEES THEREOF

Mateo v. Auto Rental Co.

5 CCH Aviation L. Rep. 17,240 (9th Cir. Jan. 23, 1957).

Mitchell v. Airline Foods, Inc.

5 CCH Aviation L. Rep. 17,244 (E.D. La. Jan. 9, 1957).

In the *Auto Rental Co.* case, the drivers of an airport limousine service had sued their employer for overtime compensation under the Fair Labor Standards Act. The limousine service was engaged principally in transporting airline and steamship passengers to and from the Honolulu International Airport and the Port of Honolulu and the downtown and Waikiki districts. However, the limousines were also used occasionally for sightseeing tours. The only contracts between the airlines and the limousine service

involving passengers, provided transportation of deplaning passengers who had not made prior arrangements. The trial court had held that the drivers were not employees "engaged in interstate commerce" and, therefore, denied recovery. In affirming this result, The United States Court of Appeals for the Ninth Circuit rejected the tests "affecting interstate commerce" and "production of goods for interstate commerce" and stated that the test for determining what industries came within the purview of the Fair Labor Standards Act was whether the particular industry was "engaged in interstate commerce." Basing its decision on the lack of comprehensive contractual agreements between the airlines and the limousine service, the fact that the limousine service was in stiff competition with other airport systems and taxicab companies, the fact that the limousines were not used exclusively for transporting interstate passengers, and the lack of evidence that the airlines exercised any control over the schedules, fares, and policies of the limousine service, the court held that the defendant was not an integral step in interstate commerce. As an additional basis for holding that the defendant was not engaged in interstate commerce, the court said that the stream of commerce ended upon a passenger's arrival at International Airport, and the transportation rendered by the limousine service was of a purely local nature. Since the defendant was not engaged in interstate commerce, its drivers were not covered by the Fair Labor Standards Act.

In the *Airline Foods, Inc.* case, the employees of a drive-in restaurant and catering service sued in the United States District Court for the Eastern District of Louisiana for a temporary injunction restraining their employer from violating the minimum wage, overtime pay, and record-keeping provisions of the Fair Labor Standards Act. Approximately one-half of the defendant's gross revenue was derived from its preparing meals for airlines to be served in flight. The court held that the preparation of meals for the airlines constituted "production of goods for interstate commerce," and that the employees carrying on such activities were covered by the Fair Labor Standards Act. Therefore, since the defendant had violated the provisions of the act, its employers were entitled to the preliminary injunction.

LANDINGS AND TAKE-OFFS — FEDERAL JURISDICTION OVER AIRCRAFT FLIGHTS — CONFLICTING MUNICIPAL ORDINANCE UNCONSTITUTIONAL

Allegheny Airlines, Inc. v. Village of Cedarhurst

238 F.2d 812 (2d Cir. Dec. 13, 1956).

The defendant village, which is situated at its nearest point about 4,000 feet from New York City's Idlewild Airport, had a municipal ordinance prohibiting flights over it at altitudes of less than 1,000 feet. The plaintiff airlines had sued for a permanent injunction restraining the enforcement of this ordinance, and an injunction was issued by the trial court. The basis of the trial court's decision was that the commerce clause of the United States Constitution granted to Congress the power to regulate the flight of aircraft in interstate and foreign commerce, that this power had been exercised by the Air Commerce Act of 1926, the Civil Aeronautics Act of 1938, and regulations of the Civil Aeronautics Board and the Administrator of Civil Aeronautics, and that the federal government had thereby preempted the field of air traffic regulation. Since the ordinance in question conflicted with these federal statutes and regulations, the trial court held it to be invalid. On appeal to the United States Court of Appeals for the Second Circuit, the defendant conceded that the federal government had preempted the field with respect to flights at altitudes in excess of 1,000 feet, but contended that Congress had not preempted the airspace under 1,000 feet. The Second Circuit, in rejecting this contention, held that Congress

had preempted the field with respect to flights at any altitude when it granted "freedom of transit in air commerce through the navigable airspace of United States." Further evidence, the court said, that the federal government had preempted the field below as well as above 1,000 feet was the delegation to Board of power to make rules concerning safe altitudes of flight at any elevation.

The court also rejected the defendant's further contention that the Board's and Administrator's regulations with respect to landings and take-offs constituted a taking without compensation. There were not sufficient flights over the village at any altitude to constitute a "taking." Furthermore, the court answered the attack that these regulations were the product of an invalid delegation of legislative power, by saying that it is not necessary that Congress provide a standard that can be applied with mathematical certainty. Decisions with respect to safe altitudes for any specific set of circumstances can only be made by some specially equipped administrative agency which can act *ad hoc* to carry out the congressional policy declared by statute. Therefore, for these purposes, the terms "safe altitudes" and "safety" provided sufficiently definitive standards.

AIRPLANE CRASH — VIOLATION OF FEDERAL AIR TRAFFIC RULES EVIDENCE OF NEGLIGENCE — PILOT'S EVASIVE ACTION NOT CONTRIBUTORY NEGLIGENCE

Hough v. Rapidair, Inc.

5 CCH Aviation L. Rep. 17,204 (Mo. Jan. 14, 1957).

The plaintiff was attempting to land his plane pursuant to instructions transmitted to him from the control tower. When he was about two hundred feet above the ground, he observed another plane proceeding on a collision course at right angles to his landing approach. When the plaintiff attempted to avoid a collision, his plane stalled and crashed, and the plaintiff was injured. The jury, in a personal injury and property damage suit brought by the plaintiff, found for the defendant. The trial court, however, sustained the plaintiff's motion for a new trial, and the defendant appealed the new trial order to the Missouri Supreme Court. Under the federal Air Traffic Rules, the plaintiff's plane, being on the right of the defendant's plane and also being on final approach to land, had the right of way over other aircraft in flight, and the defendant's plane should have given way to it. The Missouri Supreme Court, although indicating that violations of federal air regulations do not constitute negligence as a matter of law, held that such violations are evidence of negligence. The violations in this case, in connection with the other evidence, was sufficient to show that the defendant's aircraft had been negligently operated. In rejecting the defendant's contention that the plaintiff had been contributorily negligent, the court held that, by virtue of the transmitted instructions, the plaintiff had a right to assume that pilots of other aircraft would recognize that his plane had the right of way, especially planes approaching from his left. Also, the court refused to rule that the evasive action taken by the plaintiff, when confronted with an imminent collision, constituted contributory negligence as a matter of law, even though another course of action would have been safer. Furthermore, the court held, neither was there any other evidence indicating that the plaintiff had been contributorily negligent. Therefore, the trial court's instruction on the issue of contributory negligence, submitted in the disjunctive or alternative, was error and the new trial was properly granted.