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DIGEST OF RECENT CASES

ANTI-TRUST LAWS — CONCERTED RATE QUOTATIONS TO GOVERNMENT BY RAILROADS — SUPPLEMENTAL AIR CARRIERS

A. T. & S. F. Ry. Co. v. Aircoach Transportation Assoc.

5 CCH Aviation L. Rep. 17,792 (D.C. Cir. 1958)

Plaintiff airline companies and defendant railroads were competing for government contracts involving the transportation of military personnel. Plaintiff objected to certain rate fixing practices which normally would have been clear violations of the Sherman Act and asked for an injunction preventing any future use of such practices. Defendant resisted the injunction on the ground that sec. 5a of the Interstate Commerce Act specifically excluded government contracts such as these from the scope of the Sherman Act. In reversing the trial court and denying the injunction, the court of appeals held that the lower court should have first referred the question of whether these contracts were exempt from the Sherman Act to the Interstate Commerce Commission for an advisory ruling. The court further held, however, that regardless of how the Interstate Commerce Commission regarded these contracts, they could not be immune from the Sherman Act if it should be found that they were part of a conspiracy to eliminate the airlines from competition.

FLIGHTS OVER PRIVATE PROPERTY — COURT INTERFERENCE WITH CIVIL AERONAUTICS BOARD REGULATIONS

Newark v. Eastern Airlines, Inc.

5 CCH Aviation L. Rep. 17,828 (D.C. N.J. Feb. 27, 1958)

Plaintiff municipalities and private landowners seek to enjoin the defendant airlines in their operations from Newark airport on the grounds that said operations constitute a nuisance as well as a trespass on private property. Flight operation patterns at Newark airport were regulated by the Administrator under the authority of the Civil Aeronautics Act. It was the contention of the defendant that the injunctive relief sought by the plaintiffs was directed at the flight patterns relating to take-offs and landings and this was already governed by Civil Aeronautics Board regulations. In dismissing the suit, the court was of the opinion that the power to amend the CAB flight pattern regulations is not within the jurisdiction of the court.

AIRCRAFT DAMAGES — BAILMENT OF SUBSTITUTE — LIABILITY FOR DAMAGES AND RENTAL

Athabaska Airways Ltd. v. Government Airways

5 CCH Aviation L. Rep. 17,702 (Queen's Bench Sask. Oct. 28, 1957)

Plaintiff's airplane was damaged due to the negligence of defendant while the parties were competing in the business of flying material and equipment to sites on the Canadian early warning system. Unable to purchase another plane, plaintiff rented one during the period in which defendant undertook to repair the plaintiff's damaged craft. In a suit for damages resulting from defendant's negligence, plaintiff claimed the rental cost as an item of liability to be sustained by the defendant. Defendant's contention that the rental was unjustified and only tended to increase the amount of damages was rejected upon the theory that precluding the plaintiff from renting another

plane would give the defendant an opportunity to corner all of the business. It is not only the privilege, but the duty of the plaintiff to obtain a substitute aircraft and attempt to minimize the loss resulting from the accident. Judgment rendered for the plaintiff.

AIRLINE INSURANCE — IRREGULAR AIR CARRIERS — POLICY PROVISIONS LIMITED TO CERTIFIED CARRIERS

Thompson v. Fidelity and Casualty Co.

5 CCH Aviation L. Rep. 17,800 (Ill. App. Jan. 24, 1958)

The plaintiff was beneficiary of one of defendant's life insurance policies purchased through a vending machine. The provisions of the policy specifically limited liability to accidents occurring aboard scheduled air carriers certified by the Civil Aeronautics Board. Denying recovery on the policy, the court said that the fact that the plane on which the insured secured transportation was scheduled to leave at a certain time did not make it a scheduled air carrier as defined in the policy.

AIRMAN CERTIFICATE REVOCATION — REVIEW OF CAB ORDER — ADMINISTRATIVE PROCEDURE ACT

Walker v. Civil Aeronautics Board

5 CCH Aviation L. Rep. 17,739 (U.S.C.A. 2d Jan. 31, 1958)

After a license suspension by the Civil Aeronautics Administration, the plaintiff continued to fly in violation of the suspension order. The Administrator then initiated a proceeding revoking the petitioner's license because of said violation. Petitioner appealed asserting that under the provisions of the Administrative Procedure Act no license shall be suspended, withdrawn, or revoked until the holder thereof has been given an opportunity to demonstrate compliance. This contention was rejected by the court because it ignored the fact that the opportunity to achieve compliance granted by § 9(b) of the Administrative Procedure Act is expressly made inapplicable to cases involving a willful violation of regulations.