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Digest of Recent Cases

DIGEST OF RECENT CASES

AIRPLANE CRASH — WRONGFUL DEATH — CONTROLLING STATUTE

Bannister, Admr. v. Northeast Airlines, Inc.

6 CCH Aviation Law Rep. 17,688 (E.D.N.Y. Oct. 5, 1959)

Decedent passenger's administrator brought an action against the defendant airline for wrongful death resulting from an air crash under the law of the state where the crash occurred. As this statute placed a limit upon the amount of recovery, plaintiff also brought an action under a decedent's law in the state where the estate was being administered for an alleged breach of contract of safe carriage. The court held that the law of the state where the crash occurs is controlling, and thus the second cause of action must be dismissed.

AIRPORTS — DISCRIMINATION — INJUNCTION — MOTIONS TO STRIKE AND DISMISS COMPLAINT

Henry v. Greenville Airport Commission

6 CCH Aviation Law Rep. 17,680 (W.D. S.C. Aug. 5, 1959)

Negro plaintiff brought a damage action against defendant airport authority on the ground that he was required to wait for his plane in a segregated waiting room, and also a motion for an injunction to prevent a similar occurrence in the future to himself and any others in his position. Motions to strike portions of the complaint were granted as plaintiff's allegations failed to show how he had been damaged; or that he had been deprived of any rights under color of state law. The motion for an injunction was denied for the reason that plaintiff's affidavit failed to show that he had been deprived of any legal right, and also failed to sufficiently allege that there are others in his position who have been similarly discriminated against. Accordingly, the Court dismissed the complaint on the ground that it lacked jurisdiction, and that the complaint failed to state a cause of action upon which relief could be granted.

AIRLINE EMPLOYEE — DISCHARGE FOR UNION ACTIVITY — COMMON CARRIER STATUS

Bullock v. Capitol Airways, Inc.

6 CCH Aviation Law Rep. 17,674 (E.D.N.Y. Sept. 9, 1959)

Plaintiff employee became actively engaged in an effort to organize the flight engineers of defendant airline, and to induce them to join a labor union. After the union had been certified by the National Mediation Board as the exclusive bargaining agent for the defendant airline's flight engineer, plaintiff was discharged because of his union activities. The Court held that defendant airline qualified as a common carrier and hence came under the purview of the Railway Labor Act which prohibits discharges of this type. Although defendant airline did not operate under a certificate of public convenience and necessity issued by the Civil Aeronautics Board, the fact that it did not surrender control of its airplanes to charterers or lessees, but engaged in transporting goods and passengers on its own, rendered it a common carrier.

AIRLINE EMPLOYEE — DEATH AT SEA — WORKMEN'S COMPENSATION — DEATH ON THE HIGH SEAS ACT

King, Admx. v. Pan American World Airways, Inc.

6 CCH Aviation Law Rep. 17,666 (U.S.C.A. 9th Cir. August 27, 1959)

An airline employee whose contract of employment stated that he was to spend a certain number of hours yearly aboard an aircraft as a flight service supervisor comes within the provisions of the state Workmen's Compensation Act. Accordingly, in an action by his administratrix following his death in an air crash at sea, the court held that the Death on the High Seas Act was inapplicable, as state workmen's compensation acts which provide an exclusive remedy to injured employees supersede the otherwise existing admiralty remedy for personal injuries in situations where the application of the state acts does not interfere with the uniformity of the maritime law. The Death on the High Seas Act however, might abrogate state wrongful death statutes. The fact that the decedent's employment was not maritime in nature, takes this case out of the so-called "twilight zone" cases which afforded an election between the federal and state acts. The remedy in this case can be under the state act only.

CONDEMNATION — AIRPORT — QUALIFICATION OF COMMISSIONER

Collins v. Pulaski County

6 CCH Aviation Law Rep. 17,637 (Va. Sept. 3, 1959)

In an airport condemnation proceeding, one of the commissioners appointed to file the report fixing the compensation for the land to be taken, had also been appointed to make an appraisal of the land. The court held that the fact that one of the commissioners had also been elected as an appraiser created a presumption of prejudice, notwithstanding the fact that the commissioner in this case did not subsequently serve as the appraiser because of illness. This strict rule is deemed necessary because the power of eminent domain is a very high prerogative and great weight is attached to the report of the commissioners in fixing compensation.

CONDEMNATION — AIRPORT — METHOD OF EVALUATING DAMAGES

Matter of Town Board of Town of Islip

6 CCH Aviation Law Rep. 17,629 (N.Y. July 23, 1959)

In a condemnation proceeding for the purpose of acquiring land adjacent to an airport in order to provide a clear zone beyond one of the airport runways, the court in assessing damages, considered any possible uses of the land by prospective purchasers despite the fact that there was a zoning ordinance which would narrow the uses to be made of the land. The decision contemplated a reasonable probability that the zoning restriction might be modified or removed in the near future. Further, evidence of valuations fixed by taxed assessors is competent only for determining the actual value of the land for tax purposes, and not for condemnation purposes.

AIRLINE EMPLOYEES — RAILWAY LABOR ACT — SYSTEM BOARD OF ADJUSTMENT — JUDICIAL REVIEW

National Airlines, Inc. v. Metcalf

6 CCH Aviation Law Rep. 17,626 (Florida Aug. 13, 1959)

Plaintiff airline employee was awarded money damages by the System Board of Adjustment for being laid off from his job, and defendant airline sought declaratory relief from this judgment in the lower state court, claiming that the award was arbitrary and capricious, and that the board

exceeded its authority in awarding it. The lower court dismissed the complaint holding that under the provisions of the Railway Labor Act, and the contract under which the System Board of Adjustment was created, an award by the board is final and binding upon the parties thereto. The appellate court reversed, holding that agreements to arbitrate disputes and be bound by the awards do not preclude attacks through declaratory judgment actions on the grounds that the Board has exceeded its jurisdiction, or that the award was so arbitrary and capricious as to deny procedural due process of law.

AERIAL SPRAYING PILOTS — INDEPENDENT CONTRACTORS — WORKMEN'S COMPENSATION

Houston Fire & Casualty Ins. Co. v. Farm Air Service, Inc.

6 CCH Aviation Law Rep. 17,611 (Texas June 10, 1959)

Defendant aerial spraying service hired pilots to have complete control over the spraying operation, with the express contract proviso that they were to be treated as independent contractors. The pilots, when not used in a flying status, also contracted to service the planes. In an action by plaintiff insurance company to recover unpaid premiums under a workmen's compensation policy, the court held that parties may legally enter into a contract creating the status of independent contractor, notwithstanding the fact that the contract was entered into for the express purpose of avoiding the state Workmen's Compensation Act. Although the Act will still be applicable when the pilots are engaged in servicing the planes, it will not apply when they are engaged in the spraying operation.

AIRLINE PASSENGER INJURED — PROXIMATE CAUSE

Winer v. Eastern Air Lines, Inc.

6 CCH Aviation Law Rep. 17,609 (Mass. June 30, 1959)

Defendant airline failed to allow sufficient time for transfer from one airport to another in New York on a Miami-Boston through flight. Plaintiff passenger, in hurrying to make her plane after the late transfer, tripped and was injured. The court held that the airline was negligent in failing to allow sufficient time for transfer, and that this negligence could be properly construed as the proximate cause of the plaintiff's injury.

CAB ORDERS — JUDICIAL REVIEW — NEW ROUTE AWARDS

Eastern Air Lines v. Civil Aeronautics Board

6 CCH Aviation Law Rep. 17,694 (U.S.C.A. 2d Cir. Oct. 7, 1959)

In affirming orders of the Civil Aeronautics Board granting new routes to various air carriers, the court held: (1) In an area proceeding where an applicant objects to the failure of the Board to consolidate its application contending that it is entitled to a concurrent hearing as its application and the others are mutually exclusive, the applicant must produce evidence of mutual exclusivity or his objection will be treated as not having been made; (2) the Board's practice of issuing press releases prior to its formal decision does not amount to a prejudgment of the case or deny a party of a fair hearing; (3) there is no improper delegation of authority where assistants to Board members cast votes pursuant to instructions of their superiors; (4) the issuance of press releases by one of the plaintiffs relating to an equipment acquisition program immediately prior to the award cannot have the effect of unduly influencing the Board; (5) there is no requirement that the Board make a finding if fitness respecting an unsuccessful applicant where the Board has made a finding that the successful applicant is fit, willing and able to perform the required service; (6) Congressional testimony in favor of one of the applicants does not constitute undue influence.