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DIGEST OF RECENT CASES

AIRLINE EMPLOYEES — RAILWAY LABOR ACT — MINOR DISPUTE

Northwest Airlines, Inc. v. International Association of Machinists

6 CCH Aviation Law Rep. 17,835 (D.C. Minn. Dec. 23, 1959)

A dispute arose between plaintiff airline and a class of flight engineers represented by defendant union, over the interpretation of a flight engineers' collective bargaining agreement in its application to employment of such engineers on *Electra* airplanes. The defendant union induced the flight engineers to refuse to work on such aircraft, and refused to utilize the collective bargaining agreement's detailed procedure for settling disputes. The court held the dispute to be a "minor" one, and hence the defendant's action was in violation of the Railway Labor Act. Since the airline complied in good faith with the Act's provisions, the court felt that the union's conduct in perpetuating the dispute and causing the airline irreparable injury warranted injunctive relief. As the Norris-La Guardia Act was not applicable to the acts and conduct of the defendants in this case, a preliminary injunction was issued restraining the union from striking or from inducing employees to engage in a concerted refusal to work.

PLANE COLLISION — WRONGFUL DEATH — FEDERAL TORT CLAIMS ACT — RECOVERY AGAINST GOVERNMENT AND AIRLINE — FAILURE TO ITEMIZE DAMAGES

Cook v. United States

6 CCH Aviation Law Rep. 17,818 (U.S.C.A. 2d Cir. Jan. 19, 1960)

Plaintiff executors instituted two wrongful death actions in Connecticut on behalf of decedent who was killed in an aircraft collision in Virginia. One action was brought against the airline under the District of Columbia wrongful death statute and judgment was obtained in the amount of \$37,820. The other action was brought against the United States under the Federal Tort Claims Act, and the District of Columbia court awarded damages of \$15,000, the maximum amount permitted by the applicable Virginia wrongful death statute. Plaintiffs appealed because the court refused to itemize the damages for loss of consortium and solatium for which the Virginia statute provided. The appellate court, denying the appeal, held that the Virginia statutory limitation applies here, and as the recovery already equals this amount, itemizing the damages would amount to a useless gesture.

CAB ORDERS — JUDICIAL REVIEW — AREA ROUTE PROCEEDING — MUTUAL EXCLUSIVITY OF APPLICATIONS — EXPANSION OF PROCEEDING

Delta Airlines, Inc. v. Civil Aeronautics Board

6 CCH Aviation Law Rep. 17,770 (U.S.C.A. D.C. Cir. Dec. 10, 1959)

An order of the CAB extended an air carrier's route from the West Coast through St. Louis to Miami, when there was already in existence a southern transcontinental three carrier interchange service. This action was taken in an area route proceeding in which the CAB had confined itself to area limitations, and therefore was an expansion into a transcontinental route proceeding. Applicants for transcontinental routes in another pending proceeding were denied a fair hearing on their applications. The court set

aside the order of the CAB as it was in direct contravention of the *Ashbacker* doctrine which holds that where two or more pending applications are mutually exclusive, both must be accorded a hearing before an award can be made.

**CONDEMNATION — EASEMENTS — AIR FORCE BASE —
CLEARANCE OR OBSTRUCTION — AVIGATION**

United States v. Brondum

6 CCH Aviation Law Rep. 17,767 (U.S.C.A. 5th Cir. Dec. 8, 1959)

The United States instituted condemnation proceedings to acquire an easement affecting land belonging to plaintiff land owner which was situated near an air force base. The declaration of taking specified the right only to keep certain land clear of obstructions in order to maintain a minimum glide angle without the right to fly over such land. The court held that this taking was clearly a clearance or obstruction easement rather than an avigation easement, and hence found the trial court in error in their instructions to the jury that an avigation easement was the type granted to the plaintiff in these circumstances. Rather than affirming the court's action, which in effect amounted to compelling the United States to take an avigation easement, the court reversed and remanded the case.

**RAILWAY LABOR ACT — SYSTEM BOARD OF
ADJUSTMENT — JURISDICTION**

Metcalf v. National Airlines, Inc.

6 CCH Aviation Law Rep. 17,760 (U.S.C.A. 5th Cir. Dec. 1, 1959)

Plaintiff airline employee sued in a federal district court to enforce an award of an airline system board of adjustment granted to him as a result of a breach of the collective bargaining agreement between defendant airline and its employees. The court held that it had no authority under the Railway Labor Act to enforce such an award even though the Act does confer authority on federal courts to enforce awards of the National Railroad Adjustment Board. The court went on to say however, that a state court would have jurisdiction to grant such relief but must apply the federal law which controls the claim.

**PRACTICE AND PROCEDURE — EQUITY ACTIONS AGAINST
AIRLINE — PUNITIVE DAMAGES**

McManus v. Capital Airlines

6 CCH Aviation Law Rep. 17,744 (N.Y. Nov. 19, 1959)

Without discussing the factual situation of the case, the court stated that punitive damages are not given in an equity action against an airline. Further, punitive damages do not constitute a separate cause of action; they merely constitute an element of the single total claim for damages and can never even be considered until compensatory damages have been established.

**AIRPORT INJURIES — GOVERNMENTAL V. PROPRIETARY
FUNCTION — STATUTE OF LIMITATIONS**

Marks v. City of Battle Creek, Mich.

6 CCH Aviation Law Rep. 17,740 (Mich. Nov. 25, 1959)

Plaintiff was injured while attending an air show put on by the defendant, but had his damage action denied under a city ordinance which had the effect of shortening the statutory period in which claims may be brought by requiring the claimants to give the city a reasonable time to investigate and pass upon the claim. The court held that the city is engaged in a pro-

prietary function here and thus cannot give itself advantages which private individuals do not possess. Accordingly, they held that the ordinance was applicable only when the plaintiff was engaged in a governmental function.

**ADMINISTRATIVE AGENCIES — NATIONAL DEFENSE —
AIRCRAFT RADIO FREQUENCIES — TREATY OBLIGATIONS**

Bendix Aviation Corp. v. Federal Communications Commission

6 CCH Aviation Law Rep. 17,725 (U.S.C.A. D.C. Cir. Nov. 13, 1959)

The Commission, without complying with the public notice requirements of the Administrative Procedure Act, made certain changes in its rules whereby many bands of frequencies were reassigned for government use to fill certain essential radiopositioning requirements. In accordance with these changes, plaintiff aircraft manufacturer's petition for authority to experimentally use a certain radio frequency for the development of an airborne aircraft collision avoidance system was denied without a hearing. The actions of the Commission were upheld by the court on the ground that the Commission had authority to change its rules to meet the requirements of the federal government, especially when the action taken is in the interest of national defense, and in view of the international political climate and the advent of the space age. Moreover, the allocation of frequencies for exclusive government use in radiopositioning is not in conflict with treaty obligations of the United States since such allocations for aeronautical radio-navigation under such treaty were temporary and exclusively for altimeters.

**INSURANCE — SONIC BOOM FROM JET AIRCRAFT —
AIRCRAFT COVERAGE**

Firemen's Insurance Co. v. Alexander

6 CCH Aviation Law Rep. 17,711 (Texas Oct. 1, 1959)

Plaintiff's metal and frame lumber warehouse was destroyed by the sonic boom of a low flying jet aircraft which caused it to collapse. Plaintiff prevailed in a damage action against defendant insurance company even though the insurance policy's extended coverage provision referred only to damage caused by aircraft falling or by objects falling from the aircraft. The court nevertheless, affirming a prior appellate ruling, held that the plaintiff was entitled to recover on a showing that the damage was proximately caused by the aircraft.