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## Judicial and Regulatory Decisions

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# JUDICIAL AND REGULATORY DECISIONS

## I. JUDICIAL DECISIONS

### AIR CARRIER CERTIFICATES:

#### Certificate Modification — Effective Date Already Passed — Failure to Institute Formal Proceedings

*Delta Air Lines, Inc. v. CAB*, 6 Av. Cas. 18,107 (2d Cir. 1960).

After the effective date of Delta's authorization to serve Indianapolis, Indiana, the CAB imposed a restriction on the authorization requiring the carrier to originate or terminate flights serving that city in Atlanta, Georgia or south thereof. Since the restriction was imposed without starting a new proceeding under section 401 (g) of the FAA, the order was set aside.

#### Alaskan Air Carrier's "Bush" Operation Terminated — Carrier Granted Trunkline Authority — Board Action Public Interest-Resultant Reduction in Route Mileage and Communities Served Not Certificate Revocation

*Alaska Airlines, Inc. v. CAB et al.*, 6 Av. Cas. 18,102 (D.C. Cir. 1960).

#### Carrier Ordered to Provide Adequate Service to Toledo, Ohio — Aggregate of Service Provided by Other Carriers in Same Market Adequate — Individual Adequacy Required by Section 404 of FAA

*Capital Airlines, Inc. v. CAB*, 6 Av. Cas. 18,104 (D.C. Cir. 1960).

### AIRPORTS:

#### Taxation — Public Airport — Partial Private Use — Public Character Not Lost

*Town of Harrison v. County of Westchester*, 6 Av. Cas. 18,177 (N.Y. Sup., Westchester Ct. 1960).

A town may not tax a public airport because part of it is being used to store private aircraft. The public character given it by the legislature is not lost because it is no longer exclusively devoted to public use. Accordingly, a summary judgment dismissing the complaint was entered.

#### Governmental Immunity — Plane Destruction at Airport — Effect of Liability Insurance

*Lynwood v. Decatur Park District*, 168 N.E. 2d 185, 6 Av. Cas. 18,132 (Ill. App. 1960).

A municipality waived any governmental immunity which it could have availed itself as a defense in an action against it for the destruction of a plane, since it carried liability insurance. A statute in Illinois which would have granted such immunity has been enacted, but the defendant could not plead it as a defense since the cause of action arose prior to its enactment.

#### Invitee Injured — Municipal Airport — Statute Makes Operation a Governmental Function — No Tort Liability

*Wade v. Salt Lake City*, 6 Av. Cas. 18,158 (Utah 1960).

### CONTRACTS:

#### Conditional Sales Contract — Proving Conversion

*Arkansas Airmotive Division of Currey Aerial Sprayers, Inc. v. Arkansas Aviation Sales, Inc.*, 335 S.W. 2d 813, 6 Av. Cas. 18,130 (Ark. 1960).

Even though the conditional sales contract was void because the purchaser of a plane under said contract was not licensed to do business within the state, the court found that the purchaser should not be precluded from attempting to prove a conversion without having to rely on the illegal contract. It thus held that it was error for a trial court to enter summary judgment for the seller who had repossessed the plane.

**Manufacturer-Airline Sales Contract — Disclaimer Clause —  
Breach of Warranty — Negligence**

*Pan American World Airways, Inc. v. United Aircraft Corporation*, 6 Av. Cas. 18,135 (Del. 1960). Pet. for reh'd denied, 6 Av. Cas. 18,176 (Del. 1960).

In construing a disclaimer clause in a sales contract between an aircraft engine parts manufacturer and the plaintiff airline, the court found that the clause applied to goods not manufactured by the defendant manufacturer, but which were part of the sale, since the disclaimer referred to "goods" in general and not to "products." It therefore dismissed an action based on breach of warranty.

However, it was found that the manufacturing company might be held on a negligence charge since such charge was predicated on the "sale" and not the "use" of the goods. There was some doubt as to whether the disclaimer clause extended to negligence incident to the sales of parts.

**DAMAGES:**

**Aircraft Engine Parts Damaged in Transit — Motor Carrier's  
Liability Under Released Valuation**

*National Airlines, Inc. v. Mercury Motor Express, Inc.* 6 Av. Cas. 18,127 (N.Y. Sup., N.Y. County 1960).

An air carrier who had shipped an aircraft engine at released valuation by motor carrier was limited in his recovery for damages to certain removable parts of the engine while in transit to the released valuation of the damaged parts. The court rejected plaintiff's contention that recovery should be had on the basis of the value of the parts since the released value rate applied as a unit to the entire engine.

**Government Employee Air Crash Victim — Widow Paid Compensation by  
Government — Subsequent Recovery of Damages from Airline —  
Obligation to Reimburse Government Sum Paid Her Under the  
Federal Employee Compensation Act**

*Randall, Admx. v. United States*, 6 Av. Cas. 18,139 (D.C. Cir. 1960).

**Wrongful Death Recovery — Verdict Based on Deceased's Earning Capacity  
During His Life Expectancy — Not Excessive as Matter of Law**

*Capital Airlines, Inc. v. Barger, Admx.*, 6 Av. Cas. 18,175 (Tenn. Ct. App. 1960).

**INSURANCE:**

**Aviation Exclusion Clause — Double Indemnity Provision — Death on  
Military Training Flight — No Recovery Allowed**

*Bennett v. Metropolitan Life Ins. Co.*, 6 Av. Cas. 18,152 (Tenn. 1960).

Although the insured's policy included a clause within the double indemnity provision of the policy which suspended such coverage only if the insured was in the armed forces during time of war, there was also another exclusion clause which extended the exclusion to flights in the course of any training exercises while in the armed forces. Thus the defendant's demurrer, in a case arising out of the insured's death while serving on an Air Force bomber engaged in a training flight, was properly sustained.

**LABOR RELATIONS:****Union Strike Assessment — Airline Pilots — Power of Union Officials**

*Eads et al. v. Sayen et al.*, 6 Av. Cas. 18,171 (7th Cir. 1960).

A group of airline pilots, members of an unincorporated union, sought equitable relief from alleged invalid strike assessments. The court, however, upheld the trial court's findings that the assessments were not invalid as the union's board of directors had the power under an emergency clause in the union's constitution and by-laws to make such assessments. It was further pointed out that the pilots had not exhausted their remedies available under the union constitution and thus it was not proper to resort to judicial proceedings.

**Railway Labor Act — Crew Requirements — Major Dispute**

*Northwest Airlines, Inc. v. Airline Pilots Association, Int., AFL-CIO et al.*, 6 Av. Cas. 18,143 (D. Minn. 1960).

A preliminary injunction to prevent a strike as a result of a dispute between the carrier and its pilots and flight engineers over the crew complement was denied. There was no evidence that collective bargaining was not being conducted in good faith and since the subject matter of the dispute might affect pay and working conditions, it became a major dispute requiring compliance with RLA procedures.

**Railway Labor Act — "Cooling-Off" Period Following Emergency Fact-Finding Board Report — Parties Obligated to Bargain in Good Faith — Failure to Do So by Union — Subsequent Strike Enjoined**

*Pan American World Airways, Inc. v. Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, AFL-CIO et al.*, 6 Av. Cas. 18,156 (E.D. N.Y. 1960).

**Railway Labor Act — Flight Engineers' Refusal to Take Pilot Training — Major Dispute — Injunction Denied — Question to Be Resolved by Collective Bargaining**

*Northwest Airlines, Inc. v. International Association of Machinists, AFL-CIO et al.*, 6 Av. Cas. 18,146 (D. Minn. 1960).

**Threatened Pilots' Strike — Determination as to Whether Dispute a Minor One Under RLA — State Courts Lack Jurisdiction Over Subject Matter of Dispute**

*Pan American World Airways, Inc. v. Air Line Pilots Association, Int. et al.*, 22 Misc. 2d 150, 6 Av. Cas. 18,115 (N.Y. Sup., N.Y. County 1960).

**PROCEDURE:**

**Wrongful Death Action — Negligence of Airline — Law of Place Where Accident Occurred Controlling — Breach of Contract Theory Rejected**

*Riley, Admx. v. Capital Airlines*, 6 Av. Cas. 18,159 (N.Y. Sup., Monroe County 1960).

Plaintiff sued defendant air carrier for negligence causing an aircraft crash in which her husband was killed. Among other things, she sought recovery under a New York statute, although the crash occurred in West Virginia, under a breach of contract theory. The court upheld the defendant's motion to strike in respect to this attempted recovery in that the court found the gravamen of the action to be negligence and thus the law of the place where the wrong occurred to be controlling.

**Passenger Injured in Emergency Landing — Motion to Amend Complaint to Show Violation of Civil Air Regulation Denied — Abuse of Discretion — Granting of Motion for New Trial Upheld**

*Sleezer v. Lang*, 102 N.W. 2d 435, 6 Av. Cas. 18,088 (Neb. 1960).

**TAXATION:**

**Taxation of Foreign Aircraft — California Property Tax — Upheld**

*Scandinavian Airlines System, Inc. v. County of Los Angeles et al.*, 6 Av. Cas. 18,164 (Cal. Ct. App. 1960).

On the basis that foreign aircraft which are physically present in a state at regular intervals establish a situs, the court upheld a California property tax which was imposed on the foreign carrier. The tax was assessed against that fraction of the total value of the aircraft which equalled the hours spent at the place of landing. Since the tax was fairly apportioned to correspond with the privilege afforded, it did not violate due process or place an undue burden on foreign commerce.

**Excess Profit Tax Action — Subpoena for Renegotiation Board Records — Records Should Be Produced for Tax Court's Determination of Excess Profits — Court to Exercise Discretion as to What Information in Such Records Is to Be Protected**

*Boeing Airplane Co. v. Coggeshall, Ch., The Renegotiation Board*, 6 Av. Cas. 18,096 (D.C. Cir. 1960).

**TORTS:**

**Res Ipsa Loquitur — Airplane Crash — Approach Normal**

*Capital Airlines, Inc. v. Barger, Admx.*, 6 Av. Cas. 18,147 (Tenn. Ct. App. 1960).

A jury may find negligence where a plane crashed in a field adjacent to an airport runway. Since the plane's approach to the airfield was apparently normal and there were no facts indicating the crash to be unavoidable, the doctrine of *res ipsa loquitur* was properly applied.

**Aircraft Crash While Landing — Air Turbulence Caused by Second Aircraft — Duty of Control Tower Personnel — Negligence of Plaintiff Proximate Cause**

*Johnson et al. v. United States*, 183 F. Supp. 489, 6 Av. Cas. 18,111 (E.D. Mich. 1960).

Plaintiff's plane crashed because of the air turbulence created by a heavier aircraft which was making a simultaneous approach over the airfield. Although the control tower personnel breached their duty by failing to determine the proper separation between the two planes so as to avoid turbulence, the court found that such breach was not the proximate cause of the accident since there was evidence that the plaintiff was flying too low and in an improper traffic pattern. Accordingly, no cause of action existed against the United States under the Federal Tort Claims Act.

**Traumatic Neurosis as a Result of Air Crash — Air Travel Required in Injured's Employment — Damages**

*Gore v. Eastern Air Lines et al.*, 6 Av. Cas. 18,154 (S.D. N.Y. 1960).

The plaintiff has a compensable claim against the air carrier for a traumatic neurosis which resulted from his experience in an aircraft crash and for burns suffered from the crash. Air travel was a necessity in his employment and he suffered from an anxiety complex each time he was required to use air transportation. A \$17,550 judgment was entered.

## II. C.A.B. AWARDS AND DECISIONS

### AREA AND ROUTE PROCEEDINGS:

#### Local Service Carrier — "Use It or Lose It" Policy Complied With — Suspension Still Authorized

*Ozark Air Lines, Inc. Suspension of Service at St. Joseph, Missouri;* Docket No. 11269 (Order Serial No. E-15406), June 17, 1960, reported in 1A CCH Av. L. Rep. ¶ 21,031.

The local service air carrier was empowered to suspend service at a point which did not meet the Board's long range objectives for local service carriers. Although the carrier met the minimum "use it or lose it" standards of five emplaned passengers per day, there was evidence that the suspension would enable the carrier to reduce its break-even need and that a competing carrier was available to provide needed service. The board invited requests for suspension when similar circumstances warrant it.

#### Renewal of Authority — Intermediate Points — "Use It or Lose It" Standards Not Met — Unusual and Compelling Circumstances Warranted Approval

*Bonanza Air Lines, Inc. Temporary Points Case;* Docket No. 10038 (Order Serial No. E-155551, July 19, 1960, reported in 1A CCH Av. L. Rep. ¶ 21,039.

#### Local Service in Tennessee — New Route Awarded — Inadequate Surface Transportation — Economic Expansion in Area

*Southeastern Area Local Service Case—Second Supplemental Opinion and Order on Deferred Applications;* Docket No. 7038 et al. (Order Serial No. E-15585), July 27, 1960, reported in 1A CCH Av. L. Rep. ¶ 21,042.

#### Local and Feeder Operations in Western Kentucky and Tennessee Area — Route Extension and New Service Authorized

*Piedmont Local Service Area Investigation;* Docket No. 5713 et al. (Order Serial No. E-15584), July 27, 1960, reported in 1A CCH Av. L. Rep. ¶ 21,043.

#### New Route Awarded TWA — Southeastern United States to West Coast Area — Restriction Imposed Requiring a Change of Aircraft at Kansas City or St. Louis

*St. Louis-Southeast Service Case—Supplemental Opinion and Order;* Docket No. 7735 et al. (Order Serial No. E-15599), July 29, 1960, reported in 1A CCH Av. L. Rep. ¶ 21,045

#### Amendments of Certificates in Great Lakes Area — Local and Feeder Operations — Route and Segment Extensions

*Great Lakes Local Service Investigation;* Docket No. 4251 et al. (Order Serial No. E-15695), August 25, 1960, reported in 1A CCH Av. L. Rep. ¶ 21,052.

#### Local Service Carrier Permit Amended — Service Allowed Between Minnesota-Michigan and Canada — Permanent Basis

*Hancock/Houghton-Duluth/Superior-Port Arthur/Fort William, Canada Service Case;* Docket No. 7141 (Order Serial No. E-15741), May 12, 1960, approved by the President, September 9, 1960, reported in 1A CCH Av. L. Rep. ¶ 21,057.

**FREIGHT FORWARDERS:****Domestic and Foreign International Forwarders — Control and Interlocking Relationships — Violation of Sherman Doctrine Waived**

*Harry and Martin Shulman et al.*—Control and Interlocking Relationships; Docket No. 1141 (Order Serial No. E-15578), July 26, 1960, reported in 1A CCH Av. L. Rep. ¶ 21,041.

A control and interlocking relationship between a newly organized Japanese air freight forwarder and a domestic freight forwarder was approved where the former was specifically organized for carrying on the proposed international operations of the other forwarder, and where both forwarders were owned and controlled by a family enterprise. Although a violation of the Sherman Doctrine existed, it was waived since the relationship was considered as being in the public interest.

**International Air Freight Forwarder Authorization — Recipient, American Express Co. — Three Year Limitation — Evaluation of Impact on Other Forwarders to Be Studied at That Time**

*American Express Company*; Docket No. 9315 et al. (Order Serial Nos. E-15453, E-15454), May 10, 1960, approved by the President, June 27, 1960, reported in 1A CCH Av. L. Rep. ¶ 21,032.

**PROCEDURE:****Rules of Practice — Temporary Mail Rates — Petitions for Reconsideration**

*Lake Central Airlines, Inc. Temporary Mail Rates*—"Petition for Deferral"; Docket No. 8444 (Order Serial No. E-15593), July 28, 1960 reported in 1A CCH Av. L. Rep. ¶ 21,044.

An attempt by an air carrier to have the effective date of a temporary mail rate order deferred by bringing a petition of deferral on the ground that a pending final mail rate proceeding might eliminate a recapture of temporary mail pay was dismissed as being a petition for reconsideration and thus not fileable under the Board's Rules of Practice.

**Tariff Rebating — Unfair and Deceptive — Question of Whether Aircraft "Convertible" or "All Cargo" — Allegations as to Equipment Features Should Be Made in the Complaint — To Include Such Allegations in Motion to Review Bureau of Enforcement's Action Erroneous**

*Seaboard & Western Airlines, Inc. Against The Flying Tiger Line, Inc.*—Opinion and Order Dismissing Complaint; Docket No. 11018 (Order Serial No. E-15431), June 23, 1960 reported in 1A CCH Av. L. Rep. ¶ 21,033.

**Intentional Overbooking of Passengers — Industry-wide Problem — Overall Investigation Order by C.A.B.**

*National Airlines, Inc. Enforcement Proceeding*; Docket No. 8761 (Order Serial No. E-15615), August 4, 1960 reported in 1A CCH Av. L. Rep. ¶ 21,046.

**AIRMAN'S CERTIFICATE:****Application for Medical Certificate — Adverse Findings by Administrator of the Federal Aviation Board — Findings Not Binding on C.A.B.**

*In the Matter of the Petition of Robert E. Trump et al.*; Docket No. SM-2-2 (Order Serial No. S-1049). June 24, 1960, reported in 1A CCH Av. L. Rep. ¶ 21,034.

## FOREIGN AIR CARRIERS:

Peru to Miami, Florida-Route Award — Off-Route Charter Trips Authorized — Pursuant to International Agreement — Substantial, But Not Complete by National of Peru

*Reopened Aerolineas Peruanas S. A., Foreign Permit Case*; Docket No. 8955 (Order Serial No. E-15538), June 13, 1960, approved by the President July 12, 1960 reported in 1A CCH Av. L. Rep. ¶ 21,036.

Miami, Florida to Honduras Route Award — Hondurian Air Carrier Permit Renewed — One Year Limitation to Appraise Carrier's Willingness to Comply With Act — Carriage of Fifth Freedom Traffic Forbidden

*Transportes Aereos Nacionales, S. A.—Renewal of Foreign Air Carrier Permit*; Docket No. 9647 (Order Serial No. 15548), June 23, 1960, approved by the President, July 18, 1960 reported in 1A CCH Av. L. Rep. ¶ 21,037.

Amendment of Permit — Designation of Intermediate Points as Co-Terminals — New Caledonia-Los Angeles Traffic — French Air Carrier — Operations Will Be More Flexible

*Compagnie de Transports Aeriens Intercontinentaux (T.A.I.)—Amendment of Foreign Air Carrier Permit*; Docket No. 11327 (Order Serial No. E-15643), July 5, 1960, approved by the President, August 11, 1960 reported in 1A CCH Av. L. Rep. ¶ 21,047.

Canadian Air Carrier Service Authorized — Winnipeg, Manitoba to International Falls — Tourist and Fishing Attraction in Area — International Reciprocity

*Transair Ltd.—Foreign Air Carrier Permit*; Docket No. 11511 (Order Serial No. E-15681), July 27, 1960, approved by the President, August 23, 1960 reported in 1A CCH Av. L. Rep. ¶ 21,051.

## MISCELLANEOUS:

Aircraft Leases — Stock Option Agreement

*Pan American-National Agreement Investigation*; Docket No. 9921 et al. (Order Serial No. E-15541), July 14, 1960 reported in 1A CCH Av. L. Rep. ¶ 21,035.

The CAB approved a short and a long term leasing arrangement between two trunkline carriers wherein the owner-carrier would lease jet aircraft to the lessee for its winter peak season service. A stock option agreement whereby the lessee was to pay for such a lease was disapproved, however, as being in violation of the control provisions of the Federal Aviation Act.

Interchange Agreement — Uniform System of Accounts

*National-Panagra Accounting Investigations*; Docket No. 10098 (Order Serial No. E-15501), July 5, 1960 reported in 1A CCH Av. L. Rep. ¶ 21,038.

Two aircraft which are employed in an air carrier interchange agreement should be treated as an investment of the owner since a lessor-lessee and not a vendor-vendee relationship exists between the carriers. Accordingly, under the Uniform System of Accounts, the owner may record the aircraft in its property accounts and take depreciation only to the extent it is included in the rentals received by the owner from the lessee.

Safety Violation — Case Remanded by U. S. Court of Appeals — Erroneous Findings — Proceedings Initiated Five Years Previously — No Useful Purpose Served by Reconsideration Where Proceeding Is Remedial — Complaint Dismissed

*Quesada, Administrator FAA v. Carey*; Docket No. SR-2192 (Order Serial No. S-1057), July, 1960 reported in 1A CCH Av. L. Rep. ¶ 21,040.