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Civil Aeronautics Act-Discrimination-Private Cause of Action for Punitive Damages

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RECENT DECISIONS

CIVIL AERONAUTICS ACT—DISCRIMINATION—PRIVATE CAUSE OF ACTION FOR PUNITIVE DAMAGES—Plaintiff held a reconfirmed tourist reservation on one of defendant's St. Louis-to-Los Angeles flights. Defendant oversold the flight and subsequently "bumped" the plaintiff from the flight in favor of a first-class passenger who was given plaintiff's accommodations in the tourist section. Defendant's agent booked a reservation for the plaintiff aboard another airline and provided plaintiff with lunch. The only expense incurred by the plaintiff as a result of being removed from defendant's flight was the cost of a telephone call to inform his wife of his new arrival time; and plaintiff was inconvenienced by a delay of four hours on a Sunday in his arrival in Los Angeles. Plaintiff instituted suit in federal district court for actual and punitive damages alleging the violation of a federal criminal statute.[1] *Held,* judgment for plaintiff for the cost of the telephone call as compensatory damages and for five thousand dollars as exemplary damages. Defendant unjustly discriminated against plaintiff in violation of section 404(b) of the Civil Aeronautics Act[2] by giving flight priority to passengers who had booked reservations subsequent to plaintiff's booking. This violation of a federal criminal statute creates an implied federal cause of action in favor of the plaintiff for both actual and punitive damages. *Wills v. Trans World Airlines, Inc.,* 200 F. Supp. 360 (S.D. Cal. 1961).

Where a federal criminal statute does not expressly create a civil remedy, the federal courts have frequently implied such a federal cause of action, provided that the injured party belongs to the specific class for whose benefit the statute was passed.[3] Although the federal courts have never clearly explained the basis for their jurisdiction in such cases, it has been suggested that "federal courts have the power to afford all remedies necessary to the vindication of federal substantive rights defined in

1 Federal Aviation Act of 1958, 72 Stat. 784, 49 U.S.C. § 1472(a) (1958).

2 Federal Aviation Act of 1958, 72 Stat. 760, 49 U.S.C. § 1374(b) (1958) provides: "No air carrier . . . shall make, give, or cause any undue or unreasonable preference or advantage to any particular person . . . in air transportation in any respect whatsoever or subject any particular person . . . to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

3 See Texas & Pac. Ry. v. Rigsby, 241 U.S. 33 (1916) (Federal Safety Appliance Acts of 1893); Fitzgerald v. Pan American World Airways, Inc., 229 F.2d 499 (2d Cir. 1956) (Civil Aeronautics Act of 1938); Reitmeister v. Reitmeister, 162 F.2d 691 (2d Cir. 1947) (Communications Act of 1934); Roosevelt Field, Inc. v. Town of North Hempstead, 84 F. Supp. 456 (E.D.N.Y. 1949) (Air Commerce Act of 1926). *But see* Montana-Dakota Util. Co. v. Northwestern Pub. Serv. Co., 341 U.S. 246 (1951) (Federal Power Act); Daly v. WBLN Television, Inc., 201 F. Supp. 238 (S.D. Ill. 1962) (Communications Act of 1934). Statutory interpretation may lead to the conclusion that Congress did not intend such a remedy to be implied. See T.I.M.E., Inc. v. United States, 359 U.S. 464 (1959) (Motor Carrier Act of 1935).

statutory [provisions] . . . ."[4] Thus, in *Fitzgerald v. Pan American World Airways, Inc.*,[5] the Second Circuit held that the Civil Aeronautics Act provided an implied federal cause of action in behalf of interstate air carrier passengers who were discriminated against in violation of section 404 (b) of the act. While the *Fitzgerald* court spoke of the plaintiff's right to reparation, the exact nature of the damages to which she was entitled was not described. However, the federal courts have uniformly spoken in terms of compensation for actual damages suffered by the injured party when implying a federal cause of action from a criminal statute.[6] Thus, the significance of the principal case lies in the court's determination that punitive as well as actual damages may be awarded to persons injured by a violation of the Civil Aeronautics Act.

The federal courts have held punitive damages to be justified when a tortious act is accompanied by some aggravating factor.[7] The courts have further held that such an aggravating factor exists when a carrier wantonly disregards its public duty.[8] Prior to the principal case, however, there does not seem to be a single case allowing punitive damages incident to a federal cause of action implied from a criminal statute.[9] Nevertheless, the court in the principal case felt that the defendant's practice of deliberately overselling passenger space on many of its flights constituted a wanton disregard of its public duty which justified punitive damages.[10] The domestic airlines' long-standing practice of overselling[11] is directly tied to the problem of the "no-show," *i.e.*, a ticket holder who fails to notify the airlines that he does not intend to make use of his reservation, thereby making impossible the resale of the seat reserved for him.[12] Faced

4 Note, *Federal Jurisdiction in Suits for Damages Under Statutes Not Affording Such Remedy*, 48 COLUM. L. REV. 1090, 1094 (1948).

5 229 F.2d 499 (2d Cir. 1956).

6 The rationale for this implication is that where a party suffers injury due to the violation of a federal statute, Congress would desire the parties for whose benefit the statute was passed to have the means to be made whole. See Texas & Pac. Ry. v. Rigsby, 241 U.S. 33 (1916); Goldstein v. Groesbeck, 142 F.2d 422 (2d Cir. 1944).

7 See Lake Shore & Mich. So. Ry. v. Prentice, 147 U.S. 101 (1893); Milwaukee & St. P. Ry. v. Arms, 91 U.S. 489 (1875); Atkinson v. Dixie Greyhound Lines, 143 F.2d 477 (5th Cir. 1944); Cowen v. Winters, 96 Fed. 929 (6th Cir. 1899).

8 See Lake Shore & Mich. So. Ry. v. Prentice, *supra* note 7; Milwaukee & St. P. Ry. v. Arms, *supra* note 7; Cowen v. Winters, *supra* note 7.

9 Hague v. CIO, 101 F.2d 774 (3d Cir.), *modified on other grounds*, 307 U.S. 496 (1939), a case on which the principal case relied, would seem to be distinguishable as the statutory remedy provided in Hague was a substitute for a common-law tort remedy which had allowed punitive damages. See 17 Stat. 13 (1871), 42 U.S.C. 1983 (1958). The presence in the principal case of an administrative agency with primary jurisdiction also distinguishes it from the Hague case. See text *infra*.

10 Principal case at 367-68.

11 See Aviation Week, July 23, 1956, p. 38; Aviation Week, June 11, 1956, p. 38. The CAB reported evidence of 33,000 individual cases of "oversales" in 1960. See Aviation Week, Jan. 15, 1962, p. 45.

12 "No shows" have been estimated to constitute 16% to 18% of the total airline

with the prospect of lost revenue resulting from empty seats on flights for which there is excess demand, many airlines attempt to calculate the potential number of "no shows" on a specific flight and compensate for this by overselling. This practice tends to defeat itself by encouraging multiple bookings by passengers because of the fear of being "bumped," leading to an increase in "no shows," and making necessary greater overselling—thus ultimately increasing the possibility of error in determining the potential number of "no shows" for specific flight.[13] The basic objection to this approach is that it attempts to solve the "no show" problem by inconveniencing the innocent ticketholder while the cause of the problem, the "no show," is in no way deterred or punished.[14] The passenger's difficulty in proving sufficient damages to make a law suit worthwhile and the failure of the Civil Aeronautics Board to take appropriate steps to enjoin oversales[15] has allowed the airlines to continue this practice at the expense of their passengers with relative impunity.[16] Viewed against this background, it is hardly surprising that a court would desire to give relief to the long-suffering air passenger. It seems clear, therefore, that the court, in awarding punitive damages, was attempting to deter future misconduct in this respect by the airlines,[17] and to force the airlines and CAB to seek means less objectionable than overselling to solve the critical "no show" problem.

There is, however, a significant question as to whether the court possessed the power to grant such a remedy. First, where Congress has set out a criminal statute as a method of punishment and deterrence, it is difficult to infer that punitive damages were also intended to be

passengers boarded. See Aviation Week, July 9, 1956, p. 38; Aviation Week, April 2, 1956, p. 21.

13 See Ruppenthal, *Bumping the Passenger*, 190 NATION 551 (1960); Aviation Week, April 2, 1956, p. 21.

14 The airlines have attempted at three different times since the end of World War II to discourage "no shows" by imposing fines upon them. The last plan to be used succeeded in reducing "no shows" by 61% after its adoption in 1956. The plan was discontinued in 1958, over the objections of the great majority of airlines, due to the insistence of American Airlines, which argued that the increased capacity of the airlines and the cost of administration made the plan unnecessary as well as uneconomical. Despite their objections, the other airlines, due to competitive pressure, followed American's lead. See Aviation Week, Aug. 4, 1958, p. 40; Aviation Week, July 21, 1958, p. 29; Aviation Week, May 26, 1958, p. 39.

15 The CAB as early as 1956 threatened action against the airlines if they continued to oversell, but effective action was not taken. Aviation Week, July 23, 1956, p. 38.

16 Free passage and cash payments were given in some cases to pacify angry victims of "oversales." Ruppenthal, *Bumping the Passenger*, 190 NATION 551 (1960); Aviation Week, July 23, 1956, p. 38.

17 Principal case at 367. The court, in justifying punitive damages, talks also of the vindication of the plaintiff's rights as a passenger, but the negligible amount of inconvenience suffered by the plaintiff would seem to indicate that this was secondary to the court's desire to protect future air passengers from "overselling."

used for these purposes. Secondly, the court is faced with the even more serious problem of the primary jurisdiction of the CAB. The doctrine of primary jurisdiction provides that when Congress creates an administrative agency to regulate a particular area of endeavor, state and federal courts are without jurisdiction or power to grant relief to any person complaining of any act done, if the nature of the act brings it within the sphere of regulation of the agency, until such time as the complaining party has exhausted his remedies before the administrative agency.[18] The court in the *Fitzgerald* case was careful to point out that since the plaintiff was suing on the basis of past injuries, recourse to the CAB was unnecessary as the Board had no power to grant damages for such injuries. The CAB does, however, have the power to punish parties for violations of the Civil Aeronautics Act.[19] It further possesses the power to enjoin future violations of the act for the purpose of protecting the general public.[20] The court, by attempting to deter future violations of the act, seemingly usurped the CAB's regulatory function and thus interfered with the primary jurisdiction of the Board.[21] It would seem, therefore, that the court overreached its own jurisdictional power in order to provide the mistreated air passenger with a sorely needed remedy.[22]

L. B. Hirsch

18 See Adler v. Chicago & So. Air Lines, Inc., 41 F. Supp. 366 (E.D. Mo. 1941).

19 Section 902(a), 72 Stat. 784 (1958), 49 U.S.C. § 1472(a) (1958) provides: "Any person who knowingly and willingly violates any provisions of this Act . . . shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject for the first offense to a fine of not more than $500, and for any subsequent offense to a fine of not more than $2000."

20 Civil Aeronautics Act of 1958, § 1002(c), 72 Stat. 789, 49 U.S.C. § 1482(c) (1958) provides: "If . . . any person has failed to comply with any provision of this chapter or any requirement established pursuant thereto, the Administrator or the Board shall issue an appropriate order to compel such person to comply therewith."

21 *Cf.* S.S.W., Inc. v. Air Transport Ass'n of America, 191 F.2d 658 (D.C. Cir. 1951); Slick Airways v. American Airlines, 107 F. Supp. 199 (D.N.J. 1951); Adler v. Chicago & So. Air Lines, Inc., 41 F. Supp. 366 (E.D. Mo. 1941).

22 Subsequent to this decision the CAB adopted rules whereby the airlines must pay to a passenger "bumped" because of an "oversale" five dollars or fifty percent of the one-way fare of the first remaining validated flight coupon, whichever is greater, but with a maximum charge of forty dollars. In return, the airlines may penalize "no shows" under the same formula. See Domestic Trunkline Carriers, 1A AV. L. REP. 21, 258 (CAB March 1, 1962). The federal courts have held that rules approved by the CAB, limiting the airlines' liability, become part of the passenger's contract and the federal courts will not extend jurisdiction to claims arising under such rules. These decisions indicate that if a suit similar to the principal case were now instituted, the court would dismiss the case in recognition of the CAB's primary jurisdiction. Lichten v. Eastern Airlines, Inc., 189 F.2d 939 (2d Cir. 1951); Toepfer, Inc. v. Braniff Airways, Inc., 135 F. Supp. 671 (W.D. Okla. 1955); Wittenberg v. Eastern Airlines, Inc., 126 F. Supp. 459 (E.D. S.C. 1954); Mach v. Eastern Airlines, Inc., 87 F. Supp. 113 (D. Mass. 1949).