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ABOUT US

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Jane Doe V Etihad Airways - How The Sixth Circuit's Ruling Undermines The Montreal Convention's Goals

Authored by-Karen Bobby
9 BBA LLB (Hons.)
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United States Court of Appeals, Sixth Circuit.

Plaintiff: Jane Doe, John Doe

Defendant: Etihad Airways

No. 16-1042

Decided: August 30, 2017

Citation: Doe v. Etihad Airways, P.J.S.C., 870 F.3d 406, 417–20 (6th Cir. 2017)

"The U.S. Court of Appeals for the Sixth Circuit made substantial changes to the Montreal Convention, the international agreement controlling an air carrier's responsibility to passengers for damage to persons or property during international flight." Prior to Etihad, courts nearly universally held that although passengers who experience bodily suffering in an accident are entitled to physical damages, they are only eligible for emotional damages to the extent that those damages may be connected to the physiological harm sustained. In defiance of years of precedent establishing a universal interpretation that mental anguish must "flow from" a physical injury in order to be recoverable, the United States Court of Appeals for the Sixth Circuit revised the Montreal Convention test for mental anguish to allow recovery with any physical injury.[1]

[1] J. Collin Spring, "Pilots Out of Uniform: How the Sixth Circuit's Etihad Decision Undermines the Purpose of the Montreal Convention", 84 J. AIR L. & COM. 153 (2019) https://scholar.smu.edu/jalc/vol84/iss1/9

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Facts

In the case of Etihad, Jane Doe, the plaintiff and her 11 year old daughter were traveling from Chicago to Abu Dhabi on an Etihad Airways flight (Etihad). A knob that was supposed to hold Doe's tray table in place had fallen to the floor, leaving it open in her lap. The knob was discovered on the floor by Doe's daughter during the flight and was given to Doe, who put it in a seatback pocket. When it was time to descend, an Etihad flight attendant gave Doe the customary reminder to put her tray table in the upright and locked position for landing (unaware of the detached knob). Naturally, Doe was unable to comply. She reached into the seatback pocket in front of her and punctured her finger on the concealed hypodermic needle to draw blood. Doe was given a Band-Aid for her finger and subjected to numerous tests for disease exposure; all of the results were negative. Doe filed a lawsuit against Etihad, requesting compensation for both the bodily harm (the needle poke) and "mental agony" brought on by her potential exposure to numerous infections. John Doe, her husband, asserted loss of consortium.

Issues

Can passengers receive compensation for emotional harm that is unrelated to any physical harm they may have suffered?

Law

Article 17 of the Montreal Convention[2]

Analysis

According to the conventional reading of Article 17(1)[3], a plaintiff is eligible to receive compensation for mental suffering if the mental harm "flows from" a bodily harm sustained as a result of an onboard accident. “Notably, there is no requirement of proportionality; mental suffering damages may be recovered even in the case of a minor physical harm.” In other words, the conventional understanding specifies a causal link but not one that is proportional. Contrarily, the Sixth Circuit's approach does not demand a link between the physical and mental injuries.

[2] Convention for the Unification of Certain Rules for International Carriage
by Air, pmbl., May 28, 1999, T.I.A.S. 13038, 2242 U.N.T.S. 309 [hereinafter Montreal Convention].

[3] *Id.*

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"Instead, the physical harm becomes a litmus test that allows payment of damages for any mental suffering brought on by the same accident."

Beginning with the observation that Doe's only remedy was afforded by Article 17(1) of the Montreal Convention, the Etihad opinion conceded that cases interpreting the Warsaw Convention[4], the forerunner to the Montreal Convention, have persuasive significance in interpreting the new treaty. It was said that in cases where the drafters of the Montreal Convention meant to leave something intact, the Warsaw Convention's legal precedent should apply.

The court next briefly examined the Second Circuit's ruling in Ehrlich v. American Airlines, Inc.,[5] a case interpreting the Warsaw Convention, which followed the traditional meaning. The court erred by reading the phrase literally and coming to the unpersuasive conclusion that the Warsaw Convention's theory on mental pain under Article 17(1). The court made no effort to examine the Convention's actual history, relying instead on its description of the Montreal Convention as a passenger-minded convention to reach this judgment. According to the court, the Montreal Convention was created to tip the scales in favor of passengers. It briefly discussed some of the Convention's justifiable goals, such as bringing about legal uniformity and modifying the Convention to take account of the well-established and developed airline industry, in support of this claim.

Given that the outcome is the same whether the Etihad reading or the conventional meaning is used, it is likely that the Sixth Circuit in this case used Etihad as an excuse to rewrite a test that it believed to be unfair. Despite the fact that the results of using the conventional interpretation are unfavorable, the courts are not the appropriate place to bring about change.The Montreal Convention's signatories have the option of organizing a new convention or revising the current one if they choose to change the standards for allocating damages for mental distress. This method preserves the uniformity of interpretation and takes into account the interests of many nations.

It is a well-established rule that courts should give the opinions of other treaty parties significant weight when interpreting international agreements. In reality, the courts of numerous other parties to the Montreal Convention have referenced the ruling in Ehrlich and used the conventional view when interpreting Article 17 of that convention. This is a fundamental tenet of treaty interpretation.

[4] Compare Montreal Convention, supra note 3, art. 17, with Convention for the Unification of Certain Rules Relating to International Carriage by Air art. 17, Oct. 12, 1929, 49 Stat. 3000, 137 L.N.T.S. 11 [hereinafter Warsaw Convention].

[5] 360 F.3d 366, 368 (2d Cir. 2004).

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Conclusion

Etihad submitted a petition for an en banc rehearing following the Sixth Circuit's ruling, but it was turned down. The U.S. Supreme Court then rejected Etihad's petition for a writ of certiorari, which it received later. The conflict Etihad creates with other circuits justifies a reassessment of the decision, "but the U.S. Supreme Court has not handled a case concerning Article 17 in almost 15 years, and it has heard comparatively few cases regarding the Montreal and Warsaw Conventions overall."[6] Although the Etihad decision was made not long ago, no court has yet applied its logic or in any other way adopted it.Courts that have addressed Article 17 of the Montreal Convention after Etihad have continued to follow cases limiting damages to those that are the result of the bodily injury itself because Article 17 was written with the intention of being consistent with the jurisprudence established under the Warsaw Convention.[7] Etihad, at the very least, makes Sixth Circuit courts a far more desirable location for future disputes. Foreign air carriers are particularly at danger because they could be sued in any judicial area where they operate. Therefore, even if the claim originated elsewhere, foreign carriers who operate any flights or operations within the Sixth Circuit are more likely to be sued in this jurisdiction.

[6] Olympic Airways v. Husain, 540 U.S. 644 (2004)
[7] Ojide v. Air France, No. 17-cv-3224, 2017 U.S. Dist. LEXIS 162419, at *6 (S.D.N.Y. Oct. 2, 2017)