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AVIATION

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CIVIL AERONAUTICS BOARD

The Board has amended Part 245 of its Economic Regulations so as to define more precisely which persons are required to submit reports of their interests in stock of air carriers and to expand the contents of such reports.

The CAB has amended Parts 207 and 208 of its Economic Regulations to facilitate the enforcement of charter regulations. Under the revised Regulation, charters will have to include telephone numbers in passenger lists and carriers must verify the identity of enplaning charter participants by passports or other travel identity documents where there is no passport requirement. In the case of foreign carrier charters to and from the U.S., the regulation requires the charterer to file passenger lists showing names, addresses and telephone numbers with the foreign air carrier. Carriers are to make the lists available to the Board upon receipt of a written request.

The Board has issued an Advance Notice of Proposed Rule Making, looking to possible suspension of the affinity charter concept. The CAB said any such suspension would not take effect prior to October 1, 1973. The Advance Notice is a procedure to determine if there should be a formal Rule Making Proceeding.

The CAB has adopted Regulation SPR-61 providing for a new class of charter known as travel group charters. The new form of charter is in addition to the existing affinity charters presently authorized by Parts 207, 208, 212 and 214 and inclusive tour charters under Part 378 of the Economic Regulations. The new Regulation is to apply through 1975 on an experimental basis. The Rule would allow groups of forty persons

The contribution of David Feldman, J.D., University of Miami School of Law is gratefully acknowledged.

or more to charter space on charter flights of certificated scheduled and supplemental carriers. Minimum duration of trips would be ten days for international charters and seven days for charters within North America. TGC contracts must be filed with the Board not more than four months and no later than three months before the scheduled departure dates. Mass media advertising is permitted. The new rule permits the use of charter services by all members of the public in contrast to the affinity concept which required prior membership in chartering organizations. Ten trunk airlines have filed a court suit seeking a stay of the new regulations. The carriers alleged that the Board acted illegally by failing to comply with the Federal Aviation Act by eliminating the distinction between charter and individually ticketed passengers, and committed a procedural error in failing to hold a hearing.

Airline passengers will now be able to refer to a CAB publication, "A Consumer Guide For Air Travelers" for answers to problems such as these:

- 1) Their baggage is in Rome, Italy and they are in St. Louis, Missouri.
- 2) They have a reservation, but their airline has no seat for them on the plane.
- 3) The airline ticket they bought was not the cheapest one for their flight, and they did not find out about the other fare until their flight was over.

The booklet, issued by the CAB's Office For Consumer Affairs, will be distributed to airlines, consumer organizations, and travel agencies.

HIJACKING

Delegates from fourteen nations met in Washington in September 1972 to draft a fourth international convention against air piracy. The three earlier conventions in effect are: Tokyo, 1963; Hague, 1970; Montreal, 1970 (4 *Law.Am.* 588-590, 1972). Goal was to devise sanctions against nations which do not cooperate with extradition requests or do not prosecute hijackers landing within their borders. At the first session, the group set aside as "an organizational tool," a tough U.S.-Canada resolution which provided for multilateral boycott of "safe haven" countries. The Washington meeting was chaired by Dr. Mok of the Netherlands. Countries with delegations on hand included Argentina, Brazil, Canada, France, U.S., Israel, U.K., Jamaica, USSR, Netherlands, Egypt, Spain, Japan and Tanzania. Also, official observer status was accorded Australia, the United Nations, IATA, the International Federation of Air Pilots Association and the International Transport Workers' Federation. Basically the plans

discussed would include establishment of an "appropriate body" (working mechanism and representation still undetermined) if a formal complaint against a hijacking crime is lodged. The group would be charged with determining whether a crime, i.e., "a threat to aviation," has been committed and making a decision regarding the responsibilities of the country/countries involved. Authority would extend only to labeling whether a nation has committed a criminal act by providing sanctuary, or similar acts. Thus the basic details of the new convention would have to include points such as: (1) what happens to the fact-finding body's report, (2) what, if any, sanctions will be applied, (3) to whom sanctions will apply; and (4) how sanctions will be enforced.

The Council of ICAO has called a special three-week session of the ICAO Legal Committee in Montreal beginning January 9, 1973 to consider a sanctions convention against safe havens. There is to be a subsequent convening of a diplomatic conference on air security from August 21 until September 11 at a place to be determined to consider the recommendations expected to come from the Legal Committee meeting.

The House and Senate passed Anti-Hijacking Act of 1972, S-2280, died on October 18 when the House conferees stripped from the bill a Senate provision which would create an airport security force and authorize \$35 million to fund it. The Chairman of the House Commerce Committee said the bill would have created a potential Federal Police Force. The Senate refused to reconsider the bill.

The United States and Cuba have begun indirect negotiations on the issue of hijacking. American diplomats have indicated that the State Department "would undertake any method (of negotiating) on which both governments could agree and which would produce the best results." This effort on the part of the United States is a positive response towards curbing the growth of international hijackings. In 1969 and 1970, when the United States proposed a pact calling for the mutual return of hijackers and the ships and aircraft that they commandeered, Cuba insisted on linking the hijacking question with the issue of what Havana called "illegal departees" or Cuban refugees. The attempted negotiations came to a close without any resolution to the problem. At the United Nations, the Cuban delegate stated that Cuba was prepared to accept no imposition based on agreements of a multilateral nature and would firmly maintain its view that insofar as his country was concerned, it would adopt measures based only on bilateral agreements with countries which were prepared to adopt exactly the same rules in relation to the hijacking of ships and aircraft, and similar violations as those which govern international traffic. Recent

hijackings, however, have been of a different tenor. Hijacking is now being used, not so much for political purposes, but to further common crimes and it is this change in objective which has prompted Cuba to join in seeking a solution to the hijacking problem. It is hoped that the U.S. and Cuban negotiations will be successful; the hijacking problem is a major one in the international area and any step which will contribute to its solution is welcome.

NOISE BILL

Congress passed and President Nixon has signed a compromise bill which will reduce the noise level to which Americans are to be subjected. The bill authorizes the Environmental Protection Agency (EPA) to set standards on noise from construction and transportation machinery, motors and engines, and electronic equipment. The legislation provides \$21 million over three years for the noise abatement program. It also authorizes citizen suits against industry, the EPA, or the Federal Aviation Administration for failure to comply with the noise law. A controversial part of the original Senate bill — a ban on supersonic passenger aircraft landings in the United States — has been deleted in the drive for compromise. Under the provisions of the bill, EPA is required to conclude within nine months a study of aircraft noise problems, including the implications and means of achieving levels of cumulative noise around airports and the adequacy of existing noise emission standards and operation controls and a study of the impact of noise on public health and welfare.

The EPA Administrator is required to submit regulations to protect public health and welfare from aircraft noise and sonic boom. Such regulations are required to include proposed means of reducing noise at airport environment through the application of emission controls on aircraft, the regulation of flight patterns and aircraft and airport operations, and modifications in the number, frequency or scheduling of flights. Within thirty days, the Administrator of FAA would be required to publish the EPA regulations as to its notice of proposed rulemaking, and within sixty days hold a public hearing on the EPA proposal.

HEAD TAX

The Supreme Court, in April 1972, upheld the constitutionality of the \$1 per person airport passenger tax imposed by Evansville, Indiana and New Hampshire airports. In response to an attempt by Congress to ban the tax through legislation, President Nixon vetoed the bill because he said amendments which would have increased federal aid to airports

were "inconsistent with sound fiscal policy." A strong recommendation to veto the bill and its amendments increasing airport aid had been sent to the President by the Secretary of Transportation. The Secretary said he favored a moratorium, during which studies could be made. With regard to increased airport aid he said there was no pressing need for program changes at this time. This veto action thus continues the possibilities for head tax on individual travelers by local jurisdictions. The stiffest fee to-date has been imposed by Philadelphia, originally starting with a \$2 tax for arrival as well as departure and now replacing it with a \$3 boarding fee.

SAFETY

The National Transportation Safety Board has recommended that renewed attention be given to the "new dimension" of ground hazards resulting from jet engine blasts behind wide-body airliners. Although the problem has existed since commercial jet operations first began in the late 1950's, the Safety Board has cited that there exists a disturbing number of both fatal injuries and serious property damage caused by the jet blast. The new wide body planes now in service, such as the B-747, the DC-10 and the L-1011, suggest the urgency of the problem as the more powerful jet engines move some 300 per cent more air per second than their predecessors, with an air velocity of near hurricane force at 80 mph and with the exhaust itself usually invisible.

PRICE FIXING

Ralph Nader's Aviation Consumer Action Project has accused eleven major airlines of joint price fixing of in-flight movie entertainment and liquor services. The complaint centered around facts that movies and alcoholic beverages are offered without charge to first-class passengers, while economy and coach class passengers must pay \$2 for the movie earphones and at least \$1 for each drink. Comparing the cost difference between the different class tickets, it would appear that the economy and coach class were being treated unfairly in relation to services received as opposed to the first-class passenger.

JOURNAL OF SPACE LAW

The L. Q. C. Lamar Society of International Law of the University of Mississippi School of Law announces the publication of the JOURNAL OF SPACE LAW, which appears to be the first law journal of its kind to deal exclusively with the legal problems arising out of man's activities in outer space.

The inaugural issue of THE JOURNAL OF SPACE LAW is devoted to Earth Resources Survey Satellites and International Law and carries the following articles:

International Implications of Earth Resources Surveys by Satellites,
by Franco Fiorio;

Technological and Legal Aspects of Environmental Monitoring,
by Eugene Brooks;

An International Agency for Earth Resources Experiments,
by George A. Coddington, Jr. and Mohammed Behesti;

The Space Shuttle: Investigation of Earth Resources by Manned Observatories,
by John R. Tamm;

Should the United Nations Draft a Treaty on Earth Resources Satellites? A Pro and Con Analysis,
by Eileen Galloway;

Earth Resources Survey Satellites and the Outer Space Treaty,
by Steven Gorove;

The Journal invites subscriptions and its address is Journal of Space Law, University of Mississippi School of Law, University, Mississippi, 38677. The subscription price is \$7.00 (domestic) and \$8.00 (foreign) for two issues per year.

RECENT U.S. CASE LAW

Note: Citations, unless otherwise indicated, refer to CCH Aviation Law Reporter.

Suarez v. Lufthansa 337 F. Supp. 60 (1971)

The Federal District Court denied the jurisdictional claim of the plaintiffs in excess of \$10,000 damages for inconvenience, added expense, mental anguish, pain and suffering resulting from their luggage being mistakenly sent to London instead of Rome. In ruling, the court stated that the defendant being a signatory of the Warsaw Convention, the rules limiting claims apply and that plaintiffs claim was a "colorable one" asserted for the sole purpose of asserting federal jurisdiction and should not be permitted to circumvent the intent of Congress in establishing jurisdictional amounts.

Herman v. Trans World Airlines, Inc. 12 Avi. 17,304 (1972)

The New York Supreme Court in ruling on this action to recover damages for personal injuries of extreme fright, loss of weight and skin rash alleged to have resulted from the highjacking of the aircraft upon which plaintiff was traveling on an international flight determined that the Montreal modification of the Warsaw Convention whereby the limit of liability per passenger for death, wounding or other bodily injury being \$75,000, covered plaintiff's injury and that "other bodily injury" was not to be given the restrictive meaning defendant had suggested. The court also went on to say that plaintiff's injuries were sustained both while on board the aircraft during flight when the hijacking commenced and still on board while being held captive.

Smith v. Canadian Pacific Airways, Ltd. 12 Avi. 17,143 (1971)

The United States Court of Appeals, Second Circuit held that the Warsaw Convention by virtue of its treaty status precluded domestic diversity jurisdiction wherein the cause of action failed to fall within one of the delineated forums of Article 28(1) of the Convention which requires that "An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties (which includes the United States), either before the court of the domicile of the carrier or of his principal place of business through which the contract has been made, or before the court at the place of destination.

Hudacok v. Puerto Rico International Airline 12 Avi. 17, 271 (1972)

The United States District Court, District of Puerto Rico, in an action involving the death of a Pennsylvania resident and Prinair a Puerto Rican corporation, ruled that the alleged contacts of Prinair to Pennsylvania being that it had advertised in several trade magazines likely to have been distributed in Pennsylvania and that it had interline agreements with a number of Pennsylvania carriers, were insufficient to subject Prinair to in personam jurisdiction.

Danna v. Air France 12 Avi. 17,449 (1972)

The United States Court of Appeals, Second Circuit, in affirming the District Court judgment of dismissal held that primary jurisdiction rested with the CAB to determine whether a filed tariff, here referring to youth fares, was unreasonable or unjustly discriminatory in violation of the Federal Aviation Act of 1958.