Athens International Airport

Airport Terminal Operator Liability
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ATHENS INTERNATIONAL AIRPORT ELEFTHERIOS VENIZELOS

1. Introduction

- Airport terminal operator as an "agent of the carrier"

  (Vumbaca V. Terminal One Group Association LP, 2012)

  - case law development on the notion of agent of the carrier under the Warsaw and the Montreal Convention
  - facts of the *Vumbaca* case and the reasoning of the court
  - assessment of the *Vumbaca* reasoning
  - conclusions.

2. The case law

In the absence of any definition of the term "Agent" under any of the Conventions (Warsaw/Montreal) Courts had to decide whether the term carrier (also not defined) "*was limited to the corporate entity or was intended to embrace the group of community of persons actually performing the corporate entity's (i.e. the airline) function." (Reed V. Wiser, 1977).*

- ***Chutter V. KLM and Allied Aviation Service International Corporation (1955)***
  - ✓ *Agency relationship if a part of the contract is fulfilled by another entity*
- ***Reed V. Wiser (1977)***
  - ✓ *Airline employee can invoke the liability limitations*
- ***Julius Young Jewelry Manufacturing Co V. Delta Air Lines & Allied Aviation Service Company (1979)***
  - ✓ *Furtherance of the contract of carriage*

- ***Baker V. Lansdell Protective Agency, (1984)***
  - ✓ *furtherance of the contract of carriage BA under statutory obligation to perform security checks*

- ***Johnson V. Allied Eastern States Maintenance (1985)***
  - ✓ *An agent performs functions within the scope of the Convention that the carrier would be bound to perform*

- ***Lockerbie In Re Air Disaster (1991)***
  - ✓ *Same reasoning as in Baker case*

- ***Kabbani V. International Total Services (1992)***
  - ✓ *Same reasoning as in Baker case*

- ***Waxman V. CIS Mexicana De Aviacion & Signature Flight Support Corporation (1998)***
  - ✓ *Important is the nature of the activity and not the contractual relationship*

- ***Alleyn V. Port Authority of New York et al (1999)***
  - ✓ *Not flight related services are not in furtherance of the contract of carriage*

- ***Dazo V. Globe Airport Security Services (2002)***
  - ✓ *Dual agent not furtherance of the contract of carriage-basic airport services*

3. The Vumbaca case

(Vumbaca V. Terminal One Group Association, 2012)

- Facts of the case:
  - On 26 December 2010, JFK International Airport and due to heavy snow fall shut down its operations.
  - When after almost one day it resumed operations, delays were occurred.
  - Terminal 1 operator, *TOGA* - a consortium of Terminal One Management Inc, Air France, Japan Airlines, Korean Airlines and Lufthansa - which leased Terminal 1 of JFK could not properly execute the snow plan due to shortage of ground handling personnel (due to the adverse weather conditions).

- *TOGA* is responsible for managing the gates by which passengers moved between the gates and the aircraft. *TOGA* is also responsible for choosing the ground handler provider to move planes to and from the gates
- Thus, and since the snow could not be cleared and the aircraft to be guided to and from the gates, some flights remained at tarmac for many hours.
- Ms. *Vumbaca* an Alitalia passenger had to wait for almost five and a half hours on tarmac before its flight could be moved to a gate and to disembark its passengers.
- Alitalia leased space by *TOGA* and both *TOGA* and *ASIG* – the ground-handler assigned by *TOGA*- were contractual indemnified by Alitalia for their services.

- The Judgment

- The court held: "Under *the undisputed facts, TOGA is an agent of the air carriers it serves and thus covered by the Convention. Although TOGA is a terminal operator, not an international air carrier, its operations are vital parts of Alitalia's carriage - particularly those services that are necessary to get planes to and from the gates. While TOGA provided assistance to several air carriers, all the flights it served were international. (Compare Dazo v. Globe Airport Sec. Servs., 295 F.3d 934 (9th Cir.2002) (holding that defendant security company was not an agent of an air carrier when the security checkpoint it operated served three different airlines; "both domestic and international passengers for all three airlines had to pass through the security checkpoint, as did non-passengers who merely wanted to access the gates or retail establishments beyond the checkpoint;" and " [t]he services being rendered ... were not in furtherance of the contract of carriage of an international flight, but were basic airport security services required at all airports by domestic federal law" (emphasis added) [....])That the services provided to Alitalia were a necessary part of the air carrier's relationship with its passengers is demonstrated by the fact that both TOGA and ASIG were contractually indemnified by Alitalia for their services."*

- Assessment

The Court in reaching to this conclusion relied:

- On previous case law, namely:
  - *In Re Air Disaster in Lockerbie,*
  - *Waxman V. CIS Mexicana De Aviacion & Signature Flight Support Corporation,*
  - *Chutter V. KLM and Allied Aviation Service International Corporation,*
  - *Johnson V. Allied Eastern States Maintenance and*
  - *surprisingly Dazo V. Globe Airport Security Services.*
- On the failure of the Airport Operator to carry out those services necessary (snow cleaning) to get the planes to and from gates.
- On the fact that both *TOGA* and *ASIG* were contractually indemnified by *Alitalia.*

However:

- The case law cited by the Court may lead to different considerations:
  - In *Air Disaster in Lockerbie* exclusive provision of securities services from a subsidiary of the air carrier
  - *Waxman* case – nature of the activity – addressed directly to the passenger
  - *Johnson & Chutter* cases concerned activities that were directly related to the aircraft and/or to the passengers and which the carrier would be bound to perform
  - *Dazo* case dual agent - the nature of the activity irrespective of destination
- Snow removal – basic airport function
  - Annex 14 of ICAO and ICAO Airport Services Manual (Doc 9137) that aims to maintaining the surface of the apron appropriate for all users irrespective of the destination.- Article 37 par. 2 of the CC.
- Contractual indemnification of *Alitalia* to *TOGA* or to *ASIG* insufficient to render the later agents of *Alitalia*.

Conclusion

There to be considerable authority that:

- furtherance of the contract of carriage means activity which otherwise would be undertaken by the carrier. Indeed, in all cases the service was indispensable part of the journey and it was addressed specifically to the airline concerned or to its passengers.

- Services or activities which are not flight related, (*Alleyn V. Port Authority of New York)*, or provision of basic airport services (as the security services in *Dazo V. Clobe* security services) cannot be deemed as part of the contract of carriage.

- The contractual arrangements regulating the relationship between an airport and a carrier are not per se a decisive factor *(Waxman)* but rather the nature of the activity.

- Ground handling services are addressed directly to the aircraft, its cargo, the passengers or their baggage and therefore are activities which the carrier would have otherwise to perform. Consequently and irrespective if the handling agent is the airport itself or its subsidiary or any other entity, there is strong line of case law as form 1955 *(Chutter V. KLM)* that ground handlers are agents of the carrier *Julius Young Jewelry Manufacturing Co V. Delta Air Lines & Allied Aviation Service Company, Waxman V. CIS Mexicana De Aviacion & Signature Flight Support Corporation)*.

- Conversely when an airport provides basic airport services in order to keep the infrastructure in accordance with ICAO or EASA standards (like snow removal or security services) it cannot be considered as an agent to the carrier.

Thank you!