Airplane Mode Miscue Makes Mess - Montreal Convention Still Applies

Amundsen Davis Aerospace Alert
May 13, 2016

RELATED SERVICES

Aerospace

Passenger confusion about whether certain devices must be turned off or set to "airplane mode" is understandable. FAA requirements have changed in recent years and policies differ among airlines. One might expect an FAA employee to appreciate these nuances. One FAA employee, though, on an international United Airlines flight from Washington, DC to China, took issue with crew instructions and refused to power down his device. His refusal to do so while on board the flight started a chain reaction, carrying his resulting cause of action within the pre-emptive reach of the Montreal Convention.

In ***Sam El-Zoobi v. United Airlines*****,** the plaintiff brought claims against United for tortious interference with a business relationship and intentional infliction of emotional distress after a flight attendant filed a complaint with his employer, the FAA, for an alleged failure to comply with the crew's instructions to turn off his phone. The plaintiff insisted that he could leave his phone turned on and in "airplane mode." Ultimately, he acquiesced, and turned off his cell phone prior to takeoff. Within ten days after the flight landed, the flight attendant reported the plaintiff's behavior to his employer, the FAA. The FAA initially sent the plaintiff a Notice of Proposed Civil Penalty. After an internal review, though, it was withdrawn. Even so, the plaintiff brought a state law claim against United alleging that he lost an opportunity for a promotion and suffered a loss of advancement and severe emotional distress as a result of the United flight attendant's "false" report.

The trial court dismissed the lawsuit reasoning that the plaintiff's sole recourse was the Montreal Convention, not state law tort claims. An appeal soon followed.

It is well established that a passenger's exclusive remedy for claims "arising out of" international air travel is through the Montreal Convention. This holds true even if the Montreal Convention doesn't allow recovery. All other claims are simply pre-empted. However, the application of "arising out of" is not always simple. For instance, here, the plaintiff argued that his claims were not pre-empted because the harm was caused by flight attendant's filing of the alleged false report – which did not occur on the plane. United argued that, because the alleged harm was caused by behavior occurring on board the plane, the claims were governed by the Montreal Convention.

AMUNDSEN DAVIS

The Illinois Court of Appeals agreed with United. The court relied on precedent holding that the cause of the injury, not the occurrence of the injury itself, determines whether the Montreal Convention applied. Specifically, the court pointed to the entire "chain of causes" to determine whether the link in the causal chain occurred on board the plane. The court found that "but for" some disagreement on the plane, the flight attendant would not have filed the complaint and the plaintiff would not have suffered injury. Consequently, the court affirmed the lower court's decision and held that the claims were preempted by the Montreal Convention because the alleged harm took place on board the flight.

The facts of this case are unusual; most often, courts engaged in a Montreal Convention analysis are called upon to determine whether an injury occurred in the boarding or disembarking process, or whether an injury is even an "injury" at all. This case reaffirms the actual breadth of the Montreal Convention, and should prove useful to airlines defending disgruntled passenger claims with creative theories of liability.

Airplane Mode Miscue Makes Mess - Montreal Convention Still Applies