SPC Guiding Case No. 51: Abdul Wahid v. China Eastern Airlines Co., Ltd. (Air Passenger Transport Contract Dispute)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Civil / air passenger transport contract / flight delay / duty to inform / liability for compensation

Holding

1. In an action brought in respect of the actual carrier of air passenger transport, the plaintiff may choose to bring the action against the actual carrier or the contracting carrier, or against both the actual carrier and the contracting carrier simultaneously. Where the sued carrier applies to add the other carrier to the proceedings, the court may decide whether to grant permission based on the actual circumstances of the case.

2. Where force majeure causes a flight delay such that the airline is unable to carry a connecting passenger to the destination on time, the airline has the duty to promptly and expressly inform the connecting passenger whether transfer services will be provided upon arrival at the destination, and how the passenger should complete the travel formalities if transfer services cannot be provided. Where the airline fails to perform this duty and causes loss to the connecting passenger, it shall bear liability for compensation.

3. The airline's notation of "non-refundable and non-transferable" on a discounted ticket only restricts passengers who purchased the discounted ticket from refunding or transferring the ticket for reasons of their own; it cannot thereby deprive the passenger of the right, after paying the fare, to board the flight and arrive at the destination on time.

Basic Facts

On December 29, 2004, ABDUL WAHEED ("Abdul") purchased a ticket issued by Hong Kong Cathay Pacific Airways Limited ("Cathay Pacific"). The itinerary on the ticket was: at 11:00 a.m. on December 31, 2004, departing Shanghai for Hong Kong, and at 4:00 p.m. the same day departing Hong Kong for Karachi; on January 31, 2005, departing Karachi for Hong Kong, and on February 1 of the same year departing Hong Kong for Shanghai. Among these, the segments between Shanghai and Hong Kong were actually carried by China Eastern Airlines Co., Ltd. ("China Eastern"), and the segments between Hong Kong and Karachi were actually carried by Cathay Pacific. The terms on the back of the ticket stated that the contract should be governed by the rules and limits on liability designated by the Warsaw Convention. The ticket was a discounted ticket, with "non-refundable and non-transferable" noted on it.

From 3:00 p.m. on December 30, 2004, moderate snow fell at Shanghai Pudong Airport, forcing the airport to close for one hour from 10:00 p.m. to 11:00 p.m. that day, and causing 104 flights to be delayed that day. On the 31st, due to aircraft de-icing and supplemental flight scheduling and other reasons, 43 flights were cancelled and 142 flights were delayed that day, and the normal rate of aircraft departures was only 24.1%. China Eastern's flight MU703 was also delayed by 3 hours and 22 minutes due to weather, causing Abdul and his family, after arriving at Hong Kong airport, to miss the connecting Cathay Pacific flight to Karachi. China Eastern staff informed Abdul that there were only two options: first, Abdul and the others wait three days at the airport and then take Cathay Pacific's next flight, with expenses for the three days borne by themselves; second, Abdul and the others pay out of their own pocket to purchase tickets from another airline to Karachi at a cost of HKD 25,000. Abdul immediately indicated that he could not accept either

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option, and his wife Du Lin telephoned China Eastern, but the company said that the relevant staff had already left work. Du Lin could not accept China Eastern's handling and was anxious and agitated because she was carrying an infant. Finally, through the intervention of Hong Kong airport staff, Abdul and his family paid a total of HKD 17,000 to purchase tickets and baggage tickets from Emirates Airline, and took that airline's flight via Dubai to Karachi. For this, Abdul spent HKD 4,721 for the ticket and HKD 759 for the baggage ticket, totaling HKD 5,480.

Abdul believed that China Eastern's flight delay and refusal to re-arrange the itinerary caused him economic loss, and therefore sued, requesting the court to order China Eastern to compensate for the ticket and baggage ticket expenses, and to periodically publish the flight normal rate and passenger complaint rate.

China Eastern argued that the cause of the flight delay was severe weather, which was force majeure; that it had already notified Abdul of this, and Abdul also knew that he would miss the connecting flight in Hong Kong, and he had no right to require China Eastern to change the itinerary. Abdul stated that he chose to board the flight to Hong Kong knowing that he would miss the connecting flight because China Eastern had promised him that it would resolve the matter properly.

Judgment

On December 21, 2005, the People's Court of Pudong New Area, Shanghai rendered Civil Judgment (2005) Pu Min Yi (Min) Chu Zi No. 12164: (1) China Eastern Airlines Co., Ltd. shall, within ten days from the effective date of this judgment, compensate Abdul for losses totaling RMB 5,863.60; and (2) the other claims of Abdul were dismissed. After the judgment was pronounced, China Eastern Airlines Co., Ltd. appealed. On February 24, 2006, the First Intermediate People's Court of Shanghai rendered Civil Judgment (2006) Hu Yi Zhong Min Yi (Min) Zhong Zi No. 609, dismissing the appeal and affirming the original judgment.

Reasoning

The effective judgment held as follows. The plaintiff Abdul was a citizen of Pakistan, and the ticket he purchased had Shanghai, China as the place of departure and Karachi, Pakistan as the destination. Article 142(1) of the General Principles of the Civil Law of the People's Republic of China provides: "The application of law to foreign-related civil relations shall be determined in accordance with the provisions of this Chapter." Paragraph (2) provides: "Where an international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those in the civil laws of the People's Republic of China, the provisions of the international treaty shall apply, except for clauses on which the People's Republic of China has declared reservations." Both China and Pakistan are contracting states to the Convention for the Unification of Certain Rules Relating to International Carriage by Air, 1929, as amended by the Hague Protocol of 1955 (the "Warsaw Convention as amended at The Hague in 1955"), and the 1961 Convention Supplementary to the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier (the "Guadalajara Convention"), so these two international conventions apply to this case. Article 28(1) of the Warsaw Convention as amended at The Hague in 1955 provides: "An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court of the domicile of the carrier or of his principal place of business, or where he has a place of business through which the contract has been made, or before the court at the place of destination." Article 32 provides: "Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void." Accordingly, in the circumstances where Abdul sued with the ticket in hand, the People's Court of Pudong New Area, Shanghai had jurisdiction over this international air passenger transport contract dispute.

Article 1(2) of the Guadalajara Convention provides: "'Contracting carrier' means a person who as a principal makes an agreement for carriage governed by the Warsaw Convention with a passenger or consignor or

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with a person acting on behalf of the passenger or consignor." Paragraph (3) provides: "'Actual carrier' means a person other than the contracting carrier, who, by virtue of authority from the contracting carrier, performs the whole or part of the carriage contemplated in paragraph (2) but who is not with respect to such part a successive carrier within the meaning of the Warsaw Convention. Such authority is presumed in the absence of proof to the contrary." Article 7 provides: "In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the court seised of the case." The ticket held by Abdul was issued by Cathay Pacific, so the international air passenger transport contract relationship was established between Abdul and Cathay Pacific, and Cathay Pacific was the contracting carrier. There was no direct international air passenger transport contract relationship between China Eastern and Abdul, nor was China Eastern a successive carrier; it was only presumed to have completed the Shanghai-to-Hong Kong transport task specified in the ticket pursuant to the authorization of Cathay Pacific, and was the actual carrier. Abdul had the right to choose Cathay Pacific or China Eastern, or both simultaneously, as defendants. In the action in which Abdul chose only China Eastern as defendant, although China Eastern had the right to require Cathay Pacific to join the proceedings, since the flight-delay liability pursued by Abdul arose in the Shanghai-to-Hong Kong segment carried by China Eastern and was unrelated to Cathay Pacific, and based on the circumstances of the case and weighing litigation costs, there was no need to add Cathay Pacific as a party to the case to participate in the proceedings jointly. Therefore, although China Eastern had the right to apply for Cathay Pacific to join the proceedings, whether such application could be allowed should be decided by the court seised of the case. The first-instance court held that Cathay Pacific was unrelated to the flight-delay liability pursued by Abdul, and decided, based on the convenience of protecting the passenger's rights, the possibility of bearing liability, and litigation costs, not to add Hong Kong Cathay Pacific Airways Limited as a party to the case; this was not improper.

Article 19 of the Warsaw Convention as amended at The Hague in 1955 provides: "The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo." Article 20(1) provides: "The carrier is not liable if he proves that he and his servants and agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures." The delay of flight MU703 on December 31, 2004 was caused by weather. For a delay caused by such force majeure, China Eastern could not take measures to avoid its occurrence, so it did not need to bear liability for the delay itself. But it still needed to prove that it had taken all necessary measures to avoid loss to the passengers caused by the delay; otherwise it should bear liability for the loss suffered by the passengers due to the delay. When at Pudong Airport, Abdul, foreseeing that the delay of flight MU703 would cause him to miss Cathay Pacific's connecting flight, repeatedly asked China Eastern staff what to do. China Eastern should have known that Cathay Pacific's connecting flight from Hong Kong to Karachi operated only once every three days, and even more clearly knew that Abdul's group was carrying an infant and it was inconvenient for them to wait a long time at the transfer airport, and had the duty to warn Abdul's group of the possible unfavorable situation at the transfer and to advise them to fly on another day. But China Eastern did not do so; instead it had Abdul fill out a Continuation Situation Registration Form and told him it would help resolve the matter, causing Abdul to reasonably rely on the company and thus board the flight to Hong Kong with confidence. In view of the fact that Abdul's group came to Hong Kong after obtaining China Eastern's promise of help, but China Eastern, without considering the reasonable need of Abdul's group carrying an infant to fly to Karachi as soon as possible, informed Abdul of the "help to resolve" options of either waiting three days for the next flight with expenses for the three days borne by themselves, or purchasing tickets from another airline at their own expense. According to the facts found, China Eastern was ultimately unable to produce the Continuation Situation Registration Form filled out by Abdul's wife Du Lin before boarding, and could not prove that Abdul chose to board knowing that an unfavorable situation would occur after flying to Hong Kong. Therefore, the court's finding that "China Eastern did not take necessary measures to avoid loss" was

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correct. China Eastern did not take all necessary measures to avoid loss to the passengers caused by the flight delay, and should not be exempted from liability. Abdul was forced by necessity to purchase tickets from another airline at his own expense, and for the loss of HKD 5,480 incurred by Abdul in purchasing tickets, China Eastern should bear compensation liability.

After the delayed flight arrived at Hong Kong airport, China Eastern refused to transfer Abdul's ticket, arguing that Abdul's ticket was a discounted ticket already noted "non-refundable and non-transferable," and that it did not need to provide separate reminder or notification. The court held that, even if the airline noted "non-refundable and non-transferable" on the discounted ticket, this only restricted passengers who purchased the discounted ticket from refunding and transferring the ticket for reasons of their own. When a passenger purchased a discounted ticket, the airline could correspondingly cancel some services, but once the passenger paid the full fare, the airline must provide complete transport services to the passenger, and could not deprive the passenger of the right, after paying the fare, to board the flight and arrive at the destination on time. The flight delay in this case was not caused by Abdul's own reasons. After Abdul took the delayed flight to Hong Kong airport, he certainly needed to re-transfer his ticket. China Eastern neither was able to inform Abdul at the origin airport of the reason why the ticket still could not be transferred when the flight was delayed, nor did it handle the transfer formalities for him at the transfer airport. Therefore, China Eastern failed to produce evidence proving that the loss was caused by Abdul's own reasons, and also failed to prove that it took necessary methods and proper remedial measures to avoid the expansion of the loss, so it was ordered to bear compensation liability.

Relevant Legal Provisions

Article 142 of the General Principles of the Civil Law of the People's Republic of China.

Articles 19, 20 and 24(1) of the Convention for the Unification of Certain Rules Relating to International Carriage by Air, 1929, as amended by the Hague Protocol of 1955.

Article 7 of the Convention Supplementary to the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier.

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