Judicial interpretation of ‘accident’ under the Montreal Convention (Labbadia v Alitalia)

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Personal Injury analysis: Lionel Stride, barrister at Temple Garden Chambers, explains why an airport’s use of uncovered disembarkation steps and the presence of snow and ice on the steps, which caused a passenger to slip and fall, gave rise to liability under the Montreal Convention 1999 (the Convention).

Labbadia v Alitalia (Societa Aerea Italiana SpA) [2019] EWHC 2103 (QB), [2019] All ER (D) 24 (Aug)

What are the practical implications of this case?

Prior to *Labbadia*, there was no other case precisely on all fours with this judgment.

This case will therefore help to clarify the scope of the leading Court of Appeal decision in *Barclay v British Airways PLC* [2008] EWCA Civ 1419, [2009] 1 All ER 871—it remains the case that a mere slip on an aeroplane where nothing untoward has taken place will not constitute an accident (in *Barclay*, a slip on an inert plastic strip embedded in the floor of the aircraft was not an accident).

However, following *Labbadia*, an injury that is caused directly by the acts and omissions of airport personnel, such as a decision to use uncovered steps without clearing away snow or ice, would not constitute a reaction to the ‘normal operation of the aircraft’ (or an immutable state of affairs), and in such circumstances this will give rise to liability under the Convention.

What was the background?

The case focused primarily on the judicial interpretation of ‘accident’ under the Convention. This is an autonomous concept and does not necessarily provide relief whenever traditional tort law would do so. It can in fact deny remedy even when grievous injury has occurred – the purpose of the Convention was principally to limit the circumstances under which passengers could sue airlines.

As set out in the leading authority of *Air France v Saks* [1985] 470 US 392 (not reported by LexisNexis®), accident is therefore defined narrowly as ‘an unusual, unexpected or untoward event, external to the claimant, causing death or injury, on board an aircraft or in the course of embarkation or disembarkation’. The application of this definition to the facts of any individual case can prove problematic.

In this instance, Mr Labbadia was disembarking a plane at Milan airport via a set of metal uncovered stairs. It was snowing that morning and a layer of snow began to form on the surface of the stairs. The court accepted (after hearing the witness evidence) that the claimant’s slip was due to the presence of compacted snow on the aircraft steps, which had caused him to slip immediately on disembarking and fall the entire length of the stairway.

Previous case law provided only limited insight as to whether the claimant’s fall would constitute an accident under the Convention because it fell outside the examples postulated in *Barclay*, ie that the spilling of hot coffee on a passenger will constitute an accident, whereas a heart attack clearly will not.

The defendant had prayed in aid *Vanderwall v United Airlines* 80 F.Supp 3d 1324 (not reported by LexisNexis®) to show that the presence of litter in the aisle of an aircraft would not be considered in itself unusual or unexpected, and also relied on a long line of authorities to show that ‘pure omission’ (failure to act) could not constitute an accident.

However, in *Singhal v British Airways PLC* (20 October 2007, Wandsworth County Court) (not reported by LexisNexis®) a fall caused by an airbridge positioned six inches below the sill of the aircraft door had been found to be an accident, as this would have been unexpected for the passenger (despite being in conformity with the requirements of the airport).

The claimant could also rely on a case from the US Court of Appeals in *Gezzi v British Airways PLC* 991 F.2d 603 (not reported by LexisNexis®), it was decided that the presence of water on stairs used to embark on a flight had been the proximate cause of the claimant's fall and constituted an accident because the presence of water was unexpected and unusual, and clearly external to the passenger.

In Mr Labbadia's case it was argued that the use of uncovered steps and the presence of snow and ice on the disembarkation steps was unusual from the perspective of the passenger and clearly not encompassed in the normal operation of the aircraft. It was also asserted that the positive decision by the airport and its staff to use uncovered steps, without ensuring that the stairs were free from contamination, constituted an event rather than being pure omission.

What did the court decide?

The court found that the airport, acting against its standard practices, had decided to use stairs still covered with snow by the time the first passenger disembarked the aircraft. This had caused compacted snow to form on the stairs on which the claimant would ultimately slip. There was nothing inherently unusual about the adverse weather conditions, or the presence of snow in February.

However, the court accepted that the use of aircraft stairs without a canopy was 'a positive decision on the part of the airport personnel' involving 'a series of actions and omissions culminating in the aircraft stairs being aligned to the aircraft and the authority being given for the passengers to disembark'. The series of events that led to the use of the uncovered disembarkation steps constituted an 'event' under the Convention.

Accepting the claimant's arguments, the judge also found that 'the event was unusual from the point of view of the claimant … he had no reason to expect that the stairs would be slippery due to compacted snow. Therefore, the event was unexpected and unforeseen from his perspective'.

Lionel Stride has a multi-track practice specialising in personal injury, clinical negligence and costs with expertise in product liability (particularly in the context of aviation), inquests, health and safety, insurance contracts and civil fraud. Stride regularly acts for claimants and defendants in high value fatal and catastrophic injury cases, and is well versed in claims for serious bodily injury arising out of domestic and international aviation accidents and other claims with a foreign element, including complex dependency claims arising out of the Germanwings disaster. In Labbadia v Alitalia he was counsel for the successful claimant.

Interviewed by Kate Beaumont.

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