

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

ZUDHI ABDULLAH,	)	
	)	
Plaintiff,	)	CIVIL NO. 590/1984
	)	
v.	)	
	)	
EASTERN AIRLINES, INC.,	)	ACTION FOR DAMAGES
	)	
	)	
Defendant.	)	
	)	

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PETERSEN, Judge

MEMORANDUM OPINION
February 15, 1985

This is an action for damages. This matter is before the Court on Defendant Eastern Airlines' motion for judgment on the pleadings, or in the alternative, motion for summary judgment, pursuant to Rules 12(c) and 56 respectively of the Federal Rules of Civil Procedure. See also, 5 V.I.C. App. I. R. 12(c) and 56. For the reasons set forth below, the motion for summary judgment will be granted regarding limits

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imposed on the carrier by the Warsaw Convention and denied as to the amount of damages that Plaintiff Eastern Airlines may recover.

FACTS

On or about October 6, 1983 Plaintiff shipped sixteen (16) boxes of clothing from Manila, Phillipines to Tokyo, Japan and on to San Francisco, California via Japan Air Lines. The boxes were delivered to Defendant Eastern Airlines in San Francisco in good condition. Upon arrival in St. Croix, United States Virgin Islands via Eastern Airlines on or about October 8, 1983, four (4) boxes were allegedly wet and the contents were stained and damaged. The value claimed for the boxes was Three Thousand Six Hundred Sixty-Six Dollars (\$3,666.00). As a result of Defendant Eastern Airlines alleged negligence, Plaintiff Abdullah seeks Twelve Thousand Dollars (\$12,000.00) for damages, attorney's fees and costs, and any additional relief that the court may deem. Defendant Eastern Airlines urges that the Warsaw Convention ^{1/} governs

^{1/} The Warsaw Convention was drafted at international conferences in Paris and in Warsaw in 1925 and 1929 respectively. The United States became a signatory in 1934. More than 120 nations, including the Phillipines and Japan now adhere to the Convention which creates international uniform rules governing the air carriage of passengers, baggage and cargo. See TWA v. Franklin Mint Co. 690 F.2d 303 (2nd Cir. 1982), aff'd, 104 S.Ct. 1776 (1984), reh'g denied 104 S.Ct. 2691 (1984).

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this matter; therefore, Eastern Airlines liability should be limited to 250 francs ^{2/} per kilogram, since Plaintiff had neither made a special declaration of the value at delivery nor paid a supplementary sum.

Summary judgment will be granted if the pleadings, depositions, answers to interrogatories and admissions of file, together with affidavits, if show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); Hollinger v. Wager, 667 F.2d 402 (3d Cir. 1981). In making this determination, the Court must resolve any doubt relating to disputed issues of material fact against the movants. Ness v. Marshall, 660 F.2d 517 519 (3d Cir. 1981).

The Defendant argues that his liability if any, is limited by subsection 2 of Article 22:

In the transportation of checked baggage and goods, the liability of the carrier shall be limited to a sum of 250 francs per kilogram, unless the consignor

^{2/} The task of converting the Covention's liability limit was delegated to Civil Aeronautics Board under the Federal Aviation Act of 1958, 49 U.S.C. Section 1301 et. seq. The liability limit was last modified in 1974 to \$9.07 per pound. CAB Order 74-1-16, App. 54, 39 Fed. Reg. 1526 (1974), implemented (for checked passenger baggage) in 14 CFR Section 221.176 (1975).

has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum unless he proves that the sum is greater than the actual value to the consignor at delivery. (emphasis added)

The burden is placed on the passenger, in this case the plaintiff, to declare the value of his goods. If the Plaintiff does not take the appropriate steps to insure his goods against loss or destruction, he is bound by the terms of the treaty governing liability. However, if the Defendant does not notify the Plaintiff by either a ticket ^{3/} or baggage check containing a statement concerning the limits on the carrier liability, the Defendant may not restrict its liability as governed by the Warsaw Convention. See Lisi v. Alitalia-Linee Aeree Italiane, 370 F.2d 508 (2d Cir. 1966), aff'd 390 U.S. 455 (1967), reh'g denied, 391 U.S. 929 (1968).

The Plaintiff's airline ticket provided adequate notice of the applicability of the Warsaw Convention.

^{3/} Defendant's exhibit A is a copy of the back of an airline ticket containing language provided in all of Eastern Airline's tickets. It provides notice to all passengers of the limitations placed on the amount of recovery for loss or damage to goods, absent a declaration of value at the time of delivery.

Moreover, the ticket sets forth the limitations governing the carrier's liability for the destruction of goods. In examining the evidence before this Court, there is no indication that Plaintiff declared any value; therefore, liability is governed by the treaty.

The Defendant cites TWA v. Franklin Mint Co., 104 S.Ct. 1776 (1984), reh'g denied, 104 S.Ct. 2691 (1984) to support its position. However, the facts in TWA can be distinguished from the case at bar. Although in both cases no value was declared for the goods, the passenger in TWA, unlike the Plaintiff in this case, declared the weight of his goods. Article 4(3)(f) provides that a baggage claim must contain "the number and weight of the packages." Article 4(f) states "that a carrier that accepts luggage that does not contain the particulars set forth in that Article shall not be entitled to avail himself of those provisions of the convention which exclude or limit his liability."

Several courts have applied the language of the Convention under facts analogous to those at issue here and have found that an airline failing to weigh a passenger's luggage may not claim limited liability under the Convention. See Maghsoudi v. Pan American World Airways, Inc., 470 F.Supp. 1275; 1278-1280 (D.Haw. 1979); Kupferman v. Pakistan

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International Airlines, 438 N.Y.S.2d 189, 191-92, (N.Y.Civ. Ct. 1981); Hill v. Eastern Airlines, Inc., 425 N.Y.S.2d 715, 716, (N.Y. Civ. Ct. 1980).

However, this Court does not find these holdings which are based on a literal interpretation of the provisions of the Convention, controlling in the instant case. The primary purpose of the Warsaw Convention is to limit the potential liability of international air carriers. Martin v. Pan American World Airways, Inc., 563 F.Supp. 135 (D.D.C. 1983) citing Lowenfeld & Mendelsohn, The United States and the Warsaw Convention, 80 Harv. L. Rev. 497, 499 (1967).

The Court finds as a matter of law that the Defendant's liability is governed by the Warsaw Convention. However, the unknown weight of the goods shipped raises an issue of material fact. Viewing this matter in the light most favorable to the nonmoving party, the Defendant's motion is denied as to the amount of damages the Plaintiff can recover, absent evidence of weight. Summary Judgment is granted with respect to the limits imposed on the carrier by the Warsaw Convention.


EILEEN R. PETERSEN
Judge