St. John's Law Review

Volume 28
Number 2 *Volume 28, May 1954, Number 2*

Article 20

Air Carriers--Recent Amendment to CAB Regulations

St. John's Law Review

LEGISLATION

AIR CARRIERS—RECENT AMENDMENT TO CAB REGULATIONS

As of March 2, 1954, interstate and international air carriers are no longer required to include notice of claim or time for suit provisions [1] in the tariffs which they file with the Civil Aeronautics Board. This change was effected by an addition to the Board's regulations whereby "[n]o provision of the Board's Regulations . . . shall be construed to require . . . the filing of any tariff rules stating any limitation on, or condition relating to, the carrier's liability for personal injury or death . . . ." [2] As a result, the Board has clearly indicated that should such "phantom" provisions be inserted in the carrier's tariffs, they will be mere surplusage and hence not binding upon passengers.[3]

The ST. JOHN'S LAW REVIEW,[4] in 1953, had pointed out that the inclusion of such time provisions in its filed tariff enabled the carrier to escape liability for its wrongs to the public. It was suggested that the inclusion of such provisions in the carrier's tariff, with its binding effect upon passengers, should not be condoned by the courts since neither the Civil Aeronautics Act nor the Board's regulations expressly required such inclusion. The want of express prohibition was apparently tortured to connote invitation. Consequently, both passengers and lawyers, ignorant of the provisions contained in the tariffs, yet bound by them, were effectively prevented from enforcing legitimate claims.

It should be noted, however, that the new regulation does not prohibit the use of these time provisions; it *only* proscribes them when they are sought to be rendered operative by including them in the carrier's tariff. Consequently, an air carrier may still *contract* with passengers regarding such provisions. This may be done by expressing such clauses, in full, on the transportation ticket itself. Thus, if they are printed on the face of the ticket, and are reasonable, time provisions will bind the passenger irrespective of his actual knowledge thereof. In such instances, it may be said that the carrier will have

---

[1] For example: No action may be maintained for injury to, or death of, a passenger, unless *notice of claim* in writing is presented to the general office of the carrier within ninety days following the occurrence of the event giving rise thereto, and unless the *action is actually commenced* within one year after such occurrence.

[2] CAB ECONOMIC REGULATIONS § 221.4(g) (1954).

[3] See CAB Regulation No. 195, p. 4 (1954).

[4] See Note, 28 ST. JOHN'S L. REV. 94 (1953).

fairly contracted with the passenger, since he will at least have an opportunity to notice it. The difficulty remains, however, that most passengers are unaware of the binding contractual conditions printed on the transportation ticket.

In the realm of the international air carrier, over which the rules of the Warsaw Convention may govern, the amendment will have a similar effect. Such a carrier may still effectively include time provisions on the face of the transportation ticket, but not in its filed tariff.

Although aviation law is still in its infancy, struggling for recognition in the legal world, it is, through the process of trial and error, gradually achieving stability. The amendment under consideration is another cautious step toward the attainment of that end.

THE REACQUISITION OF SHARES UNDER THE NEW YORK STOCK CORPORATION LAW

Introduction

The manner in which a corporation may deal with its own reacquired shares has been a controversial problem for many years. To properly preface a discussion of this subject, it will be necessary to enumerate and explain some of the methods of, and the reasons for, corporate reacquisition of both common and preferred shares.

One method of reacquisition is by corporate purchase of its own shares from surplus or capital. While it is well settled by decisional law in New York that a corporation may repurchase its own shares of stock from *surplus*,[1] several states recognize this right by express statutory provisions.[2] Such regulatory provisions were enacted, not because of a corporation's lack of inherent power to repurchase its own shares, but rather to safeguard corporate creditors against a possible depletion of assets.[3] In addition, many states,[4] including New York,[5] also permit the purchase of preferred or special shares from

---

[1] See notes 23, 24 *infra*.

[2] See statutes collected in PRASHKER, CASES AND MATERIALS ON CORPORATIONS 282-283 (2d ed. 1949). See also ARK. STAT. § 64-603 (1947); DEL. CODE ANN. tit. 8, § 243 (1953); LA. REV. STAT. tit. 12, § 23 (1950); W. VA. CODE ANN. §3052 (1949).

[3] See BALLANTINE, CORPORATIONS 605 (Rev. ed. 1946).

[4] DEL. CODE ANN. tit. 8, § 243 (1953); MICH. COMP. LAWS § 450.37 (1948); MO. REV. STAT. § 351.200 (1949); NEB. REV. STAT. § 21-153 (1943); W. VA. CODE ANN. § 3052 (1949).

[5] N.Y. STOCK CORP. LAW § 28(1). The preferred shares must be re-