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Supreme Court, U. S.
FILED

JUN 20 1972

MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

October Term 1971

No. 56 Original

COMMONWEALTH OF VIRGINIA, individually and
on behalf of all other states similarly situated,
Plaintiff,

v.

INTERNATIONAL AIR TRANSPORT
ASSOCIATION, ET AL,

Defendants.

MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

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COMMONWEALTH OF VIRGINIA, individually and
on behalf of all other states similarly situated,
Plaintiff,

v.

INTERNATIONAL AIR TRANSPORT
ASSOCIATION, ET AL,
Defendants.

MOTION FOR LEAVE TO FILE COMPLAINT

The Commonwealth of Virginia, by counsel, Andrew P. Miller, Attorney General, respectfully asks leave of this Court to file the Complaint which is submitted herewith.

COMMONWEALTH OF VIRGINIA

/s/ ANDREW P. MILLER
Attorney General

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Supreme Court of the United States

October Term 1971

No. Original

COMMONWEALTH OF VIRGINIA, individually and
on behalf of all other states similarly situated,
Plaintiff,

v.

INTERNATIONAL AIR TRANSPORT
ASSOCIATION

1155 MANSFIELD STREET, MONTREAL 113, P.Q., CANADA,

AIRLIFT INTERNATIONAL, INC.

A FLORIDA CORPORATION,

ALLEGHENY AIRLINES, INC.

A DELAWARE CORPORATION,

AMERICAN AIRLINES, INC.

A DELAWARE CORPORATION,

BRANIFF AIRWAYS, INC.

AN OKLAHOMA CORPORATION,

DELTA AIR LINES, INC.

A LOUISIANA CORPORATION,

EASTERN AIR LINES, INC.

A DELAWARE CORPORATION,

THE FLYING TIGER LINE, INC.

A DELAWARE CORPORATION,

MOHAWK AIRLINES, INC.

A NEW YORK CORPORATION,

NATIONAL AIRLINES, INC.

A FLORIDA CORPORATION,

NORTHEAST AIRLINES, INC.

A MASSACHUSETTS CORPORATION,

OZARK AIR LINES, INC.

A MISSOURI CORPORATION,

PAN AMERICAN WORLD AIRWAYS, INC.

A NEW YORK CORPORATION,

PIEDMONT AVIATION, INC.

A NORTH CAROLINA CORPORATION,

SEABOARD WORLD AIRLINES, INC.

A DELAWARE CORPORATION,

SOUTHERN AIRWAYS, INC.

A DELAWARE CORPORATION,

TRANS WORLD AIRLINES, INC.

A DELAWARE CORPORATION,

UNITED AIR LINES, INC.

A DELAWARE CORPORATION,

AIR CANADA

AN ALIEN CORPORATION,

AIR FRANCE

AN ALIEN CORPORATION,

AIR INDIA

AN ALIEN CORPORATION,

ALITALIA AIRLINES

AN ALIEN CORPORATION,

AUSTRIAN AIRLINES

AN ALIEN CORPORATION,

BRITISH OVERSEAS AIRWAYS, CORP.

AN ALIEN CORPORATION,

BRITISH WEST INDIAN AIRWAYS, LTD.

AN ALIEN CORPORATION,

EL AL ISRAEL AIRLINES LTD.

AN ALIEN CORPORATION,

FINNAIR

AN ALIEN CORPORATION,

IBERIA, LINEAS AEREAS de ESPANA, S.A.

AN ALIEN CORPORATION,

IRISH INTERNATIONAL AIRLINES

AN ALIEN CORPORATION,

JAPAN AIR LINES CO., LTD.

AN ALIEN CORPORATION,

KLM-ROYAL DUTCH AIRLINES

AN ALIEN CORPORATION,

LUFTHANSA GERMAN AIRLINES

AN ALIEN CORPORATION,

OLYMPIC AIRWAYS, S. A.

AN ALIEN CORPORATION,

QANTAS AIRWAYS LTD.

AN ALIEN CORPORATION,

SABENA BELGIAN WORLD AIRWAYS

AN ALIEN CORPORATION,

SCANDINAVIAN AIRLINES SYSTEMS, INC.

AN ALIEN CORPORATION,

SWISS AIR TRANSPORT CO. LTD.
AN ALIEN CORPORATION, AND,
TRANSPORTES AEREOS PORTUGUESES, S.A.R.L.
AN ALIEN CORPORATION,
Defendants.

COMPLAINT
COUNT ONE—SHERMAN ACT VIOLATION
JURISDICTION

1. The original jurisdiction of this Court is invoked under the authority of Article III, Section 2, of the Constitution of the United States and 28 U.S.C. § 1251(b)(3).

2. This action is brought under 15 U.S.C. § 26, commonly referred to as § 16 of the Clayton Act, to restrain the defendant from violating 15 U.S.C. § 1, commonly referred to as § 1 of the Sherman Act, and under § 4 of the Clayton Act, 15 U.S.C. § 15, to obtain damages and mandatory injunctive relief designed to remedy the injury to the property and economy of the plaintiff State and its citizens, as well as to the property and economy of all other States and their citizens who are similarly situated.

3. There is no suitable forum other than the United States Supreme Court, pursuant to its original jurisdiction, in which Plaintiff can bring this action and obtain adequate and timely relief as sought herein, or to which this action might be remitted in the interest of convenience, efficiency and justice.

PARTIES

4. Plaintiff is a sovereign state of the United States and has sustained damages to her property and economy as a result of the combination and conspiracy in violation of the

antitrust laws herein alleged. Plaintiff brings this action in her capacity as sovereign, *parens patriae*, quasi-sovereign, and proprietor of state lands and properties. Plaintiff also brings this action as a representative of all other States who have suffered injury to their economy and property in that: (1) the development of their economies have been hindered, and (2) they have suffered damages in their proprietary capacities, due to the unjust and discriminatory air cargo rates which have resulted from the conspiracy described herein.

5. The wrong done to the people of the plaintiff State and to the people of all other States similarly situated as a result of the combination and conspiracy alleged transcends the injury sustained individually by the plaintiff State and by each other State similarly situated, and adversely affects the economy and prosperity of the plaintiff State and the other States similarly situated.

6. This action is brought by the plaintiff State in her own behalf and on behalf of all other States similarly situated, pursuant to Rule 23(a) and Rule 23(b)(2) and (3), Fed.R.Civ.P., in that the class represented is so numerous that joinder of all members is impracticable; there are questions of law and fact common to all members of the class; the claims of the plaintiff are typical of the claims of the class; the plaintiff will fairly and adequately protect the interest of the class; and the parties opposing the class have acted on grounds generally applicable to the class, thereby making appropriate final relief with respect to the class as a whole. The plaintiff State and the class of States represented by the Plaintiff are all States, other than the State of New York, who in their proprietary capacities ship or receive air cargo to and from European cities, or whose

citizens engage in such shipping or receiving of air cargo, at rates established by defendants.

7. Defendant corporations are airlines whose service includes the shipping of air cargo in interstate and transatlantic commerce. Defendant International Air Transport Association is a trade association whose membership consists of most, if not all, of the defendant airlines and which serves as a rate-making conference for defendant airlines in their establishment of transatlantic air cargo rates. None of the parties defendant are citizens of Virginia, although some but not all transact business in Virginia.

8. The domestic corporations named below are made defendants herein. Each of said corporations is organized and exists under the laws of the State indicated and has its principal place of business in the city indicated.

- | | |
|--|--|
| (1) Airlift International, Inc.
(Florida) | International Airport
Miami, Fla. 33148 |
| (2) Allegheny Airlines, Inc.
(Delaware) | National Airport
Washington, D. C. 20001 |
| (3) American Airlines, Inc.
(Delaware) | 633 Third Avenue
New York, N. Y. 10017 |
| (4) Braniff Airways, Inc.
(Oklahoma) | Braniff Tower
Dallas, Texas 75235 |
| (5) Delta Air Lines, Inc.
(Louisiana) | Atlanta Airport
Atlanta, Ga. 30320 |
| (6) Eastern Air Lines, Inc.
(Delaware) | 10 Rockefeller Plaza
New York, N. Y. 10020 |
| (7) The Flying Tiger Line Inc.
(Delaware) | International Airport
Los Angeles, Cal. 90009 |
| (8) Mohawk Airlines, Inc.
(New York) | Oneida County Airport
Utica, N.Y. 13503 |

- | | |
|---|---|
| (9) National Airlines, Inc.
(Florida) | P. O. Box 2055, Airport
Mail Facility
Miami, Fla. 33159 |
| (10) Northeast Airlines, Inc.
(Massachusetts) | Logan International Airport
Boston, Mass. 02128 |
| (11) Ozark Air Lines, Inc.
(Missouri) | Box 10007, Lambert Field
St. Louis, Mo. 63145 |
| (12) Pan American World Airways, Inc.
(New York) | Pan Am Bldg.
New York, N. Y. 10017 |
| (13) Piedmont Aviation, Inc.
(North Carolina) | Smith Reynolds Airport
Winston-Salem, N. C. 27102 |
| (14) Seaboard World Airlines, Inc.
(Delaware) | Seaboard World Bldg.
Kennedy Int'l. Airport |
| (15) Southern Airways, Inc.
(Delware) | Atlanta Airport
Atlanta, Ga. 30320 |
| (16) Trans World Airlines, Inc.
(Delaware) | 10 Richards Rd.
Kansas City, Mo. 64108 |
| (17) United Air Lines, Inc.
(Delaware) | P. O. Box 66100
Chicago, Illinois 60666 |

9. The additional corporations named below are also made defendants herein. Each of said corporations is an alien corporation existing under the laws of the country indicated and having its principal office in the United States in the city indicated.

- | | |
|----------------------------------|--|
| (1) Air Canada
(Canada) | 1888 Century Park E.
Los Angeles, Cal. 90067 |
| (2) Air France
(France) | 1350 Ave. of the Americas
New York, N. Y. 10019 |
| (3) Air India
(India) | 345 Park Avenue
New York, N. Y. 10022 |
| (4) Alitalia Airlines
(Italy) | 666 Fifth Avenue
New York, N. Y. 10019 |

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|---|---|
| (5) Austrian Airlines
(Austria) | 545 Fifth Avenue
New York, N. Y. 10017 |
| (6) British Overseas Airways Corp.
(Great Britain) | 245 Park Avenue
New York, N. Y. 10017 |
| (7) British West Indian Airways,
Ltd.
(Great Britain) | 610 Fifth Avenue
New York, N. Y. 10020 |
| (8) El Al Israel Airlines Ltd.
(Israel) | 850 Third Avenue
New York, N. Y. 10022 |
| (9) Finnair
(Finland) | 10 E. 40th St.
New York, N. Y. 10016 |
| (10) Iberia, Lineas Aereas de
Espana, S.A.
(Spain) | 97-77 Queens Blvd.
Rego Park, N. Y. 11374 |
| (11) Irish International Airlines
(Ireland) | 564 Fifth Avenue
New York, N. Y. 10036 |
| (12) Japan Air Lines Co., Ltd.
(Japan) | 655 Fifth Avenue
New York, N. Y. 10022 |
| (13) KLM—Royal Dutch Airlines
(The Netherlands) | KLM Bldg. 609 Fifth Avenue
New York, N. Y. 10017 |
| (14) Lufthansa German Airlines
(West Germany) | 1640 Hempstead Turnpike
East Meadow, N. Y. 11554 |
| (15) Olympic Airways, S.A.
(Greece) | 888 Seventh Avenue
New York, N. Y. 10019 |
| (16) Qantas Airways Ltd.
(Australia) | 555 California St.
San Francisco, Cal. 94104 |
| (17) Sabena Belgian World Airlines
(Belgium) | Sabena Bldg., 720 5th Ave.
New York, N. Y. 10019 |
| (18) Scandinavian Airlines Systems,
Inc.
(Sweden) | 138-02 Queens Blvd.
Jamaica, N. Y. 11435 |

- | | |
|---|--|
| (19) Swiss Air Transport Co. Ltd.
(Switzerland) | Swiss Center, 608 5th Ave.
New York, N. Y. 10020 |
| (20) Transportes Aereos Portugueses,
S.A.R.L.
(Portugal)
International Air Transport Assn. | 601 Fifth Avenue
New York, N. Y. 10017

1155 Mansfield St.
Montreal 113, P. Q.
Canada |

10. All of the defendant corporations listed in the foregoing paragraphs are and have been participants in the conspiracy and combination which is the subject of this complaint. Whenever in this complaint reference is made to any act, deed, or transaction of a corporate defendant, such allegations shall be deemed to mean that said corporation engaged in said act, deed or transaction by or through its officers, directors, agents or employees while they were actively engaged in the management, direction or control of corporate business affairs.

VIOLATIONS ALLEGED

11. Beginning at least as early as the inception of the International Air Transport Association (hereinafter IATA) and continuing thereafter up to and including the date of this complaint, the defendants have been engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce.

12. The aforesaid combination and conspiracy has consisted of a continuing agreement and concert of action among the defendants, the substantial terms of which have been and are: (a) to establish rates for the shipment of transatlantic air cargo to and from John F. Kennedy Airport in New York which are substantially lower than the trans-

atlantic air cargo rates established for shipments to and from other American airports, including Dulles Airport in Virginia, through the use of arbitrary add-ons and increased minimum charges for such shipments, and which rate differentials cannot be justified on the basis of mileage differentials or cost differentials, and (b) to establish a rate structure for transatlantic air cargo shipments to and from European cities which would provide common rates to cities a substantial distance apart for shipments to and from American cities.

13. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants did those things which they conspired to do, including the submission of air cargo rates as above determined to the Civil Aeronautics Board as tariffs under the Federal Aviation Act, and agreed that no individual defendant airline would establish or attempt to establish rates other than those fixed by IATA, and agreed that no defendant airline would submit tariffs to the Civil Aeronautics Board other than at those rates fixed by IATA.

EFFECTS OF CONSPIRACY

14. The aforesaid combination and conspiracy has had and continues to have the following effects:

(a) hindrance of the development of airports other than John F. Kennedy Airport, including Dulles Airport in Virginia, which are equipped to handle transatlantic cargo but which are unable to attract the shipment of such cargo due to the unjust and discriminatory rates established by defendants;

(b) hindrance of the development of the economy of the plaintiff State and of other States similarly situated by discouraging the establishment of new industry

in States other than New York where the firms engaging in any such industry are required to ship and receive goods in transatlantic commerce;

(c) causing the plaintiff State and other States similarly situated, in their proprietary capacities, to pay higher rates for shipment of goods to and from airports other than John F. Kennedy than are justified by cost and mileage differentials;

(d) restriction and suppression of competition among the defendants themselves, where such competition, at least as to American flag carriers, might result in transatlantic rates at airports other than John F. Kennedy which fairly reflect cost and mileage differentials;

(e) denial to airports located within the plaintiff State and within other States similarly situated of the opportunity to handle their own natural traffic, due to the economic incentive given by the IATA rates to shippers by truck between the plaintiff State and other States similarly situated and New York.

COUNT TWO—COMMON LAW CONSPIRACY

1. Plaintiff realleges Paragraph 1 of Count 1 as Paragraph 1 of this count.

2. This count is brought under this Court's general equitable powers granted by Article III, Section 2, of the United States Constitution, independent of the Sherman and Clayton Acts, to eliminate and remedy conspiracies in restraint of trade by the defendants as recognized at common law, and to obtain mandatory injunctive relief designed to remedy the damage to the property and economy of the plaintiff State and her citizens, and of all other States similarly situated and their citizens, caused by the defendants.

3. There is no suitable forum other than the original jurisdiction of the United States Supreme Court in which Plaintiff can bring this action and obtain adequate and timely relief as sought herein, or to which this action might be remitted in the interests of convenience, efficiency and justice.

4. Plaintiff is a sovereign state of the United States and has sustained damages as a result of the combination and conspiracy in restraint of trade prohibited by the common law as herein alleged.

5. Plaintiff realleges Paragraphs 4 through 14 of Count One as Paragraphs 5 through 15 of this count.

PRAYER FOR RELIEF IN RESPECT TO BOTH COUNTS

Wherefore, Plaintiff prays:

1. That the Court determine by order, pursuant to Rule 23(c)(1), Fed.R.Civ.P., that this action may be maintained as a class action.

2. That the Court adjudge and decree that the aforesaid combination and conspiracy, and the acts done in pursuance thereof, were and are in unlawful restraint of interstate trade and commerce, in violation of Section 1 of the Sherman Act and in violation of the common law.

3. That a mandatory injunction be issued by this Court requiring each defendant to adopt a rate structure for transatlantic air cargo shipments which does not create an undue preference for John F. Kennedy Airport in the State of New York and undue discrimination as to all other airports located in other States.

4. That the defendants be enjoined from continuing the combination and conspiracy herein alleged, and from enter-

ing into any combination, conspiracy, agreement, understanding or concert of action having similar purposes or effects.

5. That the defendants be required to pay such damages as are authorized by law to the plaintiff State, and all other States similarly situated, resulting from injuries suffered by such States in their proprietary capacities from the payment of unlawful cargo rates.

6. That the plaintiffs have such other further and different relief as the nature of the case may require or to the Court shall seem justified.

7. That the plaintiffs recover from the defendants the cost of this suit, together with reasonable attorneys' fees as is provided in the Federal antitrust laws.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA

/s/ ANDREW P. MILLER

Attorney General

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June 20, 1972

