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Contracts: Sufficiency of Notice to Passengers in Contract of Carriage

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RECENT DECISIONS

Contracts — Sufficiency of Notice to Passengers of Limitations in Contract of Carriage — Plaintiff, a passenger on defendant's airplane bought a ticket which contained the provision: "Sold subject to tariff regulations." At this time there was an effective tariff duly filed and posted which provided, inter alia, that no action could be maintained for personal injury to a passenger unless written notice of such claim was presented to the defendant within thirty days after the injury. Plaintiff's action against the defendant company for negligent injury was not commenced within the time provided. *Held:* plaintiff's action is denied. There was sufficient notice to her of the time-limiting provision. *Wilhelmy v. North-West Airlines, 86 F. Supp. 565 (W.D. Wash. 1949).*

The novel point in the above decision is that one accepting a ticket subject to tariff regulations would be considered to have notice of limitations on time within which an action may be brought merely because such limitation was included on the posted list entitled "Tariff Regulations". The word "tariff", as commonly understood, does not seem to have so extended a scope.

The Court in the instant case seems to base its decision on *Jones v. North-West Airline, Inc.*[1] where it was held that a passenger buying a ticket subject to tariff regulations was bound by the tariff duly filed and posted which exempted the carrier from liability for failure of its planes to depart and arrive on schedule in spite of a special contract made with the passenger when he purchased his ticket guaranteeing that he would arrive at his destination at a particular time.

The general rule states that because it is impossible to imprint on tickets all of the rules and regulations of tariffs, these rules and regulations must nevertheless be binding upon the carrier and the passenger.[2] However, the word "tariff", interpreting it to the extreme limit for the purpose of this note, appears to embrace only those matters:

1) contemplated or required by the Interstate Commerce Act to be therein stated, and
2) which can be properly included in or related to a system of rates and charges.[3]

In *Boston & Maine v. Hooker*[4] plaintiff passenger sued carrier for value of baggage lost through negligence in transporting it from Boston to Sunapee, N.H. Plaintiff was held bound by a regulation not appearing on the ticket which limited the carrier's liability for passengers' bag-

[1] Jones v. Northwest Airline, Inc., 22 Wash. 863, 157 P. (2d) 728 (1945).
[2] Koontz v. South Surburban Safeway Lines, Inc., 322 Ill., App. 14, 73 N.E. (2d) 919 (1947).
[3] Pacific S.S. Co. v. Cackett, 8 F.(2d) 259 (C.C.A. 9th 1925).
[4] Boston & Maine Railroad v. Hooker, 233 U.S. 97 (1914).

gage because rates for transportation may be directly affected by the degree of the carrier's responsibility for safe carriage and delivery of baggage. Under this reasoning posted tariff regulations which in any way directly limited the amount of money which the carrier could be called upon to pay out would seem to be matter notice of which the passenger would properly be held to have. Regulations pertaining to obligatory routing of passengers or manner of baggage disposition might conceivably be included in this category. Situations are various and many. A regulation, however, limiting the time in which an action might be commenced appears too remote in its effect on the carrier's rates and charges to reasonably charge a passenger of notice thereof in the manner undertaken in the instant case. Nor can it be said to be a matter contemplated or required by the Interstate Commerce Act to be filed under tariff regulations. The law as pronounced in the present case would seem to allow the carrier to attach unusual limitations and conditions, both subsequent and precedent, to the unsuspecting passengers' contract of carriage by merely including them on the posted list of tariff regulations. This hardly seems desirable.

The case of *Pacific SS Co. v. Cackett*[5] presented a fact situation similar to the one here discussed. The Court there held specifically that because giving of notice of claims for damages from negligence had no perceptible relation to rates and charges for transportation, the plaintiff did not lose her right of action by failure to comply with carrier's regulation pertaining thereto. This case was not cited in the opinion of the present case.

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Evidence — Scope of Cross-Examination of Juror Witness to Events in Jury Room — One Burton was on trial for income tax evasion. LaBranche was called as a juror, examined, accepted, heard the evidence and thereafter was sent to the jury room where he deliberated with his fellow jurors as to the verdict. The result was a disagreement and the jury was discharged. This was followed by a criminal action charging LaBranche and others with conspiracy in that for a sum of money LaBranche promised to vote for the acquittal of Burton. The prosecution called Adams who had served as a petit juror with LaBranche, and asked how LaBranche had voted. Adams answered LaBranche had voted for acquittal throughout the entire proceedings in the jury room. On cross-examination counsel for LaBranche asked Adams how the other jurors had voted. The government objected on grounds of immateriality and irrelevancy, and was sus-

[5] *Supra,* Note 3.