



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

7th Circ. Won't Revive Pilot's Coworker Attack Suit

By **Hannah Meisel**

Law360 (February 8, 2018, 9:46 PM EST) -- A Seventh Circuit panel on Wednesday affirmed the dismissal on venue grounds of a suit filed by an Etihad Airways pilot who claimed he was attacked by a fellow crew member while staying in Chicago on a layover in October of 2014.

Martyn Baylay, a British pilot working for United Arab Emirates-based Etihad Airways, sued the airline in 2015, along with flight attendant and alleged assailant Saravdeep Mann and the hotel in which the purported attack took place. But in separate rulings, an Illinois federal judge dismissed the counts against all the defendants in late 2016 and in May, finding that federal court was not the appropriate venue for Baylay's claims.

The appellate panel agreed on Wednesday, ruling that the Foreign Sovereign Immunities Act does not preempt the Illinois Workers' Compensation Act, which Baylay had attempted to argue. The Seventh Circuit thus affirmed the lower court's ruling that the appropriate home for Baylay's claims against Mann and Etihad is in front of the Illinois Workers' Compensation Commission.

"Baylay misconstrues the [FSIA] as a whole," the panel wrote. "Congress intended the FSIA to transfer immunity determinations in cases against foreign states from the executive branch to the judicial branch ... applying the state law principles that govern that state law claim, rather than constructing a set of federal common law principles, better serves the congressional intent behind ... [the FSIA]."

According to court documents, Mann attacked Baylay with a bronze hotel decoration at the Westin Hotel on Chicago's Michigan Avenue after a crew dinner in mid-October 2014 after having flown from Abu Dhabi. The crew drank predinner cocktails together that night, where Mann allegedly consumed a "significant amount" of alcohol. After allegedly drinking even more at dinner, Mann then expressed anti-American and anti-British views while emphasizing his distaste for the British by placing his hands around Baylay's throat, according to court documents.

Mann left the restaurant without paying his bill and without his coat, court documents said. The crew members settled Mann's bill, and Baylay said he offered to take Mann's coat and return it the next day.

However, back at the Westin, Mann knocked on Baylay's door, and Baylay said he thought Mann was there to apologize. Instead, Mann allegedly struck Baylay on the head and leg with a bronze hotel decoration. During the alleged attack, Mann purportedly threatened Baylay. Afterward, Baylay was taken to Northwestern Memorial Hospital, while Mann was arrested and transported to the Chicago Police Department.

After posting bond, Mann allegedly left the U.S. with the airline's help, criminally violating his bond, according to court documents. However, Mann's attorney told Law360 on Thursday that criminal charges against him were dropped after neither party showed up to hearings for the misdemeanor.

Baylay had argued during the course of the case and the appeal that the rightful venue for the suit was Illinois federal court. But that court told him that his claims would only be appropriate in front of the Illinois Workers' Compensation Commission, and the Seventh Circuit agreed, citing a four-prong test that failed to prove Baylay should be excluded from the jurisdiction of the commission.

According to the test, Baylay had to demonstrate that his injury was not accidental, did not arise from his employment, was not received during the course of his employment and was not compensable under the IWCA. Baylay's case fails all four prongs, according to the panel.

Baylay's injuries were accidental within the meaning of the IWCA, as an employee's claims of employer negligence and willful and wanton conduct fall within the definition of "accidental."

"This is true even if the claims arise from an intentional tort committed by a coworker; the tort is 'accidental' within the meaning of the IWCA because it is unexpected and unforeseeable from both the injured employee's and the employer's points of view," the panel wrote.

The second and third prongs — that Baylay's injuries arose out of his employment and that he was injured during the course of his employment — were obvious on their face, according to the panel, especially because Baylay was traveling for work and staying in a hotel room paid for by the airline.

"Baylay, an Etihad pilot, was unquestionably a traveling employee," the panel wrote. "He sustained his injury while in his employer-paid hotel room on a layover when his fellow crewmember knocked on his door. That a coworker would knock on Baylay's door, and that Baylay would open the door, while the crew was staying at the hotel is both reasonable and foreseeable."

Finally, the panel wrote, Baylay failed to establish that the Illinois Workers' Compensation Commission would not compensate him for his injuries, as assaults by coworkers in the workplace that are motivated by racial or ethnic prejudice are treated as compensable risks arising out of the employment, the panel said.

"Mann's attack was motivated by his hostility toward Baylay's national origin," the opinion said. "And Baylay does not allege that he brought anything to the workplace other than his national origin that would personalize Mann's attack on him. Thus, Baylay failed to show that his injuries would not be compensated under the IWCA."

The Seventh Circuit also affirmed the dismissal of all Baylay's claims against the Westin for negligence, in addition to other negligence claims against Mann and Etihad, writing that state law claims predominate, and the federal court did not error in declining to exercise jurisdiction over them.

Mann's attorney, Adam Sheppard of Sheppard Law Firm PC, told Law360 on Thursday that the Seventh Circuit's opinion added "much-needed clarification" to international diversity jurisdiction cases.

"We think the court's reasoning is absolutely correct and justified by precedent," Sheppard said. "It is an interesting issue for practitioners and [the opinion] helps shed light on the issue of diversity jurisdiction."

An attorney for the hotels declined to comment. Representatives for the other parties could not be reached for comment.

Circuit Judges Michael Kanne, Ilana Rovner and Daniel Manion sat on the panel for the Seventh Circuit.

Baylay is represented by Craig Sandberg of Muslin & Sandberg.

Mann is represented by Adam Sheppard of Sheppard Law Firm PC.

Ethiad is represented by Kelly Smith-Haley and Steven Brenneman of Fox Swibel Levin & Carroll LLP.

909 North Michigan Avenue Corporation and LHO Michigan Avenue Freezeout LLC are represented by Cathleen Hobson and David Olmstead of the Law Offices of Meachum Boyle & Trafman.

The case is *Martyn Baylay v. Etihad Airways et al.*, case numbers 16-4113 and 17-1958 in the Seventh Circuit Court of Appeals.

--Editing by Alanna Weissman.

All Content © 2003-2018, Portfolio Media, Inc.