

Conflict of law, Jurisdiction, Meaning of “civil and commercial matters whatever the court or tribunal”

British Airways “BA” & International Consolidated Airlines “IAG” v Sindicato Espanol de Pilotos de Lineas Aereas “SEPLA” & The International Federation of Airline Pilots Association “IFALPA”

[2013] EWCA Civ 730

Background

IAG is the parent company of British Airways and Iberia Airlines. It is registered in Spain, but its shares are traded on the London and Spanish exchanges and the principal place of business is London. Operations in Spain are carried out by Iberia and operations in the UK by BA.

Iberia’s domestic and European business was unprofitable, so IAG decided to launch a new low-cost airline - Iberia Express - which would save money by hiring pilots and crew at competitive market rates, significantly lower than rates paid to employees of Iberia under current collective agreements. SEPLA, an independent Spanish trade union of Spanish airline pilots, urged pilots to strike. The result was 18 days of strikes spread over four months with the support of the IFALPA, aiming to stop the transfer of business to Iberia Express on terms different to the existing agreements.

Claims

Iberia filed a claim against SEPLA on the grounds that the strikes were in opposition to the lawful decision to create Iberia Express. The Spanish court ordered that the parties submit to compulsory arbitration, although this process has been confused and delayed and there are now several pending appeals relating to various stages and awards of the case.

It is in this context that BA and IAG now contend that Spanish law, which includes the right under EU law to freedom of establishment and freedom to provide cross-border services, applies to both their claims. They claim that the strikes were unlawful as they obstruct these rights as set out the treaty obligations laid upon Member States.

Jurisdiction

Claimants contend their claims fall under the jurisdiction of the court according to regulatory provisions, as harm was caused by the strikes within UK jurisdiction and IFALPA was domiciled in England at the time the Claim was issued - the two associations being so closely connected that they

should be dealt with together and avoid the risk of having irreconcilable judgements from different hearings.

The question to be determined is this: does the claim fall within these regulations, which specifically only cover “civil and commercial matters whatever the court or tribunal”? The claimants argued that public law relates to a public authority, which SEPLA is not. Instead, the claims here amount to civil claims for illegal conduct that caused loss. However, the court held that it did not have jurisdiction in this matter as the claims are based on the freedoms of establishment and provision of services expressed in the EU treaty provisions which impose obligations on states. Although a private entity, SEPLA is capable of exercising powers to regulate the conditions of the labour market, and so to this extent can be understood as a Member State and subject to the obligations prohibiting any restriction on rights of establishment. As such falls under public law and cannot be dealt with by the court.

Remarks

The issue at the heart of these claims is a crucial one to our understanding of fundamental labour rights. A decision can only be reached by carefully balancing the constitutional right to strike against the freedom to establish a business or provide services, as enshrined in EU law. Case law shows that a union cannot lawfully prevent a business from setting up in another state (with lower rates of pay). However, a restriction on this freedom could be accepted in pursuit of a legitimate aim justified by overriding reasons of public interest. Unless jobs or conditions of employment were not at risk, it is unlikely in a case like this that restrictions would be justifiable, as in each case the objectives of social policy must be weighed against the rights guaranteed under EU treaties.

This case demonstrates the importance of clarity over which sphere of law - and so which regulations and jurisdictions apply. If the Regulation had been found to apply, the court would have had no choice but to hear and decide the case, no matter the Spanish order to submit to compulsory binding arbitration.

Maxwell Alves Solicitors
75 Farringdon Road,
London EC1M 3JY
0207 632 6950
london@maxwellalves.com