

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

New England Legal Foundation v. Massachusetts Port Authority

883 F.2d 157 (1st Cir. 1989) · No. Nos. 88-1971, 88-1972, 88-1973, 88-2227 · Decided August 17, 1989

SUMMARY

The case concerns the validity of a landing-fee structure adopted by the Massachusetts Port Authority for Boston-Logan International Airport under its Program for Airport Capacity Efficiency. The First Circuit reviewed parallel district-court and Department of Transportation proceedings addressing whether the fees and exemptions were reasonable, discriminatory, preempted by federal aviation law, or otherwise unconstitutional. The excerpt describes the administrative findings and the Secretary of Transportation’s conclusion that the fee structure violated federal statutory requirements and grant assurances.

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	Juan R. Torruella; Bownes; Re; Torruella
JURISDICTION	Federal
DECIDED	August 17, 1989
DOCKET	Nos. 88-1971, 88-1972, 88-1973, 88-2227
DISPOSITION	other
PROCEDURAL POSTURE	Consolidated appeals from the district court's grant of summary judgment to Massport and denial of preliminary injunctive relief, together with Massport's petition for review of the Secretary of Transportation's administrative Opinion and Order invalidating the Logan Airport landing-fee structure and exemption program.
STANDARD OF REVIEW	Summary judgment and legal conclusions of the district court were reviewed de novo. The Secretary's administrative legal conclusions and enforcement actions under § 511 were reviewed deferentially, including abuse-of-discretion review and Chevron deference where applicable; the § 105 and § 307 determinations were affirmed as supported by substantial evidence and entitled to deference.
PRECEDENTIAL VALUE	published and precedential federal appellate opinion
PARTIES	New England Legal Foundation, Associated Industries of Vermont, commuter airlines, business entities owning small aircraft, National

Business Aircraft Association, Massachusetts business associations,
Aircraft Owners and Pilots Association v. Massachusetts Port
Authority

TOPICS

judicial review of agency action

administrative law

preemption

municipal law

commerce clause

PRACTICE AREAS

administrative law

aviation law

federal preemption

municipal law

constitutional law

QUESTIONS PRESENTED

1. Whether private plaintiffs could maintain an action under § 511 of the Airport and Airway Improvement Act of 1982.
2. Whether the Secretary of Transportation's determination that Massport's landing fees were unreasonable, unjustly discriminatory, and inconsistent with federal grant assurances was entitled to deference and supported by the record.
3. Whether the district court should have deferred under the primary-jurisdiction doctrine to DOT's administrative determination concerning the landing fees.
4. Whether Massport's landing-fee structure was a prohibited head tax or equivalent charge under the Federal Anti-Head Tax Act.
5. Whether the landing-fee structure was preempted by § 105 of the Federal Aviation Act because it related to air-carrier rates, routes, or services and exceeded the airport-proprietor exception.
6. Whether the landing-fee structure interfered with federal control of navigable airspace in violation of § 307 of the Federal Aviation Act.
7. Whether Massport's exemption program was preempted under § 105 because it established local criteria governing essential-air-service communities, service frequency, aircraft size, and carrier participation.
8. Whether the fee structure independently violated the Commerce Clause, Equal Protection Clause, or Due Process Clause.

HOLDINGS

1. Section 511 does not authorize a private cause of action; enforcement is committed exclusively to the Secretary of Transportation.
2. The Secretary reasonably determined that Massport's landing-fee structure was unreasonable and unjustly discriminatory because its cost-allocation methodology lacked a principled, non-arbitrary basis and disproportionately burdened smaller aircraft.
3. The district court erred by deciding the § 105 and § 307 controversies without deferring to DOT's primary jurisdiction.

4. Massport's landing-fee structure did not violate the Anti-Head Tax Act because it was not a charge imposed on passengers, passenger carriage, air-transportation sales, or related gross receipts; it was an operational charge on aircraft operators.
5. Massport's landing-fee structure was preempted under § 105 because, despite being styled as a proprietor's fee, its revenue-neutral design and practical effect attempted to regulate aircraft access and air-carrier services in an area reserved to federal authority.
6. The landing-fee structure violated § 307 because its regulatory effect interfered with federal control over air navigation and the efficient utilization of navigable airspace.
7. The exemption program was preempted under § 105 because Massport established local eligibility, service-frequency, aircraft-size, and carrier-participation criteria that conflicted with and intruded upon DOT's federal Essential Air Service program.
8. The court declined to decide the independent Commerce Clause, Equal Protection Clause, and Due Process Clause challenges because the statutory and administrative grounds were dispositive.

KEY QUOTATIONS

“The doctrine of “primary jurisdiction,” also referred to as the “deference doctrine,” see Mashpee Tribe v. New Seabury Corp., 592 F.2d 575, 580 n. 1 (1st Cir.), cert. denied, 444 U.S. 866, 100 S.Ct. 138, 62 L.Ed.2d 90 (1979), “primarily serves as a means of coordinating administrative and judicial machinery.”” (171)

“Can Massport do indirectly what it cannot do directly?” (173)

“Massport cannot do indirectly what it is forbidden to do directly.” (175)

FACTUAL BACKGROUND

Massport, which owns and operates Boston-Logan International Airport, adopted Phase I of its PACE program in March 1988. The new landing-fee formula imposed a fixed charge plus a weight-based charge, substantially increasing fees for smaller aircraft while reducing fees for larger aircraft, and created exemptions for certain essential-air-service hub operations. The program was designed against the backdrop of congestion and delay at Logan, but the administrative record indicated that Massport's cost-allocation methodology was not scientifically derived and assigned a disproportionate share of costs to smaller aircraft. After DOT proceedings, Massport suspended the new structure and reinstated the prior weight-based fees pending judicial review.

PROCEDURAL HISTORY

Massport adopted Phase I of its PACE program, imposing a new landing-fee formula at Boston-Logan International Airport. Several aviation associations and other plaintiffs sued in federal district court, while parallel administrative complaints were filed with the FAA and referred to a DOT presiding officer. The district court upheld the fee structure, granted Massport summary judgment, and denied injunctive relief. The DOT presiding officer recommended invalidation, and the Secretary substantially adopted that recommendation, finding the fees unreasonable and contrary to federal statutes. The First Circuit affirmed the district court's dismissal of claims under 49 U.S.C. App. § 2210 and 42 U.S.C. § 1983, reversed the district court's other rulings, and affirmed the Secretary's Opinion and Order.

DISPOSITION

other

REMAND INSTRUCTIONS

The district court's dismissal of claims under 49 U.S.C. App. § 2210 and 42 U.S.C. § 1983 was affirmed. All other district-court rulings were reversed, and the Secretary of Transportation's Opinion and Order was affirmed. The opinion does not state a separate remand instruction.

CASES CITED

- *Maine v. Thomas*, 874 F.2d 883, 884-85 (1st Cir. 1989)
- *Evansville-Vanderburgh Airport Authority District v. Delta Airlines, Inc.*, 405 U.S. 707, 713, 716-19 (1972)
- *American Airlines, Inc. v. Massachusetts Port Authority*, 560 F.2d 1036, 1039 (1st Cir. 1977)
- *Wardair Canada, Inc. v. Florida Department of Revenue*, 477 U.S. 1 (1986)
- *Western Airlines, Inc. v. Port Authority of New York and New Jersey*, 817 F.2d 222 (2d Cir. 1987)
- *Midway Airlines, Inc. v. County of Westchester*, 584 F. Supp. 436 (S.D.N.Y. 1984)
- *Interface Group, Inc. v. Massachusetts Port Authority*, 816 F.2d 9, 15-16 (1st Cir. 1987)
- *Arrow Airways, Inc. v. Dade County*, 749 F.2d 1489, 1491 (11th Cir. 1985)
- *Rocky Mountain Airways, Inc. v. Pitkin County*, 674 F. Supp. 312 (D. Colo. 1987)
- *Mashpee Tribe v. New Seabury Corp.*, 592 F.2d 575, 580-81 (1st Cir.), cert. denied, 444 U.S. 866 (1979)
- *Port of Boston Marine Terminal Ass'n v. Rederiaktiebolaget Transatlantic*, 400 U.S. 62, 68-69 (1970)
- *United States v. Western Pacific R. Co.*, 352 U.S. 59, 63-65 (1956)
- *Far Eastern Conference v. United States*, 342 U.S. 570, 573-75 (1952)
- *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 843-44 (1984)
- *McInnis v. Weinberger*, 530 F.2d 55, 63 (1st Cir. 1976)
- *Dion v. Secretary of Health and Human Services*, 823 F.2d 669, 673 (1st Cir. 1987)
- *McCuin v. Secretary of Health and Human Services*, 817 F.2d 161, 168 (1st Cir. 1987)
- *Burbank v. Lockheed Air Terminal*, 411 U.S. 624, 633 (1973)
- *American Airlines, Inc. v. Hempstead*, 272 F. Supp. 226, 232 (E.D.N.Y. 1967), aff'd, 398 F.2d 369 (2d Cir. 1968), cert. denied, 393 U.S. 1017 (1969)
- *Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 303 (1944)
- *Northwest Airlines, Inc. v. Goldschmidt*, 645 F.2d 1309, 1314 (8th Cir. 1981)
- *New Orleans v. Dukes*, 427 U.S. 297, 304 (1976)
- *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 154-55 (1982)
- *Capitol Greyhound Lines v. Brice*, 339 U.S. 542, 545 (1950)
- *American Airlines, Inc. v. Audubon Park*, 407 F.2d 1306 (6th Cir. 1969), cert. denied, 396 U.S. 845 (1969)
- *Atlanta v. United States*, 531 F. Supp. 506 (N.D. Ga. 1982)
- *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 96-97 (1983)

- Air Transport Ass'n v. P.U.C. of State of Cal., 833 F.2d 200, 207 (9th Cir. 1987), cert. denied, 108 S. Ct. 2904 (1988)
- Montauk-Caribbean Airways, Inc. v. Hope, 784 F.2d 91, 97-98 (2d Cir. 1986), cert. denied, 479 U.S. 872 (1986)

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