

Are contracts between passengers and railway companies always governed by domestic law? (Nationale v Demey Maatschappij der Belgische Spoorwegen NV)

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Commercial analysis: Sarah Prager, barrister at 1 Chancery Lane, considers a recent decision by the Court of Justice of the European Union that considered under which circumstances a contract between a passenger and a railway company has been formed.

Original news

C-261/15: *Nationale v Demey Maatschappij der Belgische Spoorwegen NV* [2016] All ER (D) 144 (Oct)

The Court of Justice of the European Union made a preliminary ruling, deciding that the final sentence of art 6(2) of Appendix A to the Convention Concerning International Carriage by Rail, as modified by the Protocol for the modification of the Convention Concerning International Carriage by Rail, in Annex I to Regulation (EC) 1371/2007 of the European Parliament and of the Council should be interpreted as not precluding national provisions which laid down that a person making a train journey while not in possession of a ticket for that purpose, who failed to regularise his situation within the periods laid down in those provisions, did not have a contractual relationship with the railway undertaking.

What was the case about?

The case concerned the position of a passenger on a train travelling without a valid ticket. The passenger in question had been found guilty of travelling on the Belgian railway system without a valid ticket on four occasions, and had been ordered to pay fines as a result. He did not pay the fines within the requisite periods, and the Belgian railway company, NMBS, brought criminal proceedings against him seeking payment of the fines and additional sums in respect of its costs occasioned by his failure. In response, he claimed that he was entitled to claim the protection of domestic Belgian law; NMBS contended that in failing to purchase a ticket he had forfeited his right to rely on consumer protection law because he did not have a contractual relationship with it.

Article 6 of Appendix A to Regulation (EC) 1371/2007 provides:

‘1 By the contract of carriage the carrier shall undertake to carry the passenger as well as, where appropriate, luggage and vehicles to the place of destination and to deliver the luggage and vehicles at the place of destination.

2 The contract of carriage must be confirmed by one or more tickets issued to the passenger. However, subject to Article 9 the absence, irregularity or loss of the ticket shall not affect the existence or validity of the contract which shall remain subject to these Uniform Rules.

3 The ticket shall be prima facie evidence of the conclusion and the contents of the contract of carriage.’

Under Belgian consumer protection law, it is unlawful for a business to seek to impose an amount of compensation upon a consumer failing to carry out his obligations, without providing for an equivalent amount to be paid by the business in the event that it fails to carry out its obligations. It was common ground that if this provision applied in this case, NMBS would not be able to recover the sums it sought against the recalcitrant passenger.

The passenger argued that he enjoyed the legal protection afforded by domestic law, since, in accordance with the final sentence of art 6(2) of Appendix A of Annex I to Regulation (EC) 1371/2007, the absence of a ticket did not affect the existence or validity of the contract.

What did the Court of Justice of the European Union decide?

The question for the court was whether or not there was a contractual relationship between the passenger and NMBS. If so, his argument would succeed, but if not, his defence would fail.

The court ruled that art 6(2) presupposed the existence of a contract of carriage concluded beforehand, and related only to the proof of the existence of such a contract, which had to be confirmed by one or more tickets. In particular, the absence of a ticket referred to in the second sentence could be interpreted only as meaning that a contract of carriage had been concluded beforehand and that the passenger was unable to produce proof that he had purchased a ticket, if it was not to deprive the first sentence of that provision of any practical effect. Similarly, art 6(3) of Appendix A simply stated that the ticket was to be prima facie evidence of the conclusion and the contents of the contract of carriage. It followed that art 6(2) of Appendix A could not be interpreted as governing the conditions for the formation of a contract of carriage, and therefore those conditions would be governed by the relevant national provisions.

Accordingly, the final sentence of art 6(2) of Appendix A in Annex I to Regulation (EC) 1371/2007 should be interpreted as not precluding national provisions which laid down that a person making a train journey while not in possession of a ticket for that purpose, who failed to regularise his situation within the periods laid down in those provisions, did not have a contractual relationship with the railway undertaking.

What is the effect of the decision?

The decision confirms that although art 6 of Regulation (EC) 1371/2007 has an effect on the evidential effect of the possession (or otherwise) of a ticket, it does not prove one way or the other whether or not a contract has in fact been concluded between the passenger and the railway company. That question continues to be governed by Member States' domestic law, whatever it may be. There continues to be a place for old-fashioned rules of offer and acceptance, provision of consideration and so forth, therefore; and for domestic legislation regulating the relationship between passengers and carriers. Many will see this as a welcome application of common sense to what was, it is submitted, an unattractive case on the part of the passenger.

Interviewed by Diana Bentley.

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