

United States Court of Appeals For the First Circuit

No. 07-1824

JOHN D. CERQUEIRA,
Plaintiff, Appellee,

v.

AMERICAN AIRLINES, INC.,
Defendant, Appellant.

ERRATA SHEET

The opinion of this Court issued on January 10, 2008 is amended as follows:

On page 17, line 3, replace "and" with ", which included the Captain's information from"

On page 17, line 14, add as the last sentence of the paragraph, "It is the decision not to rebook that morning which is at issue."

On page 28, line 11, add "by the Captain" after "refuse transport"

On page 28, line 14, replace "decisionmakers" with "Captain"

On page 29, line 1, replace "decisionmakers" with "Captain"

On page 29, line 9, replace "other decisionmaker" with "the SOC manager, whose prompt decision not to rebook was based on the Captain's decision"

On page 36, line 3, replace "about the situation" with "provided by the Captain"

On page 36, line 5, after "Boston." insert the following:

The § 1981 claim against the SOC manager's decision was derivative of the § 1981 claim against the Captain's decision. There is no

evidence that the SOC manager's decision was based on race discrimination.

On page 36, line 5, replace "is no evidence" with "is also no evidence"

On page 36, line 8, insert "within minutes" after "decided"

On page 36, line 8, replace "to deny rebooking." with "to deny rebooking or that the SOC manager's following the Captain's decision was motivated by race."

On page 36, line 8, at the conclusion of the sentence that now ends "to deny rebooking or that the SOC manager's following the Captain's decision was motivated by race." insert the following footnote:

This case does not concern a situation where a SOC manager's decision to deny rebooking was not made based on the Captain's safety concerns and not made in short proximity to the Captain's decision not to allow plaintiff to fly.

On page 36, line 9, replace "indication" with "evidence"

On page 36, line 11, add as the last sentence of the paragraph, "As a result, the § 1981 claim against the SOC manager fails, and § 1981 imposed no further duties on him."

On page 37, line 10, replace "an air carrier" with "the Captain"

On page 37, line 14, insert "Captain's" before "decision"

On page 38, line 8, immediately after the words "providing information" insert the following footnote:

The court also erroneously instructed that the mere providing of information constitutes discrimination if the person providing information was motivated by his or her perception of the plaintiff's race or ethnicity. The court erroneously instructed that if "one of the reasons that was actuating, driving, informing people," but "not the only reason," was "that person's perception of [plaintiff's] race or ethnicity," then this was a "forbidden reason." (Emphasis added.)

On page 38, line 9, replace "decisionmakers" with "Captain"

On page 38, line 9, through page 38, line 22, delete the following text:

(We discuss this error further.) The instructions also erroneously appeared to equate acting based on any perceptions of a person's race or ethnic heritage with illegal discrimination. Race or ethnic origin of a passenger may, depending on context, be relevant information in the total mix of information raising concerns that transport of a passenger "might be" inimical to safety. The court also erroneously instructed that the mere providing of information constitutes discrimination if the person providing information was motivated by his or her perception of the plaintiff's race or ethnicity. The court erroneously instructed that if "one of the reasons that was actuating, driving, informing people," but "not the only reason," was "that person's perception of [plaintiff's] race or ethnicity," then this was a "forbidden reason." (Emphasis added.)

On page 39, line 1, replace "We return to the" with "The"

On page 39, line 1, through page 39, line 2, delete the following text: "problem with the instructions. Not only is that type of "

On page 39, line 2, replace "instruction flatly" with "instruction is flatly"

On page 39, line 3, replace "with § 44902(b), it" with "with the leeway for the Captain's decision under § 44902(b), and it"

On page 39, line 13, insert "for the Captain's decision" after "air carrier"

On page 39, line 13, insert "not on the issue of the Captain's bias, but" after "based"

On page 40, line 3, replace "facts here." with "facts here as to the Captain's decision."