

**IN THE DISTRICT COURT
AT MANUKAU**

**CRI-2016-092-001762
[2016] NZDC 9258**

MINISTRY OF BUSINESS INNOVATION & EMPLOYMENT
Prosecutor

v

JETSTAR AIRWAYS PTY LIMITED
Defendant

Hearing: 23 May 2016
Appearances: S Blick for the Prosecutor
J Edwards for the Defendant
Judgment: 23 May 2016

NOTES OF JUDGE J C MOSES ON SENTENCING

[1] Jetstar Airways Limited are before the Court for sentencing on one charge, namely that they being a carrier of a commercial craft who is notified under s 97(2) Immigration Act 2009 of a decision made by the Chief Executive under s 97(1) of that Act, that a passenger (who is named in the charging document) may not board that craft failed without reasonable excuse to ensure that the person to whom the decision related complied with it.

[2] The brief facts are that the defendant company was the operator of a flight JQ216 from Bangkok Thailand via Singapore which arrived at Auckland International Airport on 9 June 2014. The defendant is required under the Immigration Act to submit passenger data at the time of check-in of passengers so as to obtain a clearance for the passengers to board the craft. The passenger clearance is obtained through a system known as the New Zealand Advanced Passenger

Processing System (“APP”), and once data is inputted by an airline check, it is sent through the control system to the APP system which is linked to New Zealand Immigration’s database, and a message is then automatically generated indicating whether a passenger is permitted to board or not, and whether there are any conditions.

[3] The person in question is a citizen of the Republic of Chile who intended to board a flight to New Zealand on, 9 June 2014. At that time that named person was the subject of a Deportation Order which excluded him from returning to New Zealand for a period of five years from, 18 March 2014.

[4] The named person attempted to board the flight travelling from New Zealand to Singapore, and at the time of check-in his correct name was put into the APP system by the check-in agent which returned a “Do not board” directive. In accordance with the Act the defendant had an obligation to ensure that the passenger did not board the flight to New Zealand. Instead two subsequent attempts were made by the check-in agent which also returned “Do not board” directives. On a fourth attempt the check-in agent put in the incorrect name using a different combination of the named persons names and the APP system then returned a directive to board with an outward ticket. The defendant then allowed that person to board the flight and travel to New Zealand.

[5] I have received submissions filed on behalf of the Ministry and also submissions filed on behalf of the defendant. The maximum penalty is a fine of \$50,000. The prosecution submit that a starting point of \$20,000 is appropriate and that a discount for mitigating features should not exceed 25 percent.

[6] In doing so, the Ministry refer to previous cases where airlines have been brought before the Court. I have had a look at those cases and it seems as though the Courts previously have taken starting points of approximately \$12,000 or \$12,500, and have then reduced the fines taking into account submissions that have been filed on behalf of the defendants.

[7] In this case there are clearly potential dangers not only for New Zealand but also for other airline passengers, if people who should not be allowed onto airlines are able to do so in the way in which the named person was able to on this occasion.

[8] Jetstar have a previous conviction where they were fined \$6,500 back in 2012. I have read carefully the affidavit from Mr Cooper who is a representative of Jetstar and head of ground operations and delivery. Jetstar have properly carried out an investigation as to the circumstances that led to this incident occurring, and I accept have put in place and intend to carry out further modifications of their system at considerable cost, to reduce the risk of this sort of incident occurring again in the future. Those measures include the introduction of international kiosks which would prohibit or inhibit the production of boarding cards if such an error was detected.

[9] In terms of the Sentencing Act, I have to impose a penalty which holds the defendants to account, which deters defendants of this kind of behaviour and publicly denounces this behaviour as well.

[10] I am of the view that the previous level of starting point for this type of offending needs to be increased as clearly there continue to be problems with airlines allowing people to enter New Zealand when they should not.

[11] I take as a starting point \$17,500 for this offence and in doing so, I take into account that the company has also been issued with a number of infringement notices including several recently.

[12] I am of the view that some credit should be given to the company for the steps that they have taken and are taking to ensure this does not happen again, and for that reason I reduce the starting point by \$1,500 to that of \$16,000. From that the company are entitled to a 25 percent discount for their early guilty plea. That reduces the fine to an end result of \$12,000, and that is the fine that I impose today, along with Court costs of \$130.

[13] No doubt this decision will be available for future Courts should this type of incident happen in the future. It seems to me that with a maximum penalty of

\$50,000, future offending is likely to be treated even more seriously with a greater increase from the starting point that I have taken on this occasion, but that of course will be for a Judge to assess in the future.

[14] So for the reasons given the end result is a fine of \$12,000, and Court costs of \$130.

J C Moses
District Court Judge