

Research on Setting Conditions of No-Fly List

WANG Ruo-lin

Guangdong University of Foreign Studies, Guangzhou 511400, China

ABSTRACT. *In order to ensure aviation safety and maintain public order, the conditions for setting the no fly list are studied. This paper analyzes the conditions for setting up the no fly zone list, and comments on the conditions of setting up the no fly list by comparing the relevant provisions of the United States and Canada. Finally, through the study of the current regulations and deficiencies in China, some suggestions on the conditions of the no fly list are put forward.*

KEYWORDS: *No fly list, Aviation safety, International treaties*

1. Introduction

No-fly list is the basic measure taken to protect aviation safety and maintain social public order and restrict uncivilized flight behaviors. Relevant international treaties and foreign laws set up conditions for No-fly lists with enumerated and generalized legislative methods. But the establishment of the No-fly list by which departments, conditions is what is not clearly defined in China. China can learn from the practices of relevant countries and adopt the combination of enumerative and Miscellaneous Provisions to make clear the conditions for setting No-fly lists through legislation, so as to reduce legal ambiguity, limit the discretion of law enforcement agencies and increase operability[1].

2. What Are Setting Conditions of the No-Fly List

In the first case of China's No-fly list case, Fan Houjun v. Xiamen Airlines Co., Ltd. The critical issue facing the court is who has the right to set up an No-fly list.

The basic situation of the case is as follows. The claimant, Fan Houjun, has worked as an aviation safety officer in Xiamen Airlines Fuzhou Branch since December 1963. Xiamen Airlines decided to terminate the labor relationship with Fan Houjun for some reasons, bringing about dispute between the two sides. Xiamen Airlines had every reason to believe that Fan Houjun had potential dangers to endanger aviation safety and public order since he once used words of written and verbal threats after the termination of labor relations with Xiamen Airlines. For this reason, in August 2014 each ticket sales unit were asked not to sell tickets to Fan

Houjun. Since then, Fan Houjun's flight on Xiamen Airlines has been rejected[2].

During the trial, the court sent a letter to the Civil Aviation Administration of China to understand the laws, regulations, departmental rules and related practices that may be involved in the case. According to the reply from the Civil Aviation Administration of China, there is no regulations about whether the owner or operator of the aircraft has the right to refuse the boarding of passengers who are considered as a danger to aviation safety and social safety under the current domestic laws. However, from the perspective of international treaties, China belongs to the States parties to ICAO which has relevant provisions. According to the Security Manual for Preventing Unlawful Interference with Civil Aviation, civil aviation operators, ie airlines, shall be authorized to refuse to take passengers, which means people regarded as a potential threat to the aircraft by the airlines can be classified as a refusal. From the perspective of international practice, it is also common practice in the international aviation industry for aircraft owners or operators to set up their own No-fly lists. Finally, in conjunction with the international treaty and international practice, the court made a judgment in support of the airline's right to set a blacklist.

In this case, there are still some problems despite of the judgement achieved. The judgment of the case is made on the basis of the international treaties and international practices mentioned. Are these document able to serve as a basis for setting administrative penalties while the No-fly list is an administrative punishment ? If not, who has the right to set up an No-fly list?

3. A Comparative study on the setting conditions of the no-fly list

3.1 International Treaties

No-fly list is not specifically mentioned in the Tokyo Convention, the Montreal Convention and the Security Manual on Preventing Unlawful Interference with Civil Aviation, but whose approach to punish or refuse the destroyer for aviation safety and aviation order is similar to that of No-fly lists. Nonetheless, it is only a refusal decision on the on-the-spot act without considering reproducibility.

In the judgment of China's first No-fly list case, the court cited the relevant provisions in the "Security Manual for Preventing Unlawful Interference with Civil Aviation", arguing that airline operators have right to refuse those who are believed to be dangerous to the aircraft. And internationally, many countries also have such practices of allowing aircraft operators to set up No-fly lists. In these regulations, the main body of the No-fly list setting is the airlines authorized by the civil aviation government department[3].

3.2 Provisions of the Relevant Countries

3.2.1 America

In the US, No-fly list is formed on the basis of Paragraph(b) Section 44902 Chapter 49 of the United States Code. The provision was originally legislated to address the hijacking attempt, and it provided the basis for the airline to take prompt and decisive action to remove any suspicious behavior on the aircraft. The US Congress and the courts also give airlines much freedom in making security-related boarding decisions.

According to Section 49902(b) of Chapter 49, it can be seen that the carrier has reasonable grounds to suspect or believe that the safety or convenience of the passenger will be jeopardized by another passenger, and the carrier may refuse to accept such a person as Passengers do not necessarily have to wait until they prove that their suspicions are correct. This provision states that the United States stipulates that the conditions for entering the blacklist are “the carrier has reasonable grounds to suspect that the safety or convenience of the passenger will be endangered by another passenger.” This behavior is a high-level summary rather than an enumeration. The regulations are made in a certain manner, and the harmfulness of their actions need not be definite. They only need to have reasonable reasons to suspect that they may be harmful and can be refused to be included in the blacklist[4].

In conclusion, setting condition of No-fly list is terrorist act such as hijacking initially, and then the scope is expanded to an act that adversely affects security, but there is no specific act. However, in order to prevent the No-fly list from being abused, there are special anti-discrimination regulations.

3.2.2 Canada

Canada's basis for setting up No-fly lists is mainly Articles 8 and 9 of the Canadian Air Law and its Air Passenger Protection Plan. According to Articles 8 and 9 of the Canadian Air Law, Minister of public security has reasonable grounds to suspect those who have following act and take them into the no-fly list: 1. Engage or attempt to engage in what will threaten the safety of transportation; 2. Certain terrorist committed while traveling by air, such as participation in terrorist activities or funding, training or recruitment of terrorist groups. The public security minister reviews these decisions at least every 90 days. The airline will only provide the name, date of birth and gender of the person on the list to screen people from, on or off the list flying in Canada.

Airlines are required to screen all 18-year-old or older passengers before issuing their boarding pass. When the name of the passenger matches that of the the list, the airline must confirm the identity of the person and notify the Canadian Department of Transportation. When it is determined to be an exact match, the Minister of Public Safety may direct the airline to take specific, reasonable and necessary actions to prevent the person from engaging in the above actions. This may include, for

example, instructing the airline to refuse to ship the person or requesting the person to undergo additional screen-ing.

Judging from the above regulations, there are two main categories of setting condition of No-fly list. The first is to en-gage in or attempt to engage in acts that threaten the safety of transportation, and the second is to commit certain terrorist crimes while traveling by air. Compared with the United States, this regulation has been enumerated to a certain extent, and it is relatively more specific than the US regulations.

3.3 Comparison and Evaluation

In summary, the setting conditions of No-fly list are mainly regulated in two ways.

One is to use enumerated rules to further refine violations of order. Montreal Convention stipulates what kind of bad behavior should be refused, by way of enumeration. The acts of violence that may occur or may occur, the acts of damaging aircraft, and the acts of false intelligence endangering aviation safety are all included in the scope of application of the con-vention. In this way, the setting conditions of the No-fly list can be made more standardized.

The other is regulations like those in the United States and Canada, which give a general standard for judging behav-ior. The setting conditions of the No-fly list, title 49, Section 44902 (b), United States Code, is a passenger determined or suspected to be an adverse safety effect. However, this regulation has the following shortcomings. First, the entry condi-tions of the No-fly list are not clear enough, which is easy to produce vague laws and weak in practical operation. The standard to determine or suspect that an adverse impact on safety is to be judged by the captain of the aircraft, which is not impartial and easy to violate the rights of air passengers, leading to the abuse of the blacklist. Secondly, it is not conducive to the protection of passengers' rights.

Compared with the conditions of the United States, the conditions of Canada are relatively clear. The entry conditions of the No-fly list are the behaviors threatening transportation security and the crimes of terrorism. However, it is still not detailed enough. Terrorist crimes are generally specified in domestic criminal laws and are not easy to be abused. However, the behavior threatening transportation safety is easy to produce legal ambiguity and easy to be affected by the subjective factors of the subject of enactment. Without a clear and fair standard of judgment, the No-fly list will be abused, which is not conducive to the protection of the rights of air passengers.

4. The Current Regulations in China and Improvement Suggestions

4.1 Current Regulations and Their Deficiencies

Among the conditions for entering the air blacklist, the document lists 10 types of uncivilized behavior by air travelers. In this way, the actual operation of the air blacklist is relatively clear, air passengers are not easy to be mistakenly listed into the blacklist. But the disadvantage of the enumeration is also obvious. It is not flexible enough to deal with the reality. Foreign No-fly lists mainly deal with terrorism and threats to aviation security, and their entry conditions should also be set around these two aspects. But combined with the reality of China, China's No-fly list is mainly linked to the "excessive rights protection" behavior of air passengers, whether the "excessive rights protection" behavior of passengers is "uncivilized behavior", what is the standard of judgment? Should it be included in the No-fly list? None of these can be judged by airlines unilaterally, and there needs to be uniform and legal standards.

4.2 Considerations and Suggestions

As one of the administrative punishment measures, the setting conditions of No-fly list should follow the reasonable administrative principle and due process principle. At present, the basis for the establishment of No-fly list in China is only the provisions of the industry association, which leads to the lack of legal basis for administrative punishment.

My country adopts enumerative provisions for No-fly lists, and it should be combined with Miscellaneous Provisions. The enumerated rules have advantages and also have certain shortcomings, that is, they are not flexible enough to cope with the complicated and realistic situation. These problems can be solved by setting up bottom-line clauses, which is a solution based on the understanding of the limitations of the law. As a written norm, the law has inherent deficiencies, inconsistencies, contradictions, and lags. It can cope with complex and diverse social life through bottom-line provisions. In judging whether it meets the bottom-line condition, it should be considered from the perspective of the harmfulness of the bad behavior carried out by the passenger and the reproducibility of the inappropriate behavior, combined with China's actual situation, for the frequent occurrence of "excessive rights protection" behavior of air passengers, Consider the above two aspects. The harmfulness of bad behavior can be measured in terms of the severity of the behavior itself and the harmful results. When the bad behavior is very serious or the possible harmful results are serious, it should be deemed to be an act that may endanger aviation safety in accordance with the bottom-line provisions. Passengers who commit this undesirable behavior can be added to the air passenger blacklist.

5. Conclusion

This paper studies the conditions of setting the no fly list. Firstly, it analyzes the conditions of setting the no fly zone list, then compares the setting conditions of the no fly list between the United States and Canada through international treaties, and finally puts forward some suggestions on the shortcomings of the current no flight zone list in China.

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