

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NKEMAKONAM IKEKPEAZU, M.D., :
 :
 Plaintiff, :
 :
V. :
 :
AIR FRANCE, ET AL., :
 :
 Defendants. :

CASE NO. 3:04cv00711 (RNC)

RULING AND ORDER

Plaintiff brings this diversity case against Air France and one of its employees alleging negligence, breach of contract, and negligent infliction of emotional distress. The action arises from defendants' refusal to allow plaintiff to board a flight from Nigeria to the United States due to an alleged security problem with his passport. Defendants have moved to dismiss the action on the ground that plaintiff's claims fall within the scope of the Warsaw Convention and are therefore preempted. (Doc. # 9) Plaintiff has responded by seeking leave to amend his complaint to assert claims based on the Convention. Construing the claims as if they had been brought under the Convention originally, the motion to dismiss is granted insofar as plaintiff seeks damages for emotional injury but otherwise denied.

Facts

Plaintiff, a busy surgeon, booked an Air France flight to return to the United States from Nigeria departing on July 5, 2002. Compl. ¶ 7. At the terminal, he checked his luggage and presented his passport. Id. ¶ 8. Defendant Chateau, an Air France employee, confiscated the passport and told plaintiff to

step aside. Id. ¶ 9. Plaintiff was kept waiting for over an hour. Chateau then returned the passport stating that there was a "security problem," id. ¶ 14, and another Air France employee told plaintiff he should report to the American Embassy. Id. ¶ 15. Plaintiff's luggage was removed from the flight and he was not permitted to board. Id. ¶ 16. As a result, he was forced to cancel all surgeries, procedures, and consultations he had scheduled for the upcoming week. Id. ¶¶ 17-18.

Plaintiff arranged for transportation to the American Embassy in Lagos, an eight-hour trip. In due course, he was informed that there was no problem with his passport. Id. ¶ 19. He returned to the airport, boarded an Air France flight without difficulty, and arrived at his destination on July 11, 2002. Id. ¶ 21.

Discussion

_____The Warsaw Convention is intended to "achieve uniformity of rules governing claims arising from international air transportation." King v. Am. Airlines, Inc., 284 F.3d 352, 356 (2d Cir. 2002) (citations omitted). Its preemptive reach extends to state law claims for "injuries to persons or baggage suffered in the course of international airline transportation, regardless of whether a claim actually could be maintained under the provisions of the Convention." Id.; see also Fishman v. Delta Air Lines, Inc., 132 F.3d 138, 141 (2d Cir. 1998) ("[a]ll state law claims that fall within the scope of the Convention are preempted"). Plaintiff's claims are thus preempted and his

complaint must be dismissed unless his allegations state a claim for relief under the Convention. See El Al Israel Airlines, Ltd. v. Trui Yuan Tseng, 525 U.S. 155, 161 (1999) ("recovery . . . if not allowed under the Convention, is not available at all."); King, 284 F.3d at 356.

Article 17 of the Convention provides that "[t]he carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking." 49 U.S.C. § 40105 note. See Scala v. Am. Airlines, 249 F. Supp. 2d 176, 178 (D. Conn. 2003). Plaintiff's allegations do not state a claim for relief under this Article because he does not allege bodily injury. See King, 284 F.3d at 359; Turturro v. Continental Airlines, 128 F. Supp. 2d 170, 175 (S.D.N.Y. 2001) (citing Eastern Airlines, 499 U.S. at 552).

Article 19 provides that "[t]he carrier shall be liable for damage occasioned by delay in the transportation by air of passengers, baggage, or goods." 49 U.S.C. § 40104 note.¹ Plaintiff's allegations of financial injury resulting from the delay in his return to practice provide a basis for a claim under

¹ Most Article 19 cases concern the practice of "bumping" passengers, but the reason for a carrier's refusal to allow a person to board a scheduled flight is of no consequence; "the result of a delay in transportation is the same." Fields v. BWIA Int'l Airways Ltd., No. 99-CV-2493 (JG), 2000 WL 1091129, at *3 (E.D.N.Y. July 7, 2000).

this Article. See Minhas, 1999 WL 447445, at *2. However, his allegations of emotional injury do not. See Fields v. BWIA Int'l Airways Ltd., No. 99-CV-2493 (JG), 2000 WL 1091129, at *6 (E.D.N.Y. July 7, 2000); Daniel v. Virgin Atlantic Airways, Ltd., 59 F. Supp. 2d 986, 992 (N.D. Cal. 1998); Barrett v. United Airlines, Inc., No. 92 C 5578, 1994 WL 419637, at *3 (N.D. Ill. Aug. 5, 1994).

Conclusion

Accordingly, defendants' motion to dismiss is granted with regard to plaintiff's claim for emotional injury but otherwise denied.

So ordered.

Dated at Hartford, Connecticut this 6th day of December 2004.

Robert N. Chatigny
United States District Judge