



German COURT CONCLUDES: toxic air on aircraft = and RULES work accident

A stewardess has been having considerable health problems which occurred after a flight, due to toxic chemicals floating around the aircraft. Together with Oliver Birk of the Stuttgart office of the DGB Rechtsschutz GmbH, she fought her case at the labour/industrial court Freiburg/Germany to determine the existence of an accident.

After reviewing and evaluating all the individual aspects, the Freiburg Labour Court concluded that an accident indeed had occurred. The applicant has thus become a victim of a workplace injury.

Besides this flight attendant, other colleagues' symptoms were also symptomatic, which were in part less severe than the applicants'. Traces of tributyl phosphate were found inside the aircraft which was collected in a wipe sample the following day.

The Legal Framework

According to the provisions of the Labour Code VII, an accident occurs when an insured event affects an insured person from outside, causing an injury or death to the insured person. In the event of a dispute, the insured persons must prove among other things, that an accident has occurred. This evidence has been successful when the Court considers that with high certainty an accident occurred.

The view of the Berufsgenossenschaft (BG)

The employers' liability insurance company refused to recognize an accident at work. In its view, the applicant had not been able to prove that an accident occurred.

The decision of the Labour Court

In its judgment, the Labour Court (Sozialgericht) assumes that the applicant was with high certainty a victim of a work injury. The following factors were decisive:

Since the fifties of the last century, there has been a large number of cases in which health problems have been reported by aircraft personnel or passengers, without warning odors or visible air pollution.

The plaintiff developed precisely those symptoms which were typical of cases in the past.

Apart from the plaintiff the same complaints and symptoms were experienced immediately after the flight by other colleagues . At the same time, most physicians at least confirmed similar findings as the plaintiff's.

The results of the ,wipe sample' suggest that air contamination must have been present.

Frequent complaints in the past

Medical experts call the result of contaminated cabin air an "aerotoxic syndrome." The professional association itself reports several hundred cases of corresponding health impairments in the years 2013 to 2016.

An obvious technical reason for these complaints is that the compressed air is impacted by the engines and condensed air flows from the engine area into the aircraft interior. Cases of aerotoxic syndrome occur both nationally and internationally and lead to uniform impairments among the people who inhale the polluted air.

Typical symptoms

As in the cases of the past, the plaintiff also had a direct time link with the flight, including among other things, aching pain in the forehead, slowed reaction and facial motor disfunction, nasal and sinus congestion , speech disorders and memory and balance disorders. All these complaints have also affected the victims of past cases.

Impact on the colleagues

In all four cabin crew, doctors have confirmed typical signs of aerotoxic syndrome. It does not matter that the complaints varied in intensity. The variation in intensity can be explained by the fact that the persons were in different areas of the aircraft. The applicant and one colleague who were mainly at the rear of the aircraft both showed the strongest and most long lasting problems. Colleagues in the middle and the front of the aircraft on the other hand, experienced less drastic consequences. This is because the ventilation system is divided into several zones where fresh air supply and temperature differ. On one hand, the intensity of the complaints depends on the position within the aircraft. On the other hand, the same position has the same intensity of complaint. This indicates that the outflow of contaminated air is an accidental event.

Wipe Samples

As a matter of fact it would have been necessary to examine the interior of the aircraft immediately after landing for residues of toxic chemicals. No one did this at first. But on the following day traces of tributyl phosphate were still found. This substance is a component of hydraulic oil in jet engines. There is thus an objective indication that the cabin air was polluted

via the bleed-air of the engines.

Result

After reviewing and evaluating all individual points of view, the Freiburg Court concluded that an accident had occurred. The applicant has thus become a victim of a work injury.

Outlook

The judgment of the „Sozialgericht Freiburg“ is not yet final. If the employers' association appeals to the National Labour Court, we will continue to report. © (German original source DGB Rechtsschutz) (<https://www.dgbrechtsschutz.de/recht/sozialrecht/arbeitsunfall-und-berufskrankheiten/dicke-luft-im-flugzeug-arbeitsunfall/>)

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