

Case No: CO/4934/2017

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date of Decision: 08 November, 2017

LORD JUSTICE GROSS
MR JUSTICE LEWIS

Between :

MONARCH AIRLINES LTD	<u>Claimant</u>
- and -	
AIRPORT COORDINATION LTD	<u>Defendant</u>
- and -	
MANCHESTER AIRPORTS GROUP PLC	<u>Intervener</u>

Bankim Thamki QC, David Allison QC and Malcolm Birdling (instructed by **Freshfields
Bruckhaus Derringer**) for the **Claimant**
Michael Crane QC, Alexander Milner and Nicolas Damnjanovic (instructed by **Bates Wells
& Braithwaite LLP**) for the **Defendant**
Akhil Shah QC and David Murray (instructed by **DLA Piper UK**) for the **Intervener**

Hearing dates: 6 and 7 November, 2017

DECISION

Lord Justice Gross :

1. We grant the Claimant (“Monarch”) permission to apply for Judicial Review but dismiss its claim. Our full reasons will be given in a judgment, to be delivered in due course.
2. However, with a view to assisting the parties, we now summarise, in the briefest of terms, why we have reached this conclusion.
3. This case concerns slots for take-off and landing at certain airports in the United Kingdom.
4. So far as the parties and we are aware, this is the first court application in this jurisdiction on the part of an insolvent “airline” (to use that term neutrally), asserting an entitlement to and seeking to compel the allocation of, slots for a future season. Here, the slots sought are for the Summer 2018 season (“the Summer 2018 slots”).
5. The key facts on the material available to us are these:
 - i) Monarch was placed in administration by an order of the Court dated 2nd October, 2017.
 - ii) Monarch’s Air Operator Certificate (“AOC”) was provisionally suspended by the CAA on the 2nd October, 2017.
 - iii) Monarch no longer has any aircraft at its disposal through ownership or a dry lease agreement.
 - iv) Monarch has no pilots – other than, at most, 3 “historically retained” pilots, currently holding management positions.

- v) The CAA has commenced proceedings (a) to revoke, alternatively suspend, Monarch’s Operating Licence (“OL”) and (b) to revoke Monarch’s AOC.
 - vi) Having regard to the reasons advanced on Monarch’s behalf for being placed in administration and, amongst other things, the Freshfields letter of 1st November, 2017, there is no more than a theoretical possibility of Monarch emerging as a going concern or resuming the operation of air services.
6. In these circumstances, we reject the Monarch claim that the Defendant slot coordinator (“ACL”) was under a duty to allocate the Summer 2018 slots to Monarch by reason of historical precedence (“grandfather rights”). On the facts as summarised:
- i) Any such duty would not accord with the purpose underlying both Council Regulation (EEC) No. 95/93 as amended (“the Slots Regulation”) and Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 (“the Licensing Regulation”); and
 - ii) Monarch falls outside the language of the Slots Regulation, read in context.
7. It is one thing to permit a “secondary market” in slots. It is another to extend it to companies in insolvency, in circumstances such as those outlined here.
8. Our decision does not require ACL to act as an investigator.

9. The decision in *R v Airport Co-Ordination Ltd, Ex p. The States of Guernsey Transport Board* [1999] EU LR 745 is distinguishable.
10. Whatever flexibility and discretion ACL enjoys in other circumstances to reserve (or postpone) a decision, it is no longer entitled to reserve its decision on the Summer 2018 slots on the facts of this case. That would be to sterilise or distort part of the market, to the potential detriment of third parties, for an uncertain period of time. In this regard, we agree with the case advanced by the Intervenor Airport (“MAG”).
11. Accordingly, the consequence of our decision is that the Summer 2018 slots are to be placed in the slot pool.
12. For completeness:
 - i) It is unnecessary for us to reach any decision on the so-called “discretionary relief” point.
 - ii) As became common ground, the “anti-deprivation” principle is irrelevant; either Monarch (if otherwise right) does not need it; or it does not assist Monarch (if Monarch is not otherwise right).