



HIGH COURT OF AUSTRALIA

14 May 2025

EVANS & ANOR v AIR CANADA ABN 29094769561
[2025] HCA 22

Today, the High Court unanimously dismissed an appeal from a judgment of the Court of Appeal of the Supreme Court of New South Wales. The appeal concerned the meaning of certain Articles of the Convention for the Unification of Certain Rules for International Carriage by Air (1999) ("the Montreal Convention") and the application of those provisions in Air Canada's International Passenger Rules and Fares Tariff ("the Air Canada Tariff"), which formed part of its contract of carriage with passengers.

The appellant passengers travelled from Vancouver to Sydney on a flight operated by the respondent (Air Canada) in July 2019. In the Supreme Court of New South Wales, the passengers sought damages from Air Canada under Art 17 of the Montreal Convention, as incorporated into Australian law by the *Civil Aviation (Carriers' Liability) Act 1959* (Cth) ("the Civil Aviation Act"), for spinal and psychological injury allegedly caused by turbulence experienced on the flight.

Air Canada relied upon a partial defence in Art 21(2) of the Montreal Convention, available where the damage was not due to negligence or any other wrongful act or omission by Air Canada or its servants or agents. Under that partial defence, damages would be subject to a cap that limited the extent of the passengers' recovery to 113,100 Special Drawing Rights, which is approximately \$240,000 at present exchange rates. The appellant passengers replied that, under Art 25, Air Canada had waived that partial defence because the Air Canada Tariff provided in r 105(C)(1)(a) that "[t]here are no financial limits in respect of death or bodily injury".

The primary judge held that Art 25 of the Montreal Convention allowed a carrier to remove entirely the partial defence to liability provided by Art 21(2) and that the clear and unambiguous language of r 105(C)(1)(a) had done so. The Court of Appeal allowed an appeal and held that while it was open to Air Canada to waive the partial defence in Art 21(2), Air Canada had not in fact waived that partial defence under r 105(C)(1)(a).

The High Court held that Art 25 empowered Air Canada to waive the partial defence in Art 21(2) but Air Canada had not done so. It was necessary to interpret r 105(C)(1)(a) of the Air Canada Tariff having regard to its context and purpose. Although the appellant passengers' claim was brought under the Civil Aviation Act as a matter of domestic law, the relevant treaty provisions that were given effect in domestic law have a meaning in public international law which has not been altered by that Act. The context and purpose of r 105(C)(1)(a) make clear that it only described the effect of Arts 17 and 21 of the Montreal Convention, rather than stipulating a higher limit of liability for the purposes of Art 25 of the Montreal Convention. As such, Air Canada had not waived the partial defence under r 105(C)(1)(a) of the Air Canada Tariff.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.