

Claim Number 12/19 PM

**IN THE SMALL CLAIMS TRIBUNAL**

(European Small Claims Procedure)

Adjudicator: Dr. Philip M. Magri

Sitting of Monday, 2<sup>nd</sup> March, 2020

Claim Number: 12/19PM

**Martyna Mazur**

**vs.**

**Airmalta p.l.c.**

The Tribunal,

Having seen the Notice of Claim filed in virtue of Regulation (EC) 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure, filed on 13<sup>th</sup> August, 2019 in virtue of which claimant claimed that she acquired flight tickets Warsaw-Malta (21/07/2018) in connection with a flight operated by defendant company, which flight was postponed by four hours. That the compensation due in terms of Regulation 261/2004 of the European Parliament and of the Council amounts to four hundred euros (€400) per person and that although defendant company was called to effect payment on the 4<sup>th</sup> April, 2019 it failed to reply to such request.

The Tribunal also notes that defendant company was duly served with the acts of the case on 10<sup>th</sup> September, 2019 and no reply was filed.

The Tribunal:

Having seen the documents filed with the Notice of Claim, namely power of attorney, passenger confirmation and letter addressed to defendant company dated 4<sup>th</sup> April, 2019.

Having also considered that the lack of reply by defendant company does not in itself mean that claimant's claim is automatically proven;

Having therefore considered all evidence brought forward by claimant;

Having also considered that the Tribunal can adjudicate this case on the basis of the evidence produced and that therefore no oral hearing needs to be fixed;

Considers that:

In this action, claimant is suing defendant company for compensation in terms of Regulation 261/2004 of the European Parliament and of the Council for flight delay. In this respect, Article 6 of the same Regulation provides that:

*“When an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure:*

*(a) for two hours or more in the case of flights of 1 500 kilometres or less;*

*or*

*(b) for three hours or more in the case of all intra-Community flights of more than 1 500 kilometres and of all other flights between 1 500 and 3 500 kilometres; or*

*(c) for four hours or more in the case of all flights not falling under (a) or*

*(b), passengers shall be offered by the operating air carrier:*

*(i) the assistance specified in Article 9(1)(a) and 9(2); and*

*(ii) when the reasonably expected time of departure is at least the day after the time of departure previously announced, the assistance specified in Article 9(1)(b) and 9(1)(c); and*

*(iii) when the delay is at least five hours, the assistance specified in Article 8(1)(a).*

*2. In any event, the assistance shall be offered within the time limits set out above with respect to each distance bracket.”*

With regards to the right of compensation, Article 7 also provides:

*“1. Where reference is made to this Article, passengers shall receive compensation amounting to:*

*(a) EUR 250 for all flights of 1 500 kilometres or less;*

*(b) EUR 400 for all intra-Community flights of more than 1 500 kilometres, and for all other flights between 1 500 and 3 500 kilometres;*

*(c) EUR 600 for all flights not falling under (a) or (b).*

*In determining the distance, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger's arrival after the scheduled time.*

*2. When passengers are offered re-routing to their final destination on an alternative flight pursuant to Article 8, the arrival time of which does not exceed the scheduled arrival time of the flight originally booked*

*(a) by two hours, in respect of all flights of 1 500 kilometres or less; or*

*(b) by three hours, in respect of all intra-Community flights of more than 1 500 kilometres and for all other flights between 1 500 and 3 500 kilometres; or*

*(c) by four hours, in respect of all flights not falling under (a) or (b), the operating air carrier may reduce the compensation provided for in paragraph 1 by 50 %.*

*3. The compensation referred to in paragraph 1 shall be paid in cash, by electronic bank transfer, bank orders or bank cheques or, with the signed agreement of the passenger, in travel vouchers and/or other services.*

*4. The distances given in paragraphs 1 and 2 shall be measured by the great circle route method.”*

With reference to the above-mentioned articles, the Tribunal notes that no evidence was filed which could justify the defendant's failure to compensate plaintiff as duly requested. On the other hand, it transpires that plaintiff had booked a seat on the Airmalta-operated flight number KM7429 from Warszawa to Malta dated 21<sup>st</sup> July 2018. The said flight covers a distance of approximately 2,800 kms between Warsaw and Malta. To this effect, defendant company is duty bound to compensate plaintiff the sum of four hundred euros (€400) in terms of Article 7(1)(b) of Regulation 261/2004 as above-quoted.

Thus, for the aforementioned reasons, the Tribunal upholds claimant's claim and thus orders defendant company to pay to claimant the sum of four hundred Euro (€400). All costs are to be borne by the defendant company.

Dr. Philip M. Magri  
Adjudicator