Claim Number 7/19 PM

IN THE SMALL CLAIMS TRIBUNAL

(European Small Claims Procedure)

Adjudicator: Dr. Philip M. Magri

Sitting of Monday, 30th August, 2021

Claim Number: 7/19PM

Anna Iljina and Alexander Hendrikson

vs.

Ryanair DAC

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 30th May, 2019 in virtue of which claimant claimed compensation for the flight FR8853 which arrived to Malta, Luqa (MLA)n on 27th December, 2017 with a delay of four hours and forty-five minutes. 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, totaling therefore eight hundred euros (€800) for both claimants. Although defendant company was called to effect payment, it failed to reply to such request or to provide an explanation in connection with the said delayed flight.

The Tribunal also notes that defendant company was duly served with the acts of the case (as confirmed by the Assistant Registrar Civil Courts and Tribunals via his note dated 5th

May, 2020) and a reply was filed to the effect that the claim was being contested on the basis of the fact that claimants failed to comply with the standard procedure applicable when flights are delayed, as better explained and results from the airline representative declaration attached to the same and relative correspondence which is also attached to the same reply.

The Tribunal:

Having seen the documents filed with the Notice of Claim, namely claimant's statement and the following exhibits: confirmation of flight delay, electronic tickets for both claimants, claim dated 24th January, 2018, information from website flightstats.com confirming the delay, power of attorney, copies of claimants' passports, legal services agreement and invoices for same legal services as well as for postal charges.

Having also considered the reply filed by defendant company as well as the documents attached thereto.

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."

The defendant company contests the claim and refers to a failure by the claimants to comply with the standard procedure applicable for delayed flights. The Tribunal has also considered the documents attached to the reply from which it transpires that claimants did not comply with clauses 15.2.2 of the Ryanair's General terms and Conditions of Carriage which expressly provide as follows: "*Passengers must submit claims directly to Ryanair and allow Ryanair 28 days or such time as prescribed by applicable law (whichever is the lesser) to respond directly to them before engaging third parties to claim on their behalf*." Via letter dated 25th January, 2018 defendant company referred to the said clauses and, in addition, advised the claimants' representative that: "*As this claim have* (sic) *not been submitted in accordance with clause 15.2.2, as required, it has not been assessed, however at first glance it does appear that this is not a valid EU261 claim and therefore no compensation is payable. If you feel we are mistaken, please advise your client to submit their claim directly to us in accordance with clause 15.2.2 and we will be happy to assess their claim. If it turns out that EU261 compensation is payable, we will pay it directly and without deduction to our customers.* (…) *Please take note that should you ignore this letter and issue unnecessary proceedings against Ryanair we will rely on this letter to recover*

damages for the breach of the GTCCs, plus our court fees and or solicitors'fixed fees pursuant to the Civil Procedure Rules."

In this regard it has been decided that the general terms and conditions introduced by the defendant operator cannot be deemed unfair in terms of law (**BOTT & CO SOLICITORS LTD - and - RYANAIR DAC** delivered by the English High Court of Justice on the 16th March, 2018:

> *Article 15.2 of the GTCC sets out a straightforward procedure for initiating a flight disruption claim against Ryanair that is reasonable in scope. There is no question of the passenger being "excluded or hindered" in a material sense from her right to take legal action or exercise any other legal remedy in the event a dispute arises as to whether she is entitled to compensation under the Regulation. In such circumstances, she is free to seek redress through the Airline Dispute Resolution scheme or to instruct Bott or any other firm of solicitors to bring a claim, provided only that she has taken the simple steps of making her claim directly to Ryanair and allowing 28 days for a response.*

The same judgment also concluded that such a term and condition could not be deemed unenforceable as a 'limitation' to the rights granted to aggrieved passengers by the Regulation:

> *Having regard to Article 15.1 in the context of the Regulation as a whole, including its objectives, it seems clear to me that Article 15.1 is not intended to restrict any and all contractual provisions bearing on how a claim might be made under the Regulation. Yet any such contractual provision could, in a sense, be viewed as a "limitation" (there is no question of "waiver" on these facts, so I focus on "limitation"). The key question is whether a passenger is prevented by any term in the contract of carriage from achieving a full realisation of her substantive right to compensation or any other relevant substantive right under the Regulation. Accordingly, a provision mandating that*

a certain procedure be followed in order to make a claim is not, in my view, a provision that "limits" the right to make the claim within the scope of Article 15.1 of the Regulation, unless the effect of the requirement is to put a material obstacle in the way of making such a claim or to result in the passenger recovering less than she is entitled to recover.

On the evidence, it is clear that Article 15.2 of the GTCC neither puts a material obstacle in the way of making a flight delay compensation claim nor results in the passenger receiving less than she is entitled to recover. Accordingly, Article 15.2 of the GTCC is not unenforceable by virtue of the prohibition in Article 15.1 of the Regulation.

Truly enough, several legal commentators have discussed the obvious repercussions of the above judgment particularly in connection with those firms which offer legal assistance services for such claims for compensation:

Passengers using an intermediary claims company when bringing Regulation claims is great for businesses such as Bott but it does not make sense for consumers in the "vast majority" of claims where the airline pays compensation upon receipt of initial correspondence from the passenger. Moreover, the website of the UK Civil Aviation Authority ("CAA") encourages passengers to make direct contact with their airline if they believe they have a claim, and the European Commission, whose Information Notice to Air Passengers of 9 March 2017 states: "Passengers should always seek to contact the operating carrier before considering other means to seek redress for their rights." This desire for passengers to make direct contact is echoed by the airlines themselves. Since the huge upsurge in public awareness of Regulation claims this decade, a number of airlines have moved all or part of claims handling in-house as part of the overall customer service they offer to passengers.

Taking all the above into due consideration, the Tribunal is of the considered opinion that even under Maltese law the principle of *pacta sunt servanda* requires all parties to a contract to carry out the contract in good faith and that a contract legally entered into shall have the force of law for the contracting parties so that none may revoke any part thereof except by mutual consent or on grounds allowed by law (art. 992 and 993 of the **Civil Code of Malta**). Hence, this means that, failing a decision by which the said terms and conditions are deemed unfair or otherwise unenforceable in terms of Maltese law, the Tribunal is also duty bound to ensure respect by all parties involved to the contractual terms and conditions which regulate their relationship. In this case, in line with the case-law cited above, there is nothing which limits let alone precludes the application of the terms and conditions regulating carriage of claimants *qua* passengers. In addition, defendant company expressly referred to these conditions in its letter dated 25th January, 2018 and suggested that "*you advise your client in their best interest to use this portal and we will reply directly to them. Please take note that should you ignore this letter and issue unnecessary proceedings against Ryanair we will reply on this letter to recover damages for the breach of the GTCC, plus our court fees and our solicitors' fixed fees pursuant to the Civil Procedure Rules*".

It therefore transpires that, rather than abiding with their binding contractual obligations, claimants opted to (or were directed to) institute these proceedings, which proceedings are thus to be deemed entirely premature given the simple and practical procedure posted by the terms and conditions of the carriage, which procedure they unilaterally opted to ignore. The Tribunal thus cannot uphold any part of the claim without, by so doing, sanctioning an illegal breach of the General terms and conditions regulating the relationship between the parties.

Thus, for the aforementioned reasons, the Tribunal denies claimant's claim with all costs to be borne by claimants.

Dr. Philip M. Magri

Adjudicator