

Claim Number 14/20 PM

**IN THE SMALL CLAIMS TRIBUNAL**

(European Small Claims Procedure)

Adjudicator: Dr. Philip M. Magri

Sitting of Monday, 30<sup>th</sup> August, 2021

Claim Number: 14/20PM

**Roxana Jaworska and Mateusz Adamczyk**

**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 25<sup>th</sup> August, 2020 in virtue of which claimants claimed that she acquired flight tickets Oslo-Malta (18/09/2019) in connection with a flight operated by defendant company, which flight was postponed by three and a half 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, that is eight hundred euros (€800) for both claimants and that although defendant company was called to effect payment on the 18<sup>th</sup> November, 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 replied on the 5<sup>th</sup> November, 2020 by which it contested the

above-mentioned claim by stating that “*the flight was delayed by a few hours for reasons beyond the control of defendant, due to extraordinary reasons resulting in aircraft sudden overspeed due to extremely high and abrupt winds, which required ad hoc and specialized servicing of the aircraft*”. To this effect the defendant company also attached to its reply a description of events as explained by a flight operations control analyst (Doc. ‘A’ attached to the reply) and an engineering report relating to the technical problems sustained by the aircraft (Doc. ‘B’ attached to the reply) as well as copies of the delay alerts sent to passengers, compensation for refreshments pending the delay and evidence that applicants boarded the flight following the delay (Doc. C1- C5 attached to the reply).

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 18<sup>th</sup> November, 2019.

Having also considered the reply filed by defendant company, including the supporting documents attached to the same.

Having therefore considered all evidence brought forward by the respective parties;

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.”*

In addition to the above-mentioned articles, the Tribunal notes that Preamble 14 and 15 respectively provide as follows:

*(14) As under the Montreal Convention, obligations on operating air carriers should be limited or excluded in cases where an event has been caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. Such circumstances may, in particular, occur in cases of political instability, **meteorological conditions incompatible with the operation of the flight concerned**, security risks, unexpected flight safety shortcomings and strikes that affect the operation of an operating air carrier.*

*(15) Extraordinary circumstances should be deemed to exist where the impact of an air traffic management decision in relation to a particular aircraft on a particular day gives rise to a long delay, an overnight delay, or the cancellation of one or more flights by that aircraft, even though all reasonable measures had*

*been taken by the air carrier concerned to avoid the delays or cancellations.*  
(emphasis added)

In furtherance of the above Article 5(3) expressly provides as follows:

*An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, **if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.*** (emphasis added)

To this effect, as rightly noted by the defendant company, the National Enforcement Bodies for the above-mentioned Regulation have published a list of extraordinary circumstances whereby Category 10 refers to the following:

***Meteorological conditions or natural disaster or similar events:** Conditions and events incompatible with the safe operation of the flight. These conditions and events may be forecast to arise at either the airport of departure, the airport of arrival or along the intended flight path of the aircraft.*

In this particular case, it transpires clearly that the delay suffered by the claimants resulted from the relative aircraft experiencing “*an overspeed situation on approach to TRF due to a sudden increase in wind speed*”. In such circumstances “*an overspeed inspection is required to be performed on the aircraft before it can be dispatched for the subsequent flight*”. The Engineering Report filed by defendant company continues to clarify that “*(t)his was an unexpected random environmental problem beyond Ryanair’s control. As a result of this, flight FR8537 from TRF-MLA experienced a delay to operation. (...) This defect came to light on the 18<sup>th</sup> September 2019 in spite of all required checks being performed and the maintenance specified in the maintenance program being current and up to date in accordance with the aviation regulations.*”

It therefore results from the evidence produced that the delay complained of by the claimants was, truly enough, the result of an unexpected meteorological issue which

required the aircraft to be duly inspected ahead of the safe boarding by the passengers. The Tribunal is of the considered opinion that such delay was therefore the result of an extraordinary circumstance over which, truly enough, defendant company had no control in terms of Regulation 261/2004. The Tribunal also notes that plaintiffs were duly informed of this via email dated 3<sup>rd</sup> October, 2019.

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

Dr. Philip M. Magri  
Adjudicator