



## EUROPEAN SMALL CLAIMS PROCEDURE

ADJUDICATOR  
**AVV. DR. ILONA SCHEMBRI**  
LL.B., LL.D., LL.M. (Lond.), Ph.D. (Birm.)

**Today, Monday 29 July 2024**

**Claim number: 1/2022 IS**

**GIOVANNI MONACO (ITALIAN PASSPORT NUMBER YA9593873)**

*VERSUS*

**RYANAIR DESIGNATED ACTIVITY COMPANY (DAC) (IRISH REGISTRATION NUMBER 104547)**

**THE TRIBUNAL,**

Having seen the Notice of Claim filed by the plaintiff, who is the claimant in these proceedings, in virtue of Regulation (EC) 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure, filed on the 26 May 2022 in virtue of which the claimant claimed that he used the defendant company's services to travel to Malta and when he arrived in Malta, the plaintiff realised that the defendant company lost his luggage along the way. The plaintiff, as the claimant, provided a short summary to the Tribunal with the facts of the case, which is found on pages 10 and 11, and also a series of documentation in this regard, including but not limitedly, a copy of the flight ticket, which is found on page 82 and a copy of the baggage tag which is found on page 81, in view of which the plaintiff claimed the total amount of one thousand six hundred and forty-seven Euros and forty Euro cents (EUR 1,647.40);

Having also seen that the defendant company was duly served with the acts of the case on 1 November 2022 and did not file a reply (page 176);

Having 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

The defendant company provided services to the plaintiff for Malta travel, which is uncontested because the plaintiff provided a copy of the flight ticket, which is found on page 82.

However, two factors must be considered in this case: the defendant company's contumaciousness and the facts of the case.

### The defendant company's contumaciousness

This Tribunal notes that the defendant company is contumacious in these proceedings. However, the Tribunal acknowledges that it is an undisputed principle that being contumacious does not mean the person will be automatically found guilty. Despite the defendant company's contumacious behaviour, the Tribunal must still examine all the evidence to determine whether the plaintiff's action can succeed.

### The facts of the case

On pages 138 to 168, the Tribunal notes that the plaintiff has provided copies of previous attempts against the defendant company.

Following this, the plaintiff filed an action in Malta under the Montreal Convention on the 26 May 2022, as stated in Form A on page 5. The Montreal Convention is also known as the

Convention for the Unification of Certain Rules for International Carriage by Air. Several countries, including Malta, have ratified this Convention, a universal treaty that, according to Article 1 (1), "*applies to all international carriage of persons, baggage or cargo performed by aircraft for reward.*" A definition of international carriage is given in Article 1 (2) of the said Convention, which clarifies that the air carriage involved in this case comes under its ambit.

As a first step, it is necessary to determine whether the Montreal Convention applies to the case at hand. Since the plaintiff's domiciled place and the defendant company's registered place are European Union countries, the question may arise whether EU legislation or the Montreal Convention applies. In an Italian judgment dated 2 November 2020 (ordinanza 24632/20), the Italian Supreme Court ruled that actions brought by passengers against air carriers are allowed, and after reviewing all EU legislation, the Montreal Convention, and judgments from the Court of Justice of the European Union, the Montreal Convention has been ruled as the *lex specialis* applicable to the case. Therefore, the plaintiff correctly referred to the Montreal Convention in this case.

Once the applicable law for this claim has been established, the second question that this Tribunal must address is the plaintiff's claim. As clarified by Article 17 (2) of the Montreal Convention, "*The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier.*" The term baggage is then defined in Article 17 (4). Furthermore, if liability arises, Article 22 (2) of the said Convention stipulates that a carrier's liability is generally limited to 1,000 Special Drawing Rights per passenger. However, the same Article also provides an exception. Based on the documentation provided, the Tribunal could conclude, especially the flight ticket, a copy of which can be found on page 82, that the plaintiff used the defendant company's services on 19 December 2019. The plaintiff

presented a copy of the Property Irregularity Report, found on page 83, and the defendant company's confirmation that the plaintiff's luggage had been lost on 17 February 2020 via email, which can be found on page 86. Therefore, the Articles mentioned in the Montreal Convention, reproduced herein, fully apply in this case. The defendant company must compensate the plaintiff at face value as outlined therein.

However, the Montreal Convention specifies how passengers should file a claim for lost baggage and the time-frames to do so. Article 17 (3) states that *"If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage."* As pointed out in the previous paragraph, the Tribunal notes that the plaintiff filed the Property Irregularity Report and the defendant company responded accordingly. The Montreal Convention stipulates, however, in Article 35: *"The right to damages shall be extinguished if an action is not brought within a period of two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped."* A copy of the plaintiff's flight ticket, found on page 82, shows that this case occurred on 19 December 2019, which means the plaintiff should have filed the action before this Tribunal by 18 December 2021. The plaintiff filed this action before this Tribunal on 26 May 2022, which means that the plaintiff's action is **time-barred**. Under Article 33 (1) of the Montreal Convention, the term action refers to filing a court case. Specifically, the article states: *"An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination."* Therefore, the plaintiff's previous attempts with the defendant company were futile and did not comply with the Montreal Convention requirements before the plaintiff filed the action in the Maltese Tribunal.

**Decide**

For the aforementioned reasons, the Tribunal rejects the plaintiff's claim with all judicial costs to be borne by the plaintiff.

**Avv. Iona Schembri**

Adjudicator