

Claim Number 24/2020 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: 24/20PM

**Rene Polanec**

**vs.**

**Airmalta**

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 16<sup>th</sup> December, 2020 in virtue of which claimant claimed that he was a passenger on Airmalta flight KM4328 from Malta to Frankfurt and the flight was delayed. He claims that, due to that delay, he suffered *de facto* damages and incurred additional costs totaling five hundred and seven euros and fifty-seven cents (€507.57) in connection with a flight ticket and train tickets which he was forced to forfeit. He claims that defendant company is liable for such damages occasioned by its delayed flight “(i)n line with the general rules of the obligation law – Maltese Civil Code and Montreal Convention”.

The Tribunal also notes that defendant company was duly served with the acts of the case on 24<sup>th</sup> December, 2020 and no reply was filed.

The Tribunal:

Having seen the documents filed with the Notice of Claim, namely the boarding pass for the flight Malta-Frankfurt, a copy of the flight ticket between Frankfurt and Vienna, pre-booked and new train tickets and email correspondence between the parties confirming the delay.

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, declaredly in terms “(i)n line with the general rules of the obligation law – Maltese Civil Code and Montreal Convention”.

In this regard, however, art 6 of Regulation 261/2004 of the European Parliament and of the Council expressly 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.”*

From a legal point of view, this Tribunal thus needs to determine whether the above provisions operate *in tandem* with the right to compensation under the Montreal Convention and the general right to compensation for civil damages or in substitution of the same. Article 19 of the Montreal Convention (L.N. 63 of 2003), in fact, also provides that:

*The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servant and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.*

Article 22 of the Montreal Convention continues to provide that:

*In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4,150 Special Drawing Rights.*

In this regard, the **Interpretative Guidelines on Regulation (EC) No 261/2004 of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and on Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents as amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council** expressly provide as follows:

— *Compatibility of the Regulation with the Montreal Convention:* — *The Court (Case C-344/04, IATA and ELFAA, ECLI:EU:C:2006:10, paragraphs 43, 45, 46 and 47 and joined cases C-402/07 and C-432/07, Sturgeon e.a., ECLI:EU:C:2009:716, paragraph 51.) has confirmed that the requirements to provide compensation for delay at arrival and assistance in the event of delay at departure are compatible with the Montreal Convention. In that connection, the Court considers that the loss of time inherent in a flight delay constitutes an ‘inconvenience’ rather than ‘damage’ which the Montreal Convention aims at addressing. Such reasoning was based on the finding that excessive delay will first cause an inconvenience that is almost identical for every passenger and the Regulation provides for standardised and immediate compensation, whilst the Montreal Convention foresees redress which requires a case-by-case assessment of the extent of the damage caused and can consequently only be the subject of compensation granted subsequently on an individual basis. Hence, the Regulation operates at an earlier stage than the Montreal Convention. The obligation to compensate passengers whose flights are delayed under the Regulation therefore falls outside the scope of that Convention, but remains additional to the system for damages laid down by it. (emphasis added)*

It is therefore amply clear from the above, that the claimant is entitled to seek compensation for the damage suffered by him in terms of the Montreal Convention and that Regulation 261/2004 does not preclude such a claim but, on the other hand, operates as explained above “*at an earlier stage than the Montreal Convention*” in seeking to provide for a standardized and immediate compensation for the inconvenience suffered by the relative passenger, this without prejudice to the actual damages suffered by him as capped by the Montreal Convention.

With reference to the facts of the case, the Tribunal notes that no evidence was filed which could justify the defendant’s failure to the compensate plaintiff as duly requested. On the

other hand, it transpires that plaintiff had booked a seat on the Airmalta-operated flight number KM4328 from Malta to Frankfurt dated 7<sup>th</sup> April, 2020 and as a result of the delay incurred damages, consisting of forfeited tickets, the value of which certainly do not exceed the limit of SDR posed by the Montreal Convention.

Interest can and shall run on the said amount from the date of notification of these proceedings to defendant company, namely from the 24<sup>th</sup> December, 2020

Thus, for the aforementioned reasons, the Tribunal upholds claimant's claim and thus orders defendant company to pay to claimant the sum of five hundred and seven euros and fifty-seven cents (€507.57) with interest on the same from the 24<sup>th</sup> December, 2020. All costs are to be borne by the defendant company.

Dr. Philip M. Magri

Adjudicator