



**IN THE SMALL CLAIMS TRIBUNAL**

**Adjudicator: Dr. Claudio Żammit**

**Sitting of Friday 3rd September 2021**

**Claim Number: 2/21 CZ**

**Maria Faggioni**

**vs.**

**Epic Communications Limited**

**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 6<sup>th</sup> May 2021 in virtue of which claimant requested the payment of eight hundred and forty-five Euro (€845) from defendant company; plaintiff declared the following:

**Claim number 2/21 CZ – 3/9/2021**

19/04/2020 Prepaid sim MSISDN 99636050 is disconnected from Epic's network (Vodafone at the time of speaking) in error.

02/11/2020 The Sim owner, become aware of the problem and raise the issue with Epic's Customer Service, showing screenshot of 2 SMSs sent on 18/04/2020

19/01/2021 The issue is successfully resolved [sic]

Defendant company filed its reply on 25<sup>th</sup> June 2021, and declared:

Epic Communications Limited ("Epic") is not accepting Ms. Maria Faggioni's claim on the basis of the fact that the request of **€845.00** (the claim for money listed in the Form A) is unfounded, unsubstantiated and inflated.

Epic wishes to clarify that whilst connected to Epic's network and making use of the pre-paid services, Ms. Faggioni's average monthly spend was of €0.02c. When Epic first received the complaint from Ms. Faggioni, an internal investigation was carried out to determine any existing issues and through said investigation it transpired that Ms. Faggioni had only sent two SMSs to herself in the preceding 365 days (which amounts to a yearly spend of €0.10c in 2019). In furtherance to the aforementioned, Epic is hereby submitting 'Document B' which evidences the minimal use of MSISDN 99636050 (in view of retention restrictions emanating from the General Data Protection Regulation 2016/679, Epic is only able to submit a statement of use as of the 20<sup>th</sup> of December 2020). This evidence is being submitted to show that in 2021 only €0.05c were consumed which proves that the request for a three (3) Euro per day compensation is unjustified.

On the basis of the above, Epic compensated Ms. Faggioni with twenty Euro (€20.00) credit which is over and above her standard usage of the services. In this regard, Epic also wishes to add that the Malta Communications Authority did not question and/or oppose such compensation (which is standard practice in cases wherein they are not satisfied with the compensation being awarded to Epic customers). In our

opinion, the compensation given was fair and just in view of the respective usage of the services.

On a final note, Epic wishes to note that as confirmed by Ms. Faggioni in her claim, the line mentioned above was disconnected on the 19<sup>th</sup> April 2020 however she only became aware of the disconnection on the 2<sup>nd</sup> of November 2020. The fact that Ms. Faggioni realised that there were technical issues after almost seven (7) months confirms that she was not making use of the line mentioned above. Whilst this does not justify any possible technical fault from Epic's end, the compensation of three (3) Euro per day which is being requested by Ms. Maria Faggioni is in our opinion unfounded and inflated especially given that this is a pre-paid account and no credit was lost by Ms. Faggioni as a result of this situation.

The Tribunal also considered the documents filed by the parties, and the comments on Form C and additional document filed by plaintiff on the 22<sup>nd</sup> July 2021.

The Tribunal considered:

Plaintiff alleged that her pre-paid mobile telephony SIM card with defendant company was irregularly disconnected on the 19<sup>th</sup> April 2020. On the 2<sup>nd</sup> November 2020, she informed defendant company about this disconnection, and on 19<sup>th</sup> January 2021, defendant company restored service. Defendant is claiming the sum of eight hundred and forty-five Euro (€845) as compensation from defendant company calculated on the basis of three Euro (€3) for each day of disconnection.

Defendant company did not contest the allegation that the service was disconnected through a technical fault; however it declared that the sum requested by the plaintiff was inflated and not due, after considering that in the preceding three hundred and sixty-five (365) days, plaintiff had only used this service twice, by sending an SMS to herself. Defendant company had already paid to plaintiff a compensation of twenty Euro (€20) which it deemed reasonable in the circumstances, but was contesting the

quantum of compensation now requested by plaintiff. Plaintiff, in her comments on the reply submitted by defendant company made reference to the 'terms and conditions' between the parties, but the Tribunal notes that in the acts of the case there are no such 'terms and conditions', or any written contract that may have been concluded between the parties. Plaintiff stated that she calculated the amount of compensation due based on the compensation offered by landlines, but brought forth no evidence about the way in which landline providers compensate customers for disconnection. It will be the Tribunal therefore to decide on the last issue pending in this case, which is whether the compensation paid by defendant company was reasonable, or whether it needs to be increased. To this effect, defendant company argued that the Regulator did not object or question the quantum of compensation given by defendant company. However, this is not a reason in itself for the Tribunal to accept the quantum as a reasonable one.

From the evidence produced, the usage by plaintiff of this particular SIM was very limited; in fact only two SMSs were sent during the previous three hundred and sixty-five (365) days. Plaintiff argued that defendant should not categorise customers, so as to classify frequent customers from less frequent customers. While the Tribunal concurs with this argument, it is still very relevant to see the type of usage plaintiff was making of this SIM, in order to decide on the amount of compensation due. A difference must be made between someone who uses that SIM regularly, and someone who uses it twice during a period of one year. While it is perfectly acceptable for a user to use a SIM once, twice, or none at all, the amount of compensation must be commensurate with the damages, if any, caused by the disconnection. Plaintiff, apart from using this SIM only twice during the previous year, waited for seven (7) months before reporting the fault to defendant company. From the e-mail of the 24<sup>th</sup> February 2020, sent by defendant company to plaintiff, it results that plaintiff reported the fault to defendant company on the 2<sup>nd</sup> November 2020, whereas the fault had been there since 19<sup>th</sup> April 2020. This shows that plaintiff was barely using this SIM at all, and could not have suffered much prejudice and loss, having become aware of the fault seven months after disconnection. Moreover, plaintiff did not bring forward any evidence to show that she sustained any damages due to this disconnection. The daily compensation indicated by plaintiff in her claim

has no supporting evidence, and plaintiff has not proven to the Tribunal that compensation should be at that rate, rather than at the rate paid by defendant company. The Tribunal will therefore conclude that the compensation paid by defendant company is reasonable and sufficient, and plaintiff is not right to pretend an increase in compensation.

The Tribunal is therefore upholding defendant company's pleas, and is therefore rejecting plaintiff's claims. The costs of this case shall be borne by plaintiff.

**Dr. Claudio Zammit**

**Adjudicator**

Susanne Fenech

Deputy Registrar