

söp_Rejection

Regarding the conciliation procedure F .../... concerning the complaint of

Ms / Mr ...

(complainants)

versus

...

(respondent)

the conciliation body comes to the following conclusion:

The conciliation request is not successful.

Reasoning:

Judging by the information available to us, following **facts** can be assumed:

- The complainants booked tickets for flight (flight number) from L. to G. in April The departure was scheduled for 8:55 am, the arrival for 11:30 am. The flight distance between L. and G. amounts to 756 km (calculation according to the "great circle route method").
- On ... (day before flight), the complainants checked in online. About three hours later, they were informed that their flight had been cancelled. The complainants explain that they agreed to an alternative flight the following day. This required them to change their arrangements and resulted in a day's loss of work as they shifted the whole trip by one day. The complainants indicate that they were also affected by a baggage delay.
- The complainants claimed compensation from the respondent.
- The respondent rejected the claim.
- The complainants are not satisfied with this and are requesting a conciliation process. They are claiming a total amount of 1,650.00 EUR (compensation for all passengers and refund of additional costs incurred). They mention that the incident resulted in a day's loss of work as they extended the trip by one day (cost: 600.00 GBP).
- During the conciliation process, the respondent explains that it offered the complainants an alternative flight from L. to G. via Z. on ... (same day), however the complainants preferred a direct flight on ... (following day).

The respondent explains that the flight had to be proactively cancelled due to airport L. resourcing. The aircraft had to be ferried empty to G. in order to be able to operate the rest of the rotation. To establish *prima facie* evidence, the respondent provides extracts from its internal flight documentation and the rotation plan which confirm its contentions. Herein is noted „ flight (flight number) / (date), CANCELLED DUE TO ... CAPACITY REDUCTION FORCED BY AIRPORT DUE UNDER STAFFING“.

- Upon request of the conciliation body, the complainants explain that they did not make a claim with regard to the baggage delay.

In favour of the complainants we have taken the following findings into account:

- The complainants experienced inconveniences. Their flight was cancelled on short notice. This required them to postpone their journey by one day and it led to additional costs.
- According to Regulation (EC) No 261/2004, in conjunction with the jurisdiction of the CJEU, in case of cancellation, long delay and denied boarding, passengers shall receive compensation as well as care services.

The UK has implemented the EU Regulation into national law („The Air Passenger Rights and Air Travel Organisers’ Licensing (Amendment) (EU Exit) Regulations 2019“, source: <https://www.legislation.gov.uk/uksi/2019/278/contents/made>, „Regulation“). Section 6 of the Withdrawal Act 2018 also incorporates all CJEU case law made until 31 December 2020 into domestic law. The UK Regulation applies since 1 January 2021.

- In case of a flight cancellation, passengers may be eligible for lump sum compensation, Art. 5 (1) (c) in conjunction with Art. 7 (1) Regulation. In the case at hand, flight (flight number) was cancelled.
- In cases of a flight cancellation, passengers additionally have the choice between a reimbursement of the full ticket cost and a re-routing, under comparable transport conditions, to their final destination at the earliest opportunity, see Art. 5 (1) (a) in connection with Art. 8 (1) Regulation. The complainants were rebooked free of charge.
- The carrier is liable for damage occasioned by delay in the carriage of baggage by air, Art. 19 Montreal Convention (“MC”). This generally includes the purchases made while waiting for the baggage.
- With regard to the additional costs incurred (loss of income), a contractual damage claim is conceivable.

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In favour of the respondent we have taken the following findings into account:

- The respondent would be exempt from the obligation to pay lump sum compensation if, firstly, the cancellation was caused by extraordinary circumstances, and, secondly, the cancellation was inevitable, Art. 5 (3) Regulation.

In detail this means:

1. The term “extraordinary circumstances” is not defined in the Regulation and narrowly interpreted as an exemption clause by the jurisdiction of the CJEU. According to this, the mentioned circumstances must stem from events which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its control (CJEU, case Wallentin-Hermann, 22 December 2008, C-549/07, paragraph 26).

According to the respondent, the cancellation went back to restrictions imposed by the airport operator. Its orders have to be followed. Therefore, cancellations caused hereby should be judged as an interference from outside into the planned course of the flight and as withdrawn from the airlines’ sphere of influence. Thus, they can be considered as extraordinary circumstances.

In April, many airlines cancelled flights due to staff shortages, also in L. (see e.g. ..., article from online newspaper). Some cancellations went back to the airlines’ staff issues, others derived from resourcing constraints at the airport. The internal flight documentation shows that the staff issues which led to the cancellation of flight (flight number) derived from the airport’s sphere of influence. Therefore, the conciliation body assumes that reasons for the cancellation qualify as an extraordinary circumstance.

2. Furthermore, it would be necessary that the cancellation could not have been avoided, even though all technically and economically viable measures had been taken by the air carrier concerned (cf. CJEU, case Wallentin-Hermann, paragraph 40; case Eglitis and Ratnieks vs. Latvijas Republikas Ekonomikas Ministrija, 12 May 2011, C-294/10, paragraphs 27 et seq.).

Therefore, it is relevant whether the respondent could have avoided the cancellation. This requires a case-by-case assessment. It needs to be taken into account that orders by the airport

operator are generally binding and beyond the respondent's sphere of influence. Due to the presented impairments, it remains unclear which measures the respondent could have taken to avoid the cancellation.

On the whole, the conciliation body assumes that the respondent is free from the obligation to pay compensation.

- In case of delayed baggage, the damage must be reported at the latest within 21 days of the date the baggage was placed at the recipient's disposal, Art 31 (2) 2, (3) MC. The complainants have explained that they did not submit a claim for a refund of costs which derived from the baggage delay.
- A contractual claim for damages does not come into consideration if the respondent is exempt from liability. The reasons for the airline not being obliged to pay compensation pursuant to the Regulation, would also oppose a contractual claim for damages.

Result:

Taking into account all circumstances, the conciliation process is not successful. This result may differ from a court decision. Possible ancillary claims (in particular legal fees and communication cost) are not subject of the summary examination in the course of the conciliation process.

We therefore have to consider your file as closed and thank you for the confidence you placed in the söp.

You still have the option of initiating judicial proceedings.

Berlin, ...

(name)
Lawyer / Conciliator