

söp_Conciliation recommendation

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

Mrs / Mr ...

(complainant)

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 complainant booked a ticket with the respondent for a flight from F. to B. in June The following flight segments were planned:
 - (flight number) from F. to Z. and
 - (flight number) from Z. to B.
- According to the complainant, his flight was delayed. He arrived in B. with a delay of more than five hours.
- The complainant claimed a reimbursement of his ticket costs and compensation from the respondent.
- The respondent confirmed the receipt of the message but did not deal with the content of the complaint.
- The complainant is not satisfied with this and is requesting a conciliation process. He is claiming lump sum compensation.
- During the conciliation process, the respondent explains that the booked flights were both operated by ... (another flight company).

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

- The complainant experienced inconveniences. His flight was delayed, causing him to arrive at his final destination much later than planned. The missing answer to the complaint will probably fall short of the expectations towards a customer-oriented airline.
- 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/ukxi/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 accordance with the jurisdiction of the CJEU (cases Sturgeon, 19 November 2009, C-402/07 and C-432/07; cases Nelson, 23 October 2012, C-581/10 and C-629/10; case Folkerts, 26 February 2013, C-11/11), this Regulation applies respectively for the delay of a flight, if the delay at the final destination amounts to three hours or more.
- Further a claim to compensation according to Art. 19 Montreal Convention (“MC”) is conceivable.
- The complainant could be eligible for a refund of his ticket costs, as he booked the ticket with the respondent.

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

- The Regulation applies to the “operating air carrier“, Art. 3 (5) Regulation. From the flight numbers as well as flight data researched by the conciliation body follows that flights F1 (flight number) and F2 (flight number) were operated by ... (flight company).

The CJEU has clarified that, in case of connecting flights booked as a single reservation, the Regulation can also apply to the contractual air carrier (case CS et al vs. České aerolinie a.s., 11 July 2019, C-502/18 and order of 12 November 2020, case SP vs. KLM Royal Dutch Airlines, C-367/20). This requires that it operated at least one flight segment. Here, the respondent did not operate any of the booked flight segments. Therefore, claims under the Regulation cannot be brought against the respondent.

- Possible claims pursuant to the MC require a financial damage. The complainant has not indicated that he suffered a financial damage.
- The carriage was provided. Therefore, charging a fare is justified. The complainant is not eligible for a ticket refund.
- Possible claims against third parties are not assessed within the course of the conciliation process at hand.

2

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