

Date: July 19, 2013

To

Mr. Penny

Subject: **Reply to 500 Euros Claim**

Dear Mr. Penny,

I am writing this to you on behalf of **airline *Ryanair*** in response to your claim for 500 Euros as a compensation for flight cancelation in which you booked two seats at the cost of 300 Euros per person. It is right that you had to pay extra 400 Euros to reach your destination on **October 26** as ***Ryanair*** was offering a flight on 27 October which was not suitable for you. The company also offered you a full refund of your money but you did not accept it.

I am of the view that you are not right in your claim because the **airline *Ryanair*** cancelled the said flight due to foggy conditions. In addition taking care of your rights as customers, company offered you two options; you could get your money back or you could avail another flight.

Article 8- Right to reimbursement or re-routing

You were offered compensation under article 8 Right to reimbursement or re-routing. This article give passenger right of re-imbursement of ticket amount or

Article 8 (a) - reimbursement within seven days, by the means provided for in Article 7(3), of the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant,

- A return flight to the first point of departure, at the earliest opportunity;

Duty of care (regulation EU 261, Article 9)

In case of cancellation the EU regulations hold the airlines are responsible for passenger's expenses of hotels, transportation and phone calls. The Article 9 of Regulation 261 describes in detail the passenger rights towards airlines. According to Article 9, the airline is liable to provide food, hotel stay, 2 phone calls and transportation expenses that incurred due to cancellation of flight...

Cancellation cause by extraordinary circumstances

My second point in the favor of *Ryanair* is that this cancellation was made due to unfavorable weather. And as per EU regulation, airlines are not liable for paying compensation in case they can prove that the flight cancellation is caused by “the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken”, such as bad weather conditions. Thus any loss caused by this type of delay is excluded under the Montreal Convention.

Under Which Circumstances Ryanair is liable to pay compensation

Regulation 261/2004

According to EU rules (in Regulation 261/2004), typically the airline is liable to pay up to €20,000 to €300,000 per cancelled flight based on the number of passengers as well as flight destinations. This compensation is to be paid by airline in case flight was cancelled at short notice or any fault related to airline itself and not due extraordinary circumstances. The regulation 261/2004 is applicable to all flights operating in the EU/EEA or Swiss region, or any flight that departs from EU/EEA or Swiss airport and any flight that arrives this region run by an EU/EEA or Swiss airline.

Flight Cancellation for Technical Reasons

Based on different cases of compensation claims against flight cancellation, The European Court of Justice (“ECJ”), acknowledging the preeminence of the Montreal rule, has now given a decision that now held that carrier will be liable for compensation in case the flight was cancelled due to technical reasons. The technical reasons are those that stems from events which “are not inherent in the normal exercise of the activity of the air carrier concerned”

Breach of Contract

In general terms, a ticket is a contract between airline and passenger in whom a passenger promises to pay an agreed amount of the money to the airline and airline takes the responsibility to take passenger from point A to Point B. Due to Weather conditions an airline can delay or cancel a flight. In this case it is unable to keep its promise which is a breach of contract’.

Previous Cases

Case of Alitalia -C-549/07

A decision was made by ECJ in December 2008 in the case of Friederike Wallentin-Hermann v Alitalia (C-549/07). A Viennese court referred this case to ECJ. In case the flight was cancelled because a complex engine defect was found during a check the day before. The company informed Alitalia about cancellation only 6 hours before take-off. The flight was cancelled by Alitalia only five minutes before its scheduled departure time. The departure of Claimant and her family was arranged by airline through another flight however they reached four hours late to their destination. Under EU laws the Claimant claimed compensation in which the Viennese Court asked the ECJ for guidance. This case remained unresolved and details are given at Annexure-A

Case of Jeff and Joyce Halsall,

The case of Jeff and Joyce Halsall is a significant example of getting compensation in case the fault was of airline. Jeff and Joyce Halsall suffered from delay in the flight and applied for compensation by going to court in 2009 but initially their claim was rejected on the basis that airline (Thomas Cook) explained the delay was because of an 'exceptional circumstance' beyond its control. However later it was found that flight was delayed due to a mechanical fault.

Mr. Halsall appealed against the decision after learning of the European legislation, which allows people to claim between £200 and £480 if they are delayed for more than three hours. The couple re-filed their case at Stoke-on-Trent County Court which awarded €800 Euros (£680) to compensate as well as in return to the legal expenses incurred. The flight was delayed by 22 hours.

Meeting with Organizers

In order to get comprehensive information and obtain views from the organizers, I also held a meeting with organizers of Ryanair to discuss the case of compensation. In these meetings the

legal and ethical aspects were discussed. The agenda of the meeting was how we can entertain Mr. Penny's claim of compensation. The EU laws related to passenger rights and airline liabilities were discussed. It was found that;

- EU law command airlines to reimburse the ticket money to passengers
- Airline holds a duty of care in the form of hotel, transportation and phone calls expenses.
- Airline is liable to pay compensation in case the flight was cancelled under normal circumstances such as technical fault and passengers are not informed on time.
- Mr. Penny cannot be paid compensation because;
 1. Flight was cancelled due to foggy weather
 2. Flight was not cancelled in circumstances that come under "extraordinary circumstances"
 3. Mr. Penny was informed about this cancellation
 4. Under EU laws, Mr. Penny was offered to either get a reimbursement for the tickets or avail two seats in another similar flight of 27th October.
- Mr. Penny can be provided expenses of hotel booking, transportation and phone calls if they got cancellation notification at airport and was not provided these benefits.

You're truly,

Annexure-A

1. Case number = C-549/07- Frederica Wallenstein-Hermann v Alitalia - Line Aeree Italiane SpA.

Mrs Wallentin-Hermann booked three seats on a flight with Alitalia from Vienna (Austria) to Brindisi (Italy) via Rome (Italy) for herself, her husband and her daughter. The flight was scheduled to depart from Vienna on 28 June 2005 at 6.45 a.m. and to arrive at Brindisi on the same day at 10.35 a.m.

After checking in, the three passengers were informed, five minutes before the scheduled departure time that their flight had been cancelled. They were subsequently transferred to an Austrian Airlines flight to Rome, where they arrived at 9.40 a.m. that is 20 minutes after the time of departure of their connecting flight to Brindisi, which they therefore missed. Mrs Wallentin-Hermann and her family arrived at Brindisi at 2.15 p.m.

The cancellation of the Alitalia flight from Vienna resulted from a complex engine defect in the turbine which had been discovered the day before during a check. Alitalia had been informed of the defect during the night preceding that flight, at 1.00 a.m. The repair of the aircraft, which necessitated the dispatch of spare parts and engineers, was completed on 8 July 2005.

Mrs Wallentin-Hermann requested that Alitalia pay her EUR 250 compensation pursuant to Articles 5(1)(c) and 7(1) of Regulation No 261/2004 due to the cancellation of her flight and also EUR 10 for telephone charges. Alitalia rejected that request.

In the judicial proceedings that Mrs Wallentin-Hermann then brought, the Bezirksgericht für Handelssachen Wien (District Commercial Court, Vienna) upheld her application for compensation, in particular on the ground that the technical defects which affected the aircraft

concerned were not covered by the 'extraordinary circumstances' provided for in Article 5(3) of Regulation No 261/2004 which exempt from the obligation to pay compensation

Alitalia lodged an appeal against that decision before the Handelsgericht Wien (Commercial Court, Vienna),

Court (Fourth Chamber) giving decision stated that;

1. Article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, must be interpreted as meaning that a technical problem in an aircraft which leads to the cancellation of a flight is not covered by the concept of 'extraordinary circumstances' within the meaning of that provision, unless that problem stems 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 actual control. The Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999, is not decisive for the interpretation of the grounds of exemption under Article 5(3) of Regulation No 261/2004.

2. The frequency of the technical problems experienced by an air carrier is not in itself a factor from which the presence or absence of 'extraordinary circumstances' within the meaning of Article 5(3) of Regulation No 261/2004 can be concluded.

3. The fact that an air carrier has complied with the minimum rules on maintenance of an aircraft cannot in itself suffice to establish that that carrier has taken 'all reasonable measures' within the

meaning of Article 5(3) of Regulation No 261/2004 and, therefore, to relieve that carrier of its obligation to pay compensation provided for by Articles 5(1) (c) and 7(1) of that regulation.

2. Unresolved Case of *Alitalia* -C-549/07

The ECJ decided that technical problems are not enough to exclude liability for compensation under the EU rules, unless they “stem from events which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier and are beyond its actual control”. The ECJ’s examples, such as the discovery of a new manufacturing defect or damage caused by sabotage, are unhelpful. Examples concerning more frequent incidents, such as the discovery of equipment failure during routine checks, would have been far more useful to all.

The ECJ also held that compliance with maintenance regimes is not in itself enough to show that “all reasonable measures” have been taken; and that the carrier “must establish that, even if it had deployed all its resources in terms of staff or equipment and the financial means at its disposal, it would clearly not have been able – unless it had made intolerable sacrifices in the light of the capacities of its undertaking at the relevant time – to prevent the extraordinary circumstances with which it was confronted from leading to the cancellation of the flight.” This is a demanding standard.

The case returns to Vienna for a decision in the light of the ECJ’s Delphic guidance. Whether in this case or another, a number of unresolved issues need to be decided by a better-informed ECJ.

Annexure-B

Minutes of the Meeting

I had a meeting with organizers to discuss the claim. The minutes of the meeting;

- Meeting was held on 2nd November, 2007 in the office of the airline after lunch time
- Meeting continued to one hour
- The participants of the meeting were I, manager operations at Ryanair and Legal expert of the company.
- The agenda of the meeting was claim of Mr. Penney for the compensation of 400 Euros that the passenger had to pay extra for reaching destination
- The main point of the meeting were;
 1. EU law abides airlines to reimburse the ticket money to passengers
 2. Airline holds a duty of care in the form of hotel, transportation and phone calls expenses.
 3. Airline is liable to pay compensation in case the flight was cancelled under normal circumstances such as technical fault and passengers are not informed on time.
- Mr. Penny cannot be paid compensation
- Mr. Penny can be provided expenses of hotel booking, transportation and phone calls

<http://www.terminalu.com/editors-column/if-your-flight-is-cancelled-due-to-bad-weather/3572/>