



“Regulation 261/2004 is now boarding...”- Planes, Delays and Compensation

Having been at the mercy of hurricanes and ash clouds, it would seem that the woes of European airlines are set to continue as a result of the recent judgment of the Court of Justice of the European Union in Joined Cases C-581/10 Nelson and Others v Deutsche Lufthansa and C-629/10 TUI Travel and Others v Civil Aviation Authority.

The Court has ruled that where passengers reach their final destination three hours or more after the scheduled arrival time, they may claim fixed compensation from the airline, unless the delay is caused by extraordinary circumstances. The ruling provides an interpretation of EC Regulation 261/2004 and confirms the previous interpretation of the Court in the case of Sturgeon (C-402/07). The regulation states at Article 3.1 that it will only be applicable to passengers departing from an airport located in the territory of a Member State and to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State if the operating air carrier of the flight concerned is a Community carrier (i.e. an air carrier with a valid operating licence granted by a member state.)

The press release presented on behalf of the Court emphasises that in these cases there is a principle of equal treatment in that passengers who are delayed and passengers who have had their flights cancelled should be seen as suffering similar fates as they have both suffered the inconvenience of a loss of time. Therefore passengers whose flights are cancelled and have suffered a loss of time of over 3 hours can rely on the same right of compensation as a passenger who has suffered the same time loss through delay.

As discussed in Sturgeon, the compensation available is fixed according to the distance of the flight journey and ranges between 250 Euros and 600 Euros. Article 7 of the Regulation stipulates that the passenger shall receive compensation amounting to 250 Euros for all flights of 1,500km or less; 400 Euros for all intra-Community flights of more than 1,500kms, and for all other flights between 1,500 and 3,500kms; and finally 600 Euros for all flights that do not fall into the previous two categories.

So far, so passenger-centric; yet the Judgment does attempt to appease the flight carriers by indicating that it appreciated that the EU legislature wanted to strike a balance between the interests of air passengers and those of air carriers. The press release therefore states “accordingly such a delay does not entitle passengers to compensation if the air carrier can prove that the long delay is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken, namely circumstances beyond the actual control of the air carrier.” However air carriers are unlikely to take much solace in this defence as the phrase ‘extraordinary circumstances’ is not defined in the regulation and its interpretation is likely to lead to even more uncertain litigation. The regulation’s pre-amble does go some way to bringing clarity to phrase and reads as follows: “(13) such circumstances may, in particular, occur in cases of political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and strikes that affect the operation of an operating air carrier.” However, the decision in the case of Friederike Wallentin-Hermian v Alitalia-Linee Aeree Italiane Spa (C-549/07), which ruled a technical problem on an aircraft did not amount to ‘extraordinary circumstances’, perhaps demonstrates that the Court will have a rather narrow approach to its interpretation of the phrase.

The final blow to the airlines in the Judgment is that the Court felt that there was no need ‘to limit the temporal effects of the present judgment.’ The airlines in the case had

submitted that EU law cannot be relied upon as the basis for claims by passengers for compensation in respect of flights which have been the subject of delay prior to the date of the delivery of the judgement; yet it has been ruled that it can be applied to any potential claim that is within the relevant limitation period.

RICHARD CAMPBELL

(Click above link for website profile)

3 Hare Court
Temple
LONDON EC4Y 7BJ

17th November 2012

Notes:

First published in: PI Brief Update Law Journal, an online law journal available on subscription.

Article available online at: <http://www.pibriefupdate.com/content/index.php/law-journal-summaries/news-category-2/1517-regulation-2612004-is-now-boarding-planes-delays-and-compensation-richard-campbell-3-hare-court>

3 Hare Court contributes monthly articles to PI Brief Update Law Journal.