



Fit-Tribunal għal Talbiet tal-Konsumaturi.

Rikors Nru. CCT 216/11 (JE).

Jean Paul Mifsud u Maria Mifsud
Farrugia.

vs

Air Malta p.l.c.

Illum, 17 ta' Settembru tas-sena elfejn u tnax (2012).

It-Tribunal,

Ra l-avviż ta' Jean Paul Mifsud u Maria Mifsud Farrugia tal-10 ta' Mejju 2011 illi fih ippremettew illi fil-11 ta' Diċembru 2010 riedu jivvjagġjaw lejn Cancun għal honeymoon tagħhom wara illi jaqbd u connection flight f'Gatwick, Londra. Peress illi wara siegħa, it-titjira ta' l-Air Malta KM 016 illi telqet minn Malta kellha ddr lura minħabba ħsara teknika, l-atturi tilfu t-titjira BA 2203 li kellhom jaqbd u għal Cancun.

Illi s-socjetà konvenuta għamlet l-arranġjamenti meħtieġa sabiex l-atturi jaqbd u titjira għal Cancun fit-12 ta' Diċembru 2010 imma meta marru biex jagħmlu ċ-check-in, ġew infurmati illi l-booking kien proviżorju u ma kellhom l-ebda garanzija illi kienu ser jaqbd u l-connection flight minn Madrid peress illi l-BA ma kellhom l-ebda arranġament mal-linja ta' l-ajru in kwistjoni. Għalhekk, wara tmien (8) sigħat jippruvaw jirrimedjaw is-sitwazzjoni, l-atturi kellhom imorru lura il-lukanda sabiex jaqbd u t-titjira l-għada.

Illi, għaldaqstant, l-atturi waslu Cancun jumejn tard u cioè fl-14 ta' Diċembru 2010. Dan il-fatt illi bdew il-honeymoon jumejn tard ikkawża inkonvenjent u stress kbir lill-atturi illi talbu d-danni morali. Inoltre, l-atturi xorta kienu ħallsu għal jumejn akkomodazzjoni f'lukanda ta' ħames stilel f'Cancun illi kienet all inclusive. Kellhom iħallsu ukoll għal ikel, xorb u internet illi kienu nkluzi fil-pakkett kieku waslu fid-destinazzjoni fil-ħin. Kellhom ukoll jixtru ħwejjeġ u jagħmlu telefonati overseas. Illi b'kollox, l-atturi rreklamaw € 667.61 f'danni materjali u € 500 f'danni morali.

Min-naħa tagħha, is-socjetà konvenuta allegat illi hija għamlet dak kollu mitlub mir-regulamenti applikabbli fiċ-ċirkostanzi ta' titjira li ġarbet ħsarat tekniċi, inkluż ipprovdiet l-akkomodazzjoni, l-ikel u re-routing. Biddlet ukoll il-biljetti fuq it-titjira Londra-Malta mingħajr ħlas u upgrejdat il-biljetti għal Club Class u anke offriet zewġ biljetti b'xejn fuq is-servizzi tagħhom. Is-socjetà konvenuta kkontestat ukoll diversi spejjeż li rriteniet illi ma humiex ġustifikati kif ukoll it-talba għal danni morali.

Sema' l-provi tal-partijiet u t-trattazzjonijiet tal-legali rispettivi tagħhom.

Ikkunsidra.

Illi l-kwistjoni odjerna tirrigwarda l-mod kif għandhom jiġu kkumpensati passigġieri illi t-titjira tagħhom tasal tard minhabba xi raġuni. Illi dina l-materja hija ttrattata mir-Regulament (EC) No 261/2004 illi huwa, kif huwa ben not, direttament effettiv fil-gurisdizzjoni ta' dan it-Tribunal.

Illi l-artiklu 5 ta' dan ir-Regulament jipprovdi għad-drittijiet ta' passigġier f'każ ta' kancellament mentri l-artiklu 6 jipprovdi għall-assistenza dovuta lill-passigġier fil-każ illi kumpanija ta' l-ajru "tistenna raġjonevolment illi titjira sejra tiftardja mill-ħin skedat tat-tluq". L-artiklu 5 jipprovdi għall-kumpens dovut lill-passigġier, barra mill-assistenza meħtieġa, f'każ ta' kancellament ta' titjira, mentri l-artiklu 6 jipprovdi biss għall-assistenza f'każ ta' dewmien ta' titjira.

Is-soċjetà konvenuta argumentat illi fil-każ odjern, huwa applikabbli l-artiklu 6. u m'hux 5, u illi hija ottemporat ruħha rigorozament ma' dak mitlub mill-imsemmi artiklu 6 tar-Regulament. Irid jiġi premess illi fil-fatt, it-Tribunal ma jistax ma jissottolinejax illi s-soċjetà konvenuta ma' ħarbiex mir-responsabilitajiet tagħha kif spiss tisma illi gara f'każijiet oħra simili, anke jekk dan l-incident sfortunat ma kienx interament tort tagħha. Madankollu, xorta jibqa' biex jiġi determinat jekk barra mid-dritt t'assistenza, is-soċjetà konvenuta hijiex ukoll responsabbli għal rizarciment tad-danni, kemm materjali kif ukoll morali.

Wieħed irid iżomm f'moħħu illi l-artiklu 6 jipprovdi għall-assistenza meta l-linja ta' l-ajru tanticipa illi ser ikun hemm dewmien f'titjira. Illi fil-każ odjern, ma kienx il-każ illi kien hemm xi antiċipazzjoni ta' dewmien fit-titjira illi ħadu l-atturi imma li gara kien minhabba ħsara teknika illi gagħlet lis-soċjetà konvenuta tiritorna l-ajruplan f'Malta. L-atturi qabdu titjira oħra imma ma mexxielhomx jaslu Londra fil-ħin sabiex jaqdbu t-titjira li kellhom ibbukkjata għal Cancun. Sfortunatament, ir-"re-routing" li sar mis-soċjetà konvenuta permezz ta' titjira minn Londra għal Madrid b'destinazzjoni finali Cancun ma setgħetx isseħħ peress illi rrizulta illi l-British Airways ma kellhiex arrangament ma' l-Air Europe, il-linja illi kellha tiegħu lill-atturi Cancun. Ta' dan ma' jidhiex illi s-soċjetà konvenuta kellha xi responsabilità għal darbha s-sistema ppermettiet illi jsir il-"booking" (ara xhieda ta' Christopher Demicoli fit-18 ta' Lulju 2011) u l-British Airways ma nformatx lis-soċjetà konvenuta illi l-biljetti ma setgħux joħorgu. Attentat ieħor biex l-atturi jaslu fid-destinazzjoni aħħarija billi jgħaddu minn Miami gie frustrat għaliex ma kellhomx viza amerikana. Għaldaqstant, kellhom isiru arrangamenti alternattivi sabiex l-atturi jtiru fit-13 ta' Diċembru 2010 lejn il-Messiku. Is-soċjetà konvenuta baqgħet tipprovdi l-assistenza meħtieġa nkluz l-akkomodazzjoni u t-transfers f'dan il-perjodu ta' jumejn.

Illi bil-mod kif inhu abbozzat ir-Regulament (EC) No 261/2004, id-distinzjoni bejn kancellament ta' titjira u dewmien ta' titjira hija fundamentali peress illi fil-waqt illi fiż-żewġ każijiet hemm lok ta' assistenza lill-passigġier, fil-każ ta' dewmien ta' titjira, il-passigġier m'għandhux dritt għall-kumpens ulterjuri. Madankollu, dan it-Tribunal ma jistax jinjora sentenzi li ngħataw fi kwistjonijiet simili għal dawk odjerni mill-Qorti Ewropeja tal-Ġustizzja.

Fil-kazijiet magħquda C-402/07 u C 432/07, komunement magħrufa bħala l-każ Sturgeon, deciz fid-19 ta' Novembru 2009, il-Q.E.G waslet għal konkluzjoni li tiddipartixxi sew mit-test tar-Regulamenti msemmija :

1. Articles 2(1), 5 and 6 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 flight which is delayed, irrespective of the duration of the delay, even if it is long, cannot be regarded as cancelled where the flight is operated in accordance with the air carrier's original planning.

2. Articles 5, 6 and 7 of Regulation No 261/2004 must be interpreted as meaning that passengers whose flights are delayed may be treated, for the purposes of the application of the right to compensation, as passengers whose flights are cancelled and they may thus rely on the right to compensation laid down in Article 7 of the regulation where they suffer, on account of a flight delay, a loss of time equal to or in excess of three hours, that is, where they reach their final destination three hours or more after the arrival time originally scheduled by the air carrier. Such a delay does not, however, entitle passengers to compensation if the air carrier can prove that the long delay was 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.

3. Article 5(3) of Regulation No 261/2004 must be interpreted as meaning that a technical problem in an aircraft which leads to the cancellation or delay 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.

Għaldaqstant, in vista ta' dina s-sentenza, l-fatt illi t-titjira kellha tirritorna Malta minħabba problemi tekniċi ma jeżentax lill-kumpanija ta' l-ajru minn responsabilità minħabba dewmien sabiex twassal lill-atturi fid-destinazzjoni tagħhom. Inoltre, jekk il-passiġġieri jaslju fid-destinazzjoni finali tagħhom tard aktar minn tlett sigħat minn meta kellhom jaslju, huma jkunu ntitolati għall-kumpens skond ikkontemplat mill-artiklu 7 tar-Regulament suċitat.

Il-posizzjoni legali kompliet tiċċara b'sentenza suċċessiva tal-Q.E.G. fil-każ C-83/10 fl-ismijiet Aurora Sousa Rodriguez vs Air France SA deciza fit-13 t'Ottubru 2011 li kienet tittratta ukoll titjira li kienet telqet imma li rritornat minn fejn telqet minħabba raġunijiet tekniċi Illi anke f'dan il-każ, il-konkluzjonijiet tal-Q.E.G. komplew iwessgħu l-protezzjoni li jgawdu l-passiġġieri f'sitwazzjonijiet analogi :

1. 'Cancellation', as defined in Article 2(1) 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, in a situation such as that at issue in the main proceedings, it

does not refer only to the situation in which the aeroplane in question fails to take off at all, but also covers the case in which that aeroplane took off but, for whatever reason, was subsequently forced to return to the airport of departure where the passengers of the said aeroplane were transferred to other flights.

2. The meaning of 'further compensation', used in Article 12 of Regulation No 261/2004, must be interpreted to the effect that it allows the national court to award compensation, under the conditions provided for by the Convention for the unification of certain rules for international carriage by air or national law, for damage, including non-material damage, arising from breach of a contract of carriage by air. On the other hand, that meaning of 'further compensation' may not be the legal basis for the national court to order an air carrier to reimburse to passengers whose flight has been delayed or cancelled the expenses the latter have had to incur because of the failure of that carrier to fulfil its obligations to assist and provide care under Article 8 and Article 9 of Regulation No 261/2004.

Isegwi għalhekk illi anke fil-każ in deżamina, il-fatt illi l-ajruplan irritorna fl-ajruport ta' tluq minħabba ħsara teknika, u l-passiġġieri kellhom jaqbd u titjira suċċessiva għad-destinazzjoni tagħhom gie ekwiparat bħala kancellament tat-titjira għal fini tar-Regulamenti msemmija. Inoltre, ai termini ta' l-artiklu 12 ta' l-imsemmija Regulamenti, il-passiġġieri affetwati huma ntitolati għall-kumpens għal danni, anke ta' natura morali, skond il-Konvenzjoni ta' Montreal. Madankollu, l-artiklu 12 tar-Regulament imsemmi ma jntitolax lill-passiġġieri għal rizarciment tad-danni meta l-linja tal-ajru tinjora l-obbligu tagħha illi tipprovdi assistenza taħt l-Artiklu 8 jew l-Artiklu 9 tar-Regulament imsemmi. Fil-każ odjern, is-socjetà konvenuta ottemporat ruħha ma' l-obbligi tagħha taħt l-Artiklu 8 għax wettqet re-routing kif ukoll taħt l-artiklu 9 peress illi pprovdiet akkomodazzjoni, ikel u trasport.

Illi l-interpretazzjoni tal-Q.E.G. tar-Regolament suċitat kienet ferm kontroversjali. Intqal fir-rigward:

If one measure of successful and effective legislation is the ease with which it is interpreted and applied, one has to say that Regulation (EC) No 261/2004 (Regulation 261) has not been an unqualified triumph. Barely a week goes by without a new reference to the European Court of Justice (ECJ), an Advocate General's opinion or an ECJ judgment, in each case the consequence of uncertainty as to the scope or construction of the regulation. The regulation is currently under review and is likely to undergo some changes over the next eighteen months or so; the industry will need to keep a close eye on the amendment process as it evolves. However, in the meantime, there are some key recent developments for carriers to be aware of.

Challenges to Sturgeon and delay compensation

No ECJ decision relating to air passenger rights has come close to matching the Sturgeon judgment of November 2009 for controversy. The UK judicial review brought by TUI, easyJet and British Airways, which seeks to challenge *Sturgeon*, has been referred to the ECJ and should be heard in the New Year, although judgment is unlikely to be handed down for some six months following the hearing. In the UK, passenger delay compensation cases continue to be stayed by the courts pending

the ECJ's decision, but courts in other EU Member States are less lenient and continue to apply the compensation provisions in Regulation 261 as if *Sturgeon* is correct. Whilst airlines facing UK claims therefore have some breathing space on delay claims, certainty is needed. Whether it will be provided by the ECJ remains to be seen: the ECJ is in the awkward position of either having to acknowledge and try to correct the mistakes made by the Fourth Chamber in *Sturgeon*, or to uphold that Chamber's extraordinary judicial re-writing of Regulation 261. Ultimately, one suspects that the revision process for Regulation 261 will tackle the issue of delay compensation, whatever the outcome of the current challenge, but a revised regulation is probably eighteen months to two years away so the ECJ is likely to have to deal with the problem one way or another.¹

Dan it-Tribunal, minkejja illi għandu riservi dwar il-ġurisprudenza tal-Q.E.G. fir-rigward, ma jistax ma japplikax l-istess ġurisprudenza. Dana aktar u aktar meta jidher illi fil-każi simili illi qed iqumu quddiem l-Q.E.G., l-Avukat-Generali qed isegwi l-linja stabbilita bis-sentenza fil-każ ta' *Sturgeon* kif joħroġ mill-parir riċenti tal-Avukat-Generali Bot fil-każijiet magħqudin C-581/10 u C-629/10 illi ha l-posizzjoni illi kuntrarjament għal dak illi jargumentaw il-linji tal-ajru, l-interpretazzjoni tal-Q.E.G. fir-rigward ta' l-artikli 5, 6 u 7 tar-Regulament de quo fil-każ *Sturgeon* hija kompatibbli mar-ruling tal-IATA tas-sena 2006, il-Konvenzjoni ta' Montreal (illi giet ratifikata mill-U.E.), mal-principju ta' proporzjonalità u mal-principju ta' ċertezza legali (punti 29-49 u 67). Riċentement ukoll, l-Avukat-Generali fil-Qorti Suprema ta' l-Pajjiżi Baxxi pprezenta opinjoni f'diversi każi pendenti quddiem dina l-Qorti u segwa ukoll il-linja stabbilita fil-każ ta' *Sturgeon*.

Jibqa' għalhekk biex jiġi eżaminat jekk l-atturi humiex intitolati għall-kumpens ulterjuri taħt l-artiklu 12 tar-Regulament imsemmi. Fir-rigward tal-Konvenzjoni ta' Montreal, l-artikli rilevanti huma l-artikli 19 u 20 illi jgħidu :

Art. 19. The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Art. 20. If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. This Article applies to all the liability provisions in this Convention, including paragraph 1 of Article 21.

¹ <http://www.hfw.com/publications/bulletins/aerospace-bulletin-december-2011/aerospace-bulletin-december-2011-ec-regulation-2612004-update>

It-Tribunal iħoss illi peress illi l-Air Malta p.l.c. ħadet il-miżuri kollha sabiex timminimizza d-dewmien ta' l-atturi u tali dewmien kien primarjament ir-riżultat ta' ħsara teknika u ġie aggravat minn raġunijiet estraneji għas-soċjetà konvenuta, m'hux il-każ illi l-atturi għandhom dritt għall-kumpens taħt il-Konvenzjoni ta' Montreal.

It-Tribunal iħoss ukoll illi fid-deċiżjoni illi jird jieħu għandu tiegħu in konsiderazzjoni l-fatt illi meta l-atturi kellhom ibidlu t-titjira tagħhom meta riedu jiġu lura Malta qabel il-waqt, ma ntabx iħallsu sabiex jibdlu l-biljett u tpoġġew fi klassi superjuri bla ħlas. Skond Christophehr Demicoli prodott mis-soċjetà konvenuta (seduta tat-18 ta' Lulju 2011), tali bdil kien normalment jiswa sitt mija u disa' euro (€ 609) għalkemm m'huwiex ċar jekk tali somma hijjex għal kull passigġier jew għaż-żewġ atturi flimkien.

Għar-raġunijiet premissi, it-Tribunal qed jilqa' t-talba tar-rikorrenti billi jillikwida l-ammont dovut lil kull attur fis-somma ta' sitt mitt euro (€ 600) skond l-artiklu 7 tar-Regulament 261/2004, tiffissa danni morali fl-ammont ta' mitt u ħamsin euro (€ 150) lil kull attur u jordna illi minn dawn l-ammonti hekk likwidati, titnaqqas is-somma ta' sitt mija u disa' euro (€ 609). Bl-imgħax legali mid-data tas-sentenza.

In vista tan-natura tal-kwistjoni, l-ispejjeż jibqgħu bla taxxa bejn il-partijiet.


Av. Joseph Ellis
Arbitru