On 4 October 2012 the Court of Justice of the European Union (ECJ) handed down its judgment in the case of Finnair Oyj v Timy Lassooy (C-22/11).

The Judgment stated that, by reference to Regulation (EC) 261/2004 (the Regulation) the concept of denied boarding is not limited to overbooking for commercial reasons. The ECJ also held that, when a passenger is denied boarding due to his/her flight being rescheduled following an earlier cancellation due to extraordinary circumstances, the carrier cannot rely on those prior extraordinary circumstances to claim boarding was denied on reasonable grounds, thus exempting it from the obligation to pay compensation to the passenger.

BACKGROUND

The case in Finnair related to a strike by staff at Barcelona Airport on 28 July 2006, which caused a flight from Barcelona to Helsinki operated by Finnair to be cancelled. Finnair chose to reschedule its subsequent flights from Barcelona to Helsinki on 29 and 30 July in order to accommodate and minimise delay to passengers booked on the earlier flights. The claimant, who was scheduled to depart with Finnair on 30 July, presented himself for boarding but was unable to take his flight due to the operational rescheduling, which meant that his flight was over booked.

The claimant claimed he had been denied boarding within the meaning of Article 4 of the Regulation. Finnair, on the other hand, claimed that the denied boarding had been on reasonable grounds on the basis that it had been required as a result of previous extraordinary circumstances. The Supreme Court in Finland referred various questions on the scope of denied boarding and the availability of the extraordinary circumstances defence in claims for denied boarding compensation to the ECJ.

CONSIDERATION BY THE ECJ

Firstly, the ECJ was asked whether denied boarding was limited to situations of overbooking for commercial reasons, to which it held that Article 2(j) and Article 4 of the Regulation must be interpreted broadly as covering not just overbooking but "all circumstances in which an air carrier might refuse to carry a passenger."

The ECJ then considered whether a previous cancellation due to extraordinary circumstances would give carriers reasonable grounds for denying boarding to passengers on a later flight rescheduled as a consequence of the original extraordinary circumstance, thereby exempting them from the obligation to pay compensation under Article 4(3).
The ECJ rejected the possibility that a rescheduling of a later flight as a result of a previous cancellation due to extraordinary circumstances would give a carrier reasonable grounds to deny boarding pursuant to Article 2(j) of the Regulation, thereby taking the carrier outside the scope of the Article 4 obligations. However, the ECJ stopped short of limiting any reasonable grounds to deny boarding to factors relating to passengers e.g. health, safety, security or inadequate travel documents.

The ECJ then considered whether a carrier could be exempted from the obligation to pay a passenger compensation for denied boarding under Article 4(3) and Article 7 on the grounds of extraordinary circumstances themselves (a defence expressly provided for only in respect of cancellation under the Regulation).

It was noted that, unlike Article 5(3) in the context of flight cancellation, Articles 2(j) and Article 4 of the Regulation do not state that, in the event of denied boarding due to extraordinary circumstances, a carrier is exempted from its obligation to compensate passengers. As such, the ECJ stated, the EU legislature did not intend for this defence to be available in denied boarding claims.

Therefore, extraordinary circumstances do not constitute reasonable grounds for denying boarding to passengers on a later flight rescheduled as a consequence of a flight cancellation, and the carrier cannot be exempted from the obligation to pay compensation under Article 4(3).

The ECJ added that "it is apparent from recital 15 in the preamble to Regulation No 261/2004 that 'extraordinary circumstances' may relate only to 'a particular aircraft on a particular day', which cannot apply to a passenger denied boarding because of the rescheduling of flights as a result of extraordinary circumstances affecting an earlier flight."

It went on to state that: when a carrier has cancelled a scheduled flight "on the day of a strike by airport staff and then takes the decision to reschedule later flights, that carrier cannot in any way be considered to be constrained by that strike to deny boarding to a passenger who has duly presented himself for boarding two days after the flight’s cancellation".

**CONCLUSION**

Confirmation that denied boarding under the current Regulation is not limited to situations of overbooking for economic reasons, and the unavailability of extraordinary circumstances as defence to a claim for denied boarding compensation, is uncontroversial.

However, the ECJ's additional comments on extraordinary circumstances may cause some difficulty to carriers. It is not clear why the ECJ opined on the scope of extraordinary circumstances in the context of the strike in Barcelona Airport, since it had already rejected the availability of extraordinary circumstances as a defence to a denied boarding claim.

It is unclear whether the ECJ's finding that the cancellation of a flight on the day of a strike would not entitle the carrier to claim an exemption from denied boarding compensation two days later would also apply to a cancellation (or potentially a long delay) two days later.

Furthermore, the ECJ refers only to events on the day of a strike. It is unclear whether carriers are now obliged to pay compensation for cancellation (or delay) during strike periods which involve a timetable of strikes that can sandwich days that are technically operational, but necessarily disrupted.

Therefore, while the scope of denied boarding and the availability of reasonable grounds/extraordinary circumstances as a defence to a denied boarding compensation claim have been affirmed, doubt has been cast on the interpretation of extraordinary circumstances in the context of later flight cancellation or delay, particularly during strike periods.

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