

IN THE COUNTY COURT AT LIVERPOOL

CLAIM No. B3FY3R03

BETWEEN

MISS THEA GAHAN

Claimant

and

EMIRATES

Defendant

JUDGEMENT

1. In this case Miss Gahan claims damages of 600 EUR pursuant to Article 7 of Regulation (EC) 621/2004 of the European Parliament and the Council ("Regulation").

Article 7

Right to compensation

1. Where reference is made to the Article, passengers shall receive compensation amounting to:
 - a) Euro 250 for all flights of 1,500 kilometres or less;
 - b) Euro 400 for all flights of more than 1,500, and for all other flights between 1,500 and 3,500 kilometres;
 - c) Euro 600 for all flights not fall under a) or b).

In determining the distance, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passengers arrival after the schedule time.

2. By way of an order dated the 18th April 2016 the matter was allocated to the small claims track, and was listed for hearing on 5th May 2016.
3. In giving this judgement I was assisted by clear submissions from both Counsel for the Claimant and Counsel for the Defendant, and I also have the benefit of their well reasons and detailed skeleton arguments.
4. The facts of this case are not in issue and they are as follows;
 - a) The Claimant booked return travel from Manchester Airport (MAN) to Bangkok Suvarnabhumi International Airport, Thailand (BKK) via Dubai International Airport (DXB) on the following outbound flights:
 - b) Flight EK020 from MAN to DXB scheduled to depart MAN to DXB at 20.10 (local time) on 16th December 2011 and arrive at DXB at 07.10 (local time) on 17th December 2011.
 - c) Flight EK372 from DXB to BKK was scheduled to depart DXB at 09.40 (local time) on 17th December 2011 and arrive in BKK at 18.40 (local time).
5. The flight to DXB arrived 3 hours and 56 minutes after the scheduled landing but as a consequence the Claimant missed her second flight to

BKK. The Claimant was booked on the next available flight and arrived some 13 hours and 37 minutes later than originally scheduled.

6. The Defendant contends that the Claimant is entitled to be compensation in the sum of €300.00 Euros for the first flight, as they considered that it is only the first flight which is covered by the Regulation. Whereas the Claimant contends that it is the late arrival at BKK which gives rise to compensation under the Regulation.

7. Neither the flight from MAN to DXB or from DXB to BKK were cancelled. The (JEU ruled in *Christopher Sturgeon and others v Condon Flugdienst GmbH (C-402/07)*): ruled that;
"Articles 5, 6 and 7 of Regulation 261/2004 must be interpreted as meaning that passengers whose flights are delayed may be treated, for the purpose of the application of the right to compensation laid down in Article 7 of the Regulation where they suffer 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."

8. In this case the Defendant does not pursue any defence based on the statutory defence to Article 5(3). Therefore the only issue that the court has to decide is simply, is compensation payable to the delay incurred by the Claimant arriving at DXB or for delay on arriving at BKK.

9. Article 3 of the Regulation states as follows:

“(1) This Regulation shall apply:

- a) to passengers departing from an airport located in the territory of a member state to which the judgements apply.
- b) to passengers departing from an airport located in a third country to an airport situated in the territory of a member state to which the treaty applies, unless they received benefits on compensation and were given assistance in that third country, if the operating air carrier of the flight concerned is a community carrier.”

The Defendant contends that Article 3 reflects the intention of Recital 6 to the Regulation that states that “the protection accorded to passengers departing from an airport located in a member state should be extended to those leaving an airport located in a third country for one situation in a member state, where a Community carrier operates the flight.”

10. Those passengers that were flying only from MAN to DXB clearly would be entitled to compensation under Article 3.1(a), can Article 3.1(a) also apply to entitle the Claimant to entitlement to compensation pursuant to the Regulation in respect of the delay on arrival at BKK.
11. The determining issue is therefore whether the Claimant's outbound flights should for the purpose of the Regulation be viewed as one flight or two separate flights.
12. The Defendants rely on the case of *Emirates Airline Direction fur Deutschland v Schenkel* (C0173/07) [2009] 1 Lloyd's Rep 1 (CJEU). It was held in *Schenkel* that passengers that depart from an airport situated in a non-member country cannot be regarded as being covered by Article 3.1 (b). What does "departing from" mean. If "departing from" in this instance means, "departing from" Manchester Airport then the flight can be regarded as one entity and the Claimant if delayed for in excess of three hours in arriving at the final destination would be *prima facie* entitled to statutory compensation.
13. In *Schenkel* the Court of Justice of the EU held that the meaning of "flight" within the Regulation, was a "unit" of transport, as opposed to a "journey". That being the case the Defendant argues that in applying the decision to the facts in the case the second leg of the Claimant's journey must be viewed separately, and that, given the second leg of her journey was from a non-EU country to another non-EU country then

neither Article 3.1 (a) or 3.1 (b) applies and the Regulation is not engaged. In Schenkel, as in this case, the flights were the subject of a single booking and the court held that had no effect on the interpretation of the relevant regulation.

14. In *Sanghvi v Cathay Pacific* (2011) FWHC (Ch). The Claimant's flight was from London to Hong Kong and then from Hong Kong to Sydney. Cathay Pacific as in this case is not a Community carrier. The flight from London to Hong Kong was delayed and as a consequence the Claimant was denied boarding on the flight from Hong Kong to Sydney.
15. Mrs Justice Proudman followed Schenkel and held there was a distinction between "flight" and "journey" (paragraph 16 of the Judgement), that the flights should be treated as separate units (paragraph 24), that there had been separate departures from London and Hong Kong, and as the Claimant was denied boarding from Hong Kong and therefore the Regulation did not apply. The Claimants in that case had argued that the Regulation did apply by reason of the fact that the ticket was labelled as a "single contracted carriage and that it was the "final destination" that mattered. This argument was rejected by the court.
16. The term "final destination" is not used within the Regulation in either relation to its scope (Article 3) or the entitlement to compensation.

17. I consider that Sanghvi is a binding precedent upon this court that the flights are to be considered as separate units.

18. The Claimants have sought to rely on the case of Folkherts v Air France SA (C-11/11). In that case the Defendant was a Community carrier and the missed connection was from a EU Airport and therefore fell within the scope of both Article 3.1 (a) and 3.1 (b). Schenkel does not appear to have been cited, and it is Schenkel which considers rigorously the application of Article 3.1. I therefore consider that Folkerts can be distinguished from Sanghvi.

19. In making my decision I also have regard to the jurisdiction of the Regulation as set out in the recital at Recital 6. "The protection accorded to passengers departing from an airport located in a Member State should be extended to those leaving an airport located in a third country from one situated in a Member State, where a Community carrier operates the flight."

20. I therefore dismiss the Claimant's claim that the compensation that she is entitled to arises as a result of her delay in arriving at BKK Airport.

DISTRICT JUDGE BENSON

9TH MAY 2016