Aviation Law
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Liability of Air-Carriers in the Event of Delay of Flight, Take Off Time and Mishandling of Baggage in Nigeria[1]

1. Introduction

The law has created liability for air carriers when they delay flights or mishandle baggage in order to ensure their accountability and the protection of passenger's rights. In Nigeria, these liabilities are provided for in the Nigeria Civil Aviation Act, 2022 (NCAA, 2022) and Part 19 of the Nigeria Civil Aviation Authority Regulations, 2023 (CARS, 2023).[2] The NCAA, 2022 provides that air carriers are generally liable for damage occasioned by delay of carriage of its passengers and their baggage, except:

i. The air carrier proves that it and its servants or agents took all measures that could reasonably be required to avoid the damage or that it was impossible for the carrier or its agents to take such measures.[3]

ii. The air carrier proves that the damage was caused or contributed to by the negligence, other wrongful act or omission of the passenger.[4]

Furthermore, Part 19 of CARS, 2023 classifies delay of flight take off time into: flight delay (which is sub-classified into domestic and international flight delays), tarmac flight delays, and rescheduling or cancellation of flight. On the other hand, mishandling

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2 Part 19 of the Nigeria Civil Aviation Authority Regulations, 2023 is a subsidiary regulation made pursuant to the Nigeria Civil Aviation Act, 2022.

3 Article 19 of the Convention for the Unification of certain Rules relating to International Carriage by Air, 1999, as contained in the Second Schedule to the Nigeria Civil Aviation Act, 2022. This flows from a trite legal principle called "Act of God".

4 Article 20 of the Convention for the Unification of Certain Rules relating to International Carriage by Air, 1999.

of baggage is classified into international and domestic flight baggage mishandling. These classifications and sub-classification are discussed in detail below.

2. Delay Of Flight Take Off Time

2.1. Flight Delays

2.1.1 Domestic Flight Delays

Domestic flight refers to a flight which boards and alights within an autonomous country. Liability for domestic flight delays varies based on the duration of the delay. Generally, longer delays result in increased liability for the airline. To prevent incurring liability, an air carrier which reasonably expects that its domestic flight will be delayed, must disclose to all the passengers the reason or reasons for the delay within 30 minutes after the delayed domestic flight's slated take off time.[5] Thereafter, the air carrier is enjoined to offer refreshments, 2 free telephone calls, free SMSs and free E-mails to all passengers once the delay exceeds 2 hours.[6] Further, if the delay has persisted after 3 hours, CARS, 2023 requires that the air carrier offer the passenger a choice between reimbursement or re-routing.[7] The two remedies must be offered according to the provisions of CARS, 2023, which is spelt out below:

i. Reimbursement: Section 19.9.1.1(a) of CARS, 2023 enjoins air carriers to make the said reimbursement for delayed flights by repaying the flight fare to the passenger, at the same price at which it was purchased. The section goes further to state that such payments in cash shall be made immediately it is demanded, while payment made through electronic transfer, draft or cheque, should be made within 14 days of demand.

ii. Re-routing: Section 19.9.1.1(b) and (c) of CARS, 2023 enjoins air carriers to re-route the delayed passengers to their final destination, under comparable transport conditions (conditions similar to that of the delayed flight), at the earliest opportunity or a later date that is at the passenger's convenience.

Lastly, when a passenger's domestic flight is delayed within the hours of 10pm to 4am, or at a time when the airport is closed, at the point of departure or final

4 Sec. 19.6. of CARS, 2023.
5 Sec. 19.6. of CARS, 2023.
6 Sec. 19. 6. (b) CARS, 2023.

destination, the passengers must be offered a hotel accommodation and transportation to the provided accommodation.

2.1.2 International Flight Delays

International flight delays refer to delays that occur on flights that departs from one autonomous country and arrives in another. Air carriers are required to provide certain amenities and compensation to passengers in the event of an international flight delay. If an air carrier reasonably expects that its international flight will be delayed for more than 2 hours but less than 3 hours, it must provide the following to the passengers:[8]

i. Compensation amounting to 30% of the passenger's fare;

ii. 2 free telephone calls; and

iii. 2 free SMSs and emails.

If the delay is reasonably expected to last for more than 4 hours, the air carrier must provide, in addition to the above remedies, a meal for the passenger.[9] Furthermore, if the delay is reasonably expected to last for more than 6 hours, the air carrier must offer the passenger:

i. Hotel accommodation; and

ii. transportation to the accommodation.

It's worth noting that these requirements are in line with international best practices and are designed to ensure that passengers are treated fairly and with respect in the event of a flight delay. Passengers who experience a delay of more than 6 hours may also be entitled to additional compensation, depending on the specific circumstances of the delay.

2.1.3 Tarmac Delay of Domestic and International Flights

A tarmac flight delay happens when a flight is delayed after the doors of the aircraft are closed for take-off or after the flight has landed. Each air carrier is enjoined to have and adhere to a contingency plan for lengthy tarmac delays for each airport at which it operates.[10] Additionally, whenever tarmac flight

7 Sec. 19. 6. 2. 1. (a) CARS, 2023.
8 Sec. 19. 6. 2. 1. (b) CARS, 2023.
9 Sec. 19.6.3.6 CARS, 2023.

delays occur, the air carrier must, if possible, ensure passengers are provided free:[11]

i. Information about the reason for the delay;

ii. status updates every 30 minutes;

iii. subsequent updates (including flight status changes);

iv. if possible, provide access to lavatories in working order,

v. proper ventilation by heating or cooling of the aircraft.

After offering this aforesaid basic care, other liabilities then vary based on the duration of the tarmac delay. For example, after 2 hours of a tarmac delay, the air carrier must offer the delayed passengers food and drink in reasonable quantities.[12] Before the tarmac delay exceeds 3 hours, the air carrier must, if possible, provide passengers the opportunity to disembark.[13] This opportunity to disembark must be accorded to persons with disabilities and their company first, and in the event all passengers cannot disembark, the air carrier may also determine a set of reasonable criteria for deciding which passengers will disembark.[14] Also, the air carrier shall facilitate access to medical assistance to any passenger who needs it.[15] Lastly, the air carrier must submit a tarmac delay report to the Nigerian Civil Aviation Authority, within 10 days after a tarmac delay that lasted for more than 2 hours for domestic flights and 2 hours for international flights.[16]

2.1.4 Rescheduling and Cancellation of Domestic and International Flights

When an air carrier makes a significant change to a domestic flight,[17] the air carrier must give the affected passengers notice of the change not later than 12 hours before the scheduled time of departure, while for international flights, a 14 days' notice, as well as an option to reimburse the flight fare or re-route.[18]

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10 Sec.19.6.3.5 CARS, 2023; 19.6.3.1. CARS, 2023.
11 Sec. 19.6.3.2 CARS, 2023.
12 *Ibid;* 19.6.3.5 CARS, 2023.
13 Sec. 19.6.3.5 CARS, 2023.
14 Sec. 19.6.3.4 CARS, 2023.
15 Sec. 19.6.3.7 CARS, 2023.
16 'Significant Change' is defined by 19.1.2.1. of CARS, 2023, as a change to a flight's original booked time to more than 2 hours prior to departure or more than 2 hours later than arrival for domestic flights, or six hours prior to departure or six hours later on arrival for international flights.
17 Sec. 19.6.4.1. CARS, 2023; The option to reimburse flight fare or re-routing must be offered in accordance to CARS, 2023, which has been earlier stated on page 2 of this Article.

On the other hand, when passenger's flights are canceled, air carriers must accord the passengers all the treatments applicable in the event of flight delays, as well as offering them an option between reimbursement of flight fare or re-routing to the passenger's destination. [19] Additionally, domestic flight passengers have the right to a compensation that amounts to 25% of their flight fare, unless they are informed of the cancellation at least 24 hours before the scheduled time of departure. [20] On the other hand, international flight passengers have a right to compensation that amounts to 30% of their flight fare, unless they are:[21]

i. Informed of the cancellation at least 7 days before the scheduled time of departure; or

ii. informed of the cancellation between 3 and 7 days before the scheduled time of departure and are offered re-routing, allowing them to depart not more than 2 hours before the scheduled time of departure and to reach their destination less than 4 hours after the scheduled time of arrival; or

iii. informed of the cancellation less than 7 days before the scheduled time of departure and are offered re-routing, allowing them to depart not more than an hour before the scheduled time of departure and to reach their final destination less than 2 hours after the scheduled time of arrival.

3. <u>Handling of Domestic and International Flight Passengers' Baggage</u>.

Passengers who board flights usually carry along baggage to be used at their destination. Hence, the law does not only extend protection to passengers, but also their baggage. The right to a passenger's baggage in a flight is vested in that passenger, except when safety, security, legal or valid causes require otherwise.[22] If a passenger's baggage is to be off-loaded for such valid reasons, he must be first notified about it in the 'soonest practicable time'. Additionally, if the offload was because of lack of space on that passenger's flight and the airline intends to transfer it to another flight for onward delivery to the passenger's destination, the passenger shall upon the

[18] The treatments applicable in the event of flight delays are explained in previous pages in line with section 19.7.1.1 CARS, 2023.
[19] Sec. 19.7.1.1. (b) CARS, 2023.
[20] Sec. 19.7.1.1. (d) CARS, 2023.
[21] Sec. 19.18.1.1 of CARS, 2023.

receipt of his baggage be given a compensation of ₦10,000 if it was a domestic flight and $170 if it was an international flight.[23]

If a passenger's baggage is not delivered to him within 24 hours from the arrival of his flight to his destination (whether delivered thereafter or lost), he must be refunded any fees he paid for the baggage.[24] Also, a domestic flight baggage is deemed lost by an air carrier when it has not been received by the passenger 7 days after he was supposed to receive it, while for international flights, 21 days.[25] In the event of such loss (whether the passenger's flight's air carrier lost it itself or it was lost by another flight to which it was transferred for onward delivery), the passenger's flight's air carrier must compensate the passenger in accordance with the NCAA 2022.[26] Article 22 (2) of the Act, 2022, provides that the limit of liability for delay or loss of baggage is $1,000. However, there are three exceptions:

i. Where at the time of handing over a checked in baggage to an air carrier, the passenger made a 'special declaration of interest in deliver at destination' (SDIDD), the air carrier will be liable to pay the sum stated in the SDIDD.[27]

ii. When a court in accordance with its own rules of procedure, additionally awards all costs incurred by the court and expenses of litigation (with interest) incurred by a Plaintiff.[28]

iii. Where the limit stipulated by the Act is made higher or lower by the contract of carriage.[29] This exception flows from Article 13(3) of Montreal Convention, 1999[30], which provides that passengers are entitled to enforce against the air carrier all rights which flow from the contract of carriage.

4. Conclusion

In conclusion, it can be gleaned from the above review that the law on liability of air carriers aims to ensure that air carriers, who owe passengers a duty of care, are not negligent in fulfilling that duty. For every precarious event the passenger faces, the

22 Sec. 19.18.1.1(a) of CARS, 2023.
23 Sec. 19.18.2.1 (d) of CARS, 2023.
24 Sec. 19.18.2.1 (c) of CARS, 2023.
25 Sec. 19.18.2.1 (b) of CARS, 2023.
26 See Article 22 (2) of the Convention for the Unification of certain Rules relating to International Carriage by Air, 1999. A SDIDD is basically an agreement that stipulates, amongst other things, a fixed amount to be paid by an air carrier to a passenger in the event it loses the passenger's baggage.
27 Article 22 (6) of the Convention for the Unification of certain Rules relating to International Carriage by Air, 1999.
28 Article 25 of the Convention for the Unification of certain Rules relating to International Carriage by Air, 1999.
30 Convention for the Unification of certain Rules relating to International Carriage by Air, 1999.

defaulting air carrier is required to give the passenger commensurate compensation and care. For example, the quantum of care and compensation owed to a passenger in the event of a delay of flight and damage of baggage is comparatively lower than much grievous ones like tarmac delays, cancellation of flights, rescheduling of flights, and loss of baggage. The law further recognizes that the persistence of these precarious events must be accompanied with enhanced care and compensation to the passenger. These well-structured provisions will have far-reaching effects, as they will not only ensure the passengers' safety, but a resultant viability of the air industry, which like other industries, relies on the consumers' confidence in it to thrive.

For further information on this article and area of law
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