



MINISTERIO
DE FOMENTO

A.E.S.A.
Registro Presencial
SALIDA
Nº de Registro:
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DIRECCIÓN DE SEGURIDAD DE LA AVIACIÓN CIVIL
Y PROTECCIÓN AL USUARIO

DIVISION DE CALIDAD Y PROTECCION AL USUARIO

O F I C I O

S/REF: [REDACTED]
N/REF: [REDACTED]
FECHA: 19/01/12
ASUNTO: Answer to the passenger

[REDACTED]
ARNHEMSESTRAAT 47, BRUMMEN 6971AP,
PAISES BAJOS
Referencia: SERGEY POGODIN

Dear Sir/ Madam,

We refer to your complaint with regards to the incidents happened on 12/02/2010 flight number U2 4526 Barcelona (El Prat De Llobregat) - Berlin (Schoenefeld) with EASYJET. With the aim of handling your complaint we requested the air carrier, on 10/01/2012 to provide us with a report with reference to the facts exposed in your letter.

On 16/12/2011 we received the requested report wherein the airline states that your flight was delayed for 5 hours and 16 minutes due to problems with the Aircraft Rotation and that EC Regulation 261/2004 allows passengers to receive financial compensation only for flights canceled by not extraordinary circumstances. Easyjet communicates that the regulation makes no mention of compensation for delays, irrespective of the duration and Easyjet shall not apply the ruling in the case against Condor and Böck Sturgeon against Air France where it was concluded that compensation could be granted for delays of more than 3 hours because, on 10/08/2010, EasyJet, along with other parts attached to the claim, successfully petitioned the High Court of Justice of the United Kingdom, Queen's Bench Division judicial review before the Court of Justice of the European Union on inconsistency of the decision in Sturgeon with EC Regulation 261/2004. The High Court of Justice has agreed to suspend all proceedings in respect of compensation for delay, until the Court of Justice of the European Union issued a final ruling. This means that any claim filed during this time asking for compensation for delay will be answered by Easyjet until the decision has been made. The Air Safety State Agency inform you that Easyjet have not attached documentary evidence about the causes that provoked the delay.

After studying all the allegations and evidence received from all parties, we herein inform you that in case of long delay of a flight, the operating air carrier shall offer to the passenger:

1. Right to care
 - Meals and refreshments in a reasonable relation to the waiting time
 - Hotel accommodation in some cases
 - Transport between the airport and place of accommodation
 - Two telephone calls, telex, fax messages or e-mails

If you incurred in assistance expenses during your waiting period to the time of the flight departure, you should send to Easyjet the invoices of those expenses, for their study and reimbursement, if it proceeds.

2. Reimbursement within seven days of the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, when the delay is at least five hours. Reimbursement of the ticket only in the case that you decide not to fly.



As you finally flew with Easyjet, the reimbursement of the tickets does not proceed.

3. Compensation

EC Regulation 261/2004 in Article 6 does not expressly provide compensation for cases of delay in departure of flights as it does with the case of flight cancellations.

Nevertheless, we inform you that, pursuant to the Decision of the Fourth Chamber of the Court of Justice of the European Communities of 19 November 2009, the passengers affected by a delay should be compensated under the terms laid down in Article 7 of Regulation No 261 / 2004, when they reach the final destination three or more hours after the originally scheduled arrival time from the 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.

In this case, AESA considers that the reason of the delay given by the company would not constitute extraordinary circumstances pursuant to Regulation (EC) No. 261/2004. Accordingly, AESA considers that the air carrier should pay you compensation for the amount of € 400 because the distance between Barcelona and Berlin is more than 1500 kilometers.

Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 shall apply without prejudice to a passenger's rights to further compensation. The compensation granted under this Regulation may be deducted from such compensation. To this respect, we inform you that the Montreal Convention* developed in the Community by Regulation 2002/97**, states that the carrier is liable for damage occasioned by delay in the carriage by air of passengers and that the liability of the carrier for each passenger is limited to 4,694 Special Drawing Rights (SDR)***, but **no automatic compensations are provided**. 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.

As stated in the Montreal Convention, any action for damages contemplated in Article 45 must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before a court in which an action may be brought against the contracting carrier, as provided in Article 33, or before the court having jurisdiction at the place where the actual carrier has its domicile or its principal place of business.

We inform you that we are sending copy of this letter to the involved company.

Please be informed that if the final resolution made by the air carrier does not fully satisfy you, you are entitled to seek legal redress from courts. Further on this matter, we inform you that the Air Safety State Agency has no jurisdiction over a private contract of carriage, and cannot therefore take action in relation to neither claims nor proceedings before the competent courts against any air carriers due to a breach of a contract, because there is no judicial connection between the air carrier and the aeronautical authority.

Bearing in mind the aforesaid, the Air Safety State Agency considers this complaint fully close.

Chief of Quality Division and Users' Protection


Nelson Castro Gil



*Convention for the Unification of Certain Rules for International Carriage by Air of 28th of May 1999.

**Regulation (EC) 2027/97 of 9 October 1997 on air carrier liability, in the event of accidents, amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002

***SDR shall mean a Special Drawing Right as defined by the International Monetary Fund <http://www.imf.org>

We inform you that all personal data provided will be included in a personal data file named "Quejas de los pasajeros aéreos", for use by the Spanish Civil Aviation Authority to handle the complaints submitted and later forwarded to the responsible air carriers. Furthermore, we inform you that at any time you can exert before the above body (as keeper of the file) your right to access, rectificate, cancel or oppose to those as ruled by the Spanish Law 15/1999 for Personal Data Protection.