

Before His Honour Judge Pearce, sitting at Chester Civil and Family Justice Centre on 22 March 2017, judgment handed down on

BETWEEN

MISS CRYSTAL VAREY
(a child, by her litigation friend, MR ANDREW VAREY)

Claimant

and

RYANAIR LIMITED

Defendant

DRAFT JUDGMENT

Appearances: Claimant: Ms Jessica Wilson-Theaker

Defendant: Mr Max Davidson

I direct that, pursuant to CPR PD 39A para 6.1, no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

1. This a claim brought on behalf of Crystal Varey, by her father and litigation friend, Mr Andrew Varey. Crystal was born on 3 June 2015.
2. Crystal, together with her parents and sister, and Leanne, travelled on flight FR1449 from Lanzarote to Birmingham on 29 December 2015. The flight was delayed by over three hours. She claims compensation pursuant to EC Regulation No. 261/2004 (“The Regulation”).
3. The Defendant accepts that the flight was delayed but denies the Claimant’s entitlement to compensation on a number of grounds, all arising from the nature of her carriage - she was 6 months old at the time and travelled on her father’s knee.
4. The matter, which is allocated to the small claims track, was listed before a Circuit Judge pursuant to the order of District Judge Baldwin dated 20 September 2016, in which he noted that the issue that arose in the case is the subject of conflicting decisions of District Judges sitting in the County Court at Liverpool, namely District

Judge Jenkinson in *Baldwin v Ryanair Limited* and District Judge Baldwin in *Palencia v Ryanair Limited*.

5. The trial took place before me on 22 March 2017. The dispute between the parties did not require me to hear evidence and the case was heard on submissions from counsel, both written and oral. I am grateful for their clear and succinct arguments.

The Regulation

6. The preamble to the regulation includes the following:

“Whereas:

- (1) Action by the Community in the field of air transport should aim, among other things, at ensuring a high level of protection for passengers. Moreover, full account should be taken of the requirements of consumer protection in general.*
- (2) Denied boarding and cancellation or long delay of flights cause serious trouble and inconvenience to passengers.*
- (3) While Council Regulation (EEC) No. 295/51 of 4 February 2001 establishing common rules for a denied boarding compensation system in scheduled air transport created basic protection for passengers, the number of passengers denied boarding against their will remains too high, as does that affected by cancellations without prior warning and that affected by long delays.*
- (4) The community should therefore raise the standards of protection set by that Regulation both to strengthen the rights of passengers and to ensure that air carriers operate under harmonised conditions in a liberalised market...”*

7. Article 2 of the Regulation, headed ‘Definitions’, states:

“For the purposes of this Regulation:

(e) ‘Ticket’ means a valid document giving entitlement to transport, or something equivalent in paperless form, including electronic form, issued or authorised by the air carrier or authorised agent...

(g) ‘Reservation’ means the fact that the passenger has a ticket, or other proof, which indicates that the reservation has been accepted and registered by the air carrier or tour operator...”

8. Article 3 of the Regulation, headed ‘Scope’, sets out in paragraph 1 the geographical bounds of the Regulation (which bounds apply here) and goes on:

“2. Paragraph 1 shall apply on condition that passengers

(a) Have a confirmed reservation on the flight concerned ...

3. This regulation shall not apply to passengers travelling free of charge or at a reduced fare not available directly or indirectly to the public.”

9. Article 7 of the Regulation deals with the calculation of compensation for circumstances including delay.

The Issues

10. Although the Claimant's flight was delayed in circumstances which, on their face, give rise to a right to compensation under the regulation, the Defendant contends that the Claimant is not in fact entitled to compensation for three reasons:
 - (a) She was not a "*passenger*" within the ambit of protection of the Regulation.
 - (b) She did not have a "*confirmed reservation*" and therefore the effect of Article 3(2) is that the Regulation does not apply.
 - (c) She was either travelling "*free of charge*" or "*at a reduced fare not available directly or indirectly to the public*" and therefore the effect of Article 3(3) is that the Regulation does not apply. For the purpose of this judgment, I sub-divide this issue between the two alternative arguments.
11. The burden lies on the Claimant to prove her primary case that she falls within the general entitlement to compensation. In other words, she must prove that she was a passenger and that she had a confirmed reservation. In so far as the Defendant seeks to argue exceptions to a general rule of entitlement to compensation under Article 3(3), the burden lies upon it to prove the existence of those exceptions. But, in reality, this case turns on the interpretation of undisputed facts, where the application of the burden of proof is likely to have little relevance.

Issue 1 – was the Claimant a passenger?

12. The Claimant contends that she was a passenger within the ordinary meaning of the word. She argues that there is no scope to contend, as the Defendant does, that the word "*passenger*" should be given some restricted meaning.
13. The Defendant accepts that the Claimant was a "*passenger*" within the ordinary meaning of the word, but contends that, for a person to be a "*passenger*" within the particular meaning of the Regulation, they must occupy their own seat. Whilst it concedes that this restriction is not expressed in the Regulation, the Defendant contends that, applying a purposive interpretation, this limitation should be read in on the ground that it cannot have been the intention of the draftsman that the Regulation should give rise to compensation for a 6 month old baby who does not pay for her travel, who does not have their own seat and who cannot be said to have suffered "*trouble and inconvenience*" because of the delay. Such compensation would amount to a windfall for the Claimant.
14. By way of clarification in oral submissions, the Defendant stated that, in asserting that the Claimant had not paid for her travel, the Defendant was not seeking to limit compensation to those who paid for their own flight (which, if a proper basis for denying the right to compensation, would exclude many people who are young, impecunious and/or travel in groups where others pay the fare), but rather was saying that the payment made by the Claimant's father was not a payment for travel at all, a point which overlaps with issue 3(1) referred to below.
15. The Defendant also pointed out that, in its booking system, it is stated that there were only three passengers to this party, named as Crystal's parents and her sister.
16. I can see no justification for giving the word "*passenger*" anything other than its normal meaning. In so far as the Defendant relies upon the fact of the Claimant's travel not being paid for, the express words of Article 3(3) deal with the issue and no further limitation of the word "*passenger*" is required. Further, many passengers in many situations (for example, on buses and trains) travel without having a seat. They are nonetheless passengers for that, and I can see no justification for restricting the

meaning of the word in this one situation to exclude those without their own seat. If the authors of the Regulation had intended it to apply only to those who occupy their own seat, it would have been open to them to say that.

17. In so far as it is said that the Claimant did not suffer trouble and inconvenience, that is not self-evidently correct. The delay may well have caused some distress to the Claimant and, in consequence, to her parents. She certainly suffered the irreversible loss of time from the delay. In any event, it could not be said that an adult, who because of cognitive impairment did not suffer trouble and inconvenience from the delay in a flight, was not entitled to compensation. I do not see any basis for interpreting the Regulation so as to deprive the Claimant of compensation on this ground when others in parallel situations are not.
18. More generally, when looking at the purpose of the Regulation, I do not accept that a payment to a 6 month old child in the situation of the Claimant is properly called a windfall. The nature of the Regulation is to apply a simple method of calculation of compensation across the board. There is nothing in the Regulation that distinguishes between the levels of trouble and inconvenience suffered by passengers. In reality, a delayed flight is likely to cause very differing degrees of problem for passengers. In accordance with the preamble, the Regulation seeks to recognise that trouble and inconvenience and raise standards through a uniform system of compensation. The provision of compensation to a child in the Claimant's situation is perfectly consistent with those ends.
19. Further, the fact that the Defendant's booking system only names three of the party as passengers cannot in my view alter the true meaning of that word.
20. Accordingly, I reject the suggestion that the word "*passenger*" should be interpreted in a restricted way to exclude a child who travels on an adult's lap.

Issue 2 – did the Claimant did not have a confirmed reservation?

21. The Claimant contends that she had a confirmed reservation for the flight. The reservation is evidenced by a screen print from the Defendant's booking system which records, amongst other things, "*Passengers (3) – 1. Varey, Andrew +SSRs (INF: varey/crystal 03/06/2015...*" The Defendant accepts that this is a reference to Crystal being carried as a passenger on her father's knee.
22. The Defendant draws attention to the definitions of "*reservation*" and "*ticket*" in Article 2 of the Regulation. A "*reservation*" means that a person has a "*ticket*", that is a document "*giving entitlement to transport.*" The Defendant goes on to assert that to have a "*confirmed reservation*" for a flight, a passenger must have an independent entitlement to transport. Most passengers will have such an entitlement. But Crystal's right to transport was only a right to be carried on by her father. If she had attended at the airport with anyone else, she would have no right to transport.
23. In so arguing, the Defendant again relies on giving the Regulation a purposive interpretation.
24. In my judgment, the Defendant's interpretation of the phrase "*confirmed reservation*" is unnecessarily restrictive. Whilst it is no doubt true that the Claimant's right to transport was dependent on her travelling with her father, that does not mean that she did not have "*entitlement to transport*", merely that it was conditional on her father's presence with her. I can see nothing that leads to the conclusion that the word "*independent*" should be read in before "*entitlement to transport.*" Again, if the

authors of the Regulation had wished that limitation on entitlement to be included, they could have included the word, yet they did not.

25. The policy considerations behind the Regulation does not require such a limitation on the interpretation and I do not accept it. In my judgment, the Claimant was travelling with a confirmed reservation.

Issue 3(1) – was the Claimant was travelling free of charge?

26. The Defendant contends that the Claimant (or her father on her behalf) did not pay any fare for the travel. The only amount paid was what is called on the Defendant's computer system an "*infant fee*." This is described in the Defendant's Defence as an "*administrative fee*." In oral submission, counsel for the Defendant asserted that the fee was not paid either on behalf of Crystal or for her account, but rather as a charge to Mr Varey to entitle him to carry on his child. The analogy was drawn with a charge for taking golf clubs onto an aircraft.
27. The Claimant on the other hand says that this is the clearest example of a payment for the Claimant to travel. The Claimant draws particular attention to the fact that the payment of £20 applied to each leg of the journey. This confirms that it was a payment for the right to travel.
28. Most payments made in the context of the provision of a service are likely, in part, to reflect the provision of some administration of the service. But to focus on that aspect of what is provided is, in my judgment, to miss the simple point that, unless the money is paid, the service is not provided. It is no more accurate to say that the payment of a fee to allow a passenger to take their golf clubs on a flight is not a payment for the carriage of the golf clubs than it is to say that the payment of a fee to allow a passenger to take their child on the flight is not a payment for the carriage of the child. Crystal was not "*travelling free of charge*" in the ordinary meaning of the words. Her father had to pay for her to travel; and the Defendant took her as a passenger.
29. Accordingly, in my view it cannot be said that Crystal was travelling free of charge.

Issue 3(2) – was the Claimant was travelling at a reduced fare not available to the public?

30. There has been some argument in the other cases cited above as to whether a payment in circumstances such as these amounts to a "*fare*." If it does not, the Claimant could not be said to be travelling at a "*reduced fare*" so this exception would not apply. Given my finding on the issue as to whether she was travelling free of charge, the Claimant would then succeed without more. But in my judgment, the corollary of a finding that the Claimant was not travelling free of charge because her father paid an "*infant fee*" of £20 is that that fee was a "*fare*." Accordingly, in principle this defence is open to the Defendant.
31. The Defendant contends that a reduced fare that applies only to those below a certain age is, by definition, not a fare "*available ... to the public*" because it is only available to a certain section of the public.
32. The Claimant contends that this exclusion of the right to compensation applies for example to a staff discount or a discount available to certain of the Defendant's partners only. In oral submission, the Claimant contended that, if correct, the Defendant's interpretation would significantly limit the protection of the Regulation since any offer of tickets that involved a reduction in the price by reason of age or disability (for example) would exclude the Regulation; moreover, a reduced price for tickets only

advertised at a particular time and for a limited time might exclude members of the public because they were not available to purchase the tickets at that time.

33. The word "*public*" connotes the members of a community generally. But that does not mean that it must encompass all members of that community. A "*public house*" does not cease being "*public*" because particular individuals or indeed people under a particular age are not permitted to enter. The contrast is, as the Claimant suggests, with that which is limited to sections of the community defined by private interest, such as the employees of the Defendant or its partners. As long as all children of the Claimant's age are offered carriage at this rate, then it cannot in my view be said that this was "*a reduced fare not available ..., to the public.*"
34. I am fortified in this conclusion by the evidence before me that the Claimant's sister, Leanne, was charged a reduced fare for the journey on the outward leg. She paid £60.99, rather than £73.99 as paid by the Claimant's parents. There appears to be no reason for this other than that she is a child. Yet it is not suggested by the Defendant in this case that a reduced price based on age leads to a passenger not being entitled to compensation under the Regulation. To the best of my knowledge no Defendant in any other case has suggested this.

Conclusion

35. For the reasons set out above, the Claimant is entitled to the payment of Compensation under the Regulation and I give judgment for the Claimant on the claim.
36. In consequence, I make an order in the terms agreed between the parties.