

Case C-642/23

Request for a preliminary ruling

Date lodged:

26 October 2023

Referring court:

Landgericht Düsseldorf (Germany)

Date of the decision to refer:

16 October 2023

Applicant:

Flightright GmbH

Defendant:

Etihad Airways P.J.S.C.

Landgericht Düsseldorf
(Regional Court, Düsseldorf)

Order

In the case
Flightright GmbH v Etihad Airways P.J.S.C.

on 16 October 2023,

the 22nd Civil Chamber of the Landgericht Düsseldorf (Regional Court, Düsseldorf)

[...]

made the following order:

The proceedings are stayed.

The following questions on the interpretation of EU law are referred to the Court of Justice of the European Union pursuant to Article 267(1)(b) and (3) TFEU:

1.

Is Article 8(1)(a) in conjunction with Article 7(3) of the Air Passenger Rights Regulation to be interpreted as meaning that an effective signed agreement of the passenger to the reimbursement of ticket costs in the form of travel vouchers and credit notes exists where the passenger has set up an electronic customer account him or herself via the airline's website to which the travel vouchers and credit notes are to be transferred without having confirmed his or her agreement to this type of reimbursement with a handwritten signature?

2.

If Question 1 is answered in the affirmative: Can a passenger revoke his or her agreement, once effectively given, to reimbursement of the ticket costs in the form of travel vouchers and credit notes and again demand performance to be effected by payment in cash if the airline does not subsequently credit the promised travel vouchers and credit notes to the customer account?

Grounds:

I.

The assignor had a confirmed booking for the flight to be operated by the defendant on 7 September 2020 from Düsseldorf via Abu Dhabi (Flight No EY24) to Brisbane, Queensland (Flight No EY484). The booking included an 'open-return ticket' (without a fixed booking of a return flight date). However, Flight No EY24 to be operated by the defendant was cancelled. The total price paid for the outward and return flight was EUR 1 189.00 per passenger. This was paid by the assignor to the tour operator 'free4Travel'.

After the tour operator filed for insolvency in July 2020 and did not reimburse the ticket costs, the assignor's father contacted the defendant on the assignor's behalf. The defendant offered to formally rebook the flights in order to generate a new IATA booking code. The assignor's father agreed to this. The assignor's father then telephoned an employee of the defendant's service centre again and was promised that a credit of air miles redeemable for an Etihad flight to the value of the payment made (valid for two years), an additional booking of further air miles to the value of USD 400.00 and an additional credit of a further 5 000 Etihad Guest Miles would be made. For this purpose, each passenger was asked to create a corresponding Etihad Credit account, which they did. The fellow passenger was subsequently credited with the promised payments, but the assignor was not.

In a letter dated 16 March 2021, the applicant, on behalf of the assignor's father and the fellow passenger on the same booking with the booking code, informed the defendant that they were exercising their right of choice under Article 8(1)(a)

of Regulation (EC) No 261/2004 and demanded full reimbursement of the ticket costs, for all the parts of the journey not made, within seven days.

In a letter dated 13 August 2021, the assignor declared ‘as a precautionary measure’ that she ‘wished to be reimbursed for the ticket costs in accordance with the first indent of Article 8(1)(a) of the Air Passenger Rights Regulation’ and ‘reassigned her claims for reimbursement to Flightright GmbH’ (the applicant in this case).

In the present proceedings, the applicant is seeking reimbursement of the entire ticket price on the basis of an assigned right.

The defendant disputes the applicant’s right to sue.

The District Court dismissed the case on the grounds that the applicant could at most demand compensation for the costs incurred for the outward flight, which had not been quantified in the present case, even after the court had issued an order to that effect.

The applicant lodged an appeal against this judgement at first instance in due form and time.

In the appeal instance, the applicant now requests that the judgment of the Düsseldorf District Court of 29 April 2022 [...] be amended and that the defendant be ordered to pay the applicant EUR 1 189.00 plus interest of five percentage points above the base rate since 24 March 2021.

The defendant defends the judgment at first instance.

II.

The success of the proceedings depends crucially on the questions set out in the operative part of the present order.

Detailed Account:

1.

The applicant could be entitled to reimbursement of the ticket costs in the amount of EUR 1 189.00 in accordance with Article 8(1)(a), Article 7(3) of the Air Passenger Rights Regulation.

(a) According to Article 5, Article 8(1)(a) of the Air Passenger Rights Regulation, in the event of cancellation of a connecting flight, passengers are generally entitled to reimbursement of the ticket costs for the part or parts of the journey not made. In the case of a single booking, the ‘part or parts of the journey’ not made include – as here – both the outbound flight and the return flight ([...] see also European Commission Interpretative Guidelines of 10 June 2016, C(2016) 3502 final, under 4.b. and European Commission Interpretative

Guidelines – COVID-19 of 18 March 2020, C(2020) 1830 final, under 3.2.c.). The concept of ‘journey’ in the term ‘part or parts of the journey’ is to be understood more broadly than the concept of ‘flight’ within the meaning of the Air Passenger Rights Regulation. The concept of ‘flight’ must be interpreted as consisting essentially in an air transport operation, being as it were a ‘unit’ of such transport, performed by an air carrier which fixes its itinerary. The concept of ‘journey’, by contrast, attaches to the person of the passenger, who chooses his or her destination and makes his or her way there by means of flights operated by air carriers. A journey, which normally comprises ‘outward’ and ‘return’ legs, is determined above all by the personal and individual purpose of travelling (see European Court of Justice, judgment of 10 July 2008 – C-173/07 [...]). The parts of the journey not made due to the cancellation of the first part of the outward flight therefore include both the remainder of the outward flight and the entire return flight. Contrary to the opinion of the District Court, it is therefore irrelevant that the applicant was unable to quantify the costs incurred for the outward flight. The claim is for reimbursement of the full ticket costs, in this case in the amount of EUR 1 189.00.

(b)

However, it is questionable whether the claim should be completely rejected because the assignor, represented by her father, had already exercised her right to choose reimbursement of the ticket costs vis-à-vis the defendant in accordance with Article 8(1) in conjunction with Article 7(3) of the Air Passenger Rights Regulation to the effect that payment should be made in the form of credit notes. According to the witness statement, the passenger created an Etihad Credit account after consulting with the defendant, to which a credit of air miles in the amount of the value of the payment made, additional air miles worth USD 400.00 and a further 5 000 Etihad Guest Miles were to be credited. She set up this account herself electronically via the defendant’s website. This raises the question of whether the setting up [by a passenger] of an Etihad Credit account, to which, following corresponding communication and agreement between passengers and the operating airline, a credit of air miles in the amount of the value of the payment made, additional bookings of flight miles to the value of USD 400.00 and an additional 5 000 Etihad Guest Miles should be credited, is to be understood as a ‘signed agreement’ given by passengers within the meaning of Article 7(3) of the Air Passenger Rights Regulation within the framework of an autonomous interpretation of the term under EU law or whether a passenger agreement requires a handwritten signature, as required by the national standard of Paragraph 126 of the Bürgerliches Gesetzbuch (German Civil Code, ‘the BGB’).

The Court of Justice of the European Union has held that Article 31(2) and (3) of the Montreal Convention must be interpreted as not precluding the requirement of being in a written form from being regarded as fulfilled in the case where, with the knowledge of the passenger, a representative of the air carrier records in writing the declaration of loss either on paper or electronically in the carrier’s information system, provided that that passenger can check the accuracy of the text of the

complaint, as taken down in writing and entered in that system and can, where appropriate, amend or supplement it, or even replace it, before expiry of the period provided for in Article 31(2) of the Montreal Convention (see Court of Justice of the European Union, judgment of 12 April 2018 – C-258/16, paragraph 47). A handwritten signature is not required in this respect. However, it has not yet been clarified whether this broad interpretation can also be applied to the Air Passenger Rights Regulation.

2.

If the first question is answered to the effect that the ‘signed agreement’ does not require a handwritten passenger signature, but that where passengers create a user account themselves to receive the credits, this is also sufficient, the further question arises as to whether passengers can revoke their exercised right of choice and again demand reimbursement of the ticket costs in cash if, as here, the operating air carrier does not issue a credit despite a corresponding agreement.

As far as can be seen, this question has also not yet been (conclusively) clarified by the EU courts, meaning that it had to be referred to the Court of Justice of the European Union for a preliminary ruling.

III.

[...]