IN THE COUNTY COURT
SITTING AT CENTRAL LONDON

Claim No. A5QZ54C0

13-14 Park Crescent
London
W1B 1HT

Wednesday, 16th March 2016

Before:

HIS HONOUR JUDGE MADGE

Between:

DANIEL SEIDERER

Appellant

-v-

BRITISH AIRWAYS

Respondent

The Appellant appeared In Person

Counsel for the Respondent: MR MAX DAVIDSON
(Instructed by DLA Piper LLP)

JUDGMENT

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[The quality of the recording was poor in parts with the appellant and the respondent's counsel being difficult to hear at times. The transcriber has endeavoured to provide as accurate a transcript as possible.]

JUDGMENT

HIS HONOUR JUDGE MADGE:

1. This is an appeal from the decision of District Judge Gill given on 29th June 2015 dismissing Mr Seiderer's claim. Permission to appeal was given by His Honour Judge Saggerson.

2. This appeal raises two questions:

   (i) Did British Airways breach its obligations under Article 8(1)(b) of EC Regulation 261 of 2004 by failing to re-route Mr Seiderer at the earliest opportunity? and

   (ii) If they did, is he entitled to claim damages in the county court?

3. Mr Seiderer has appeared in person. He has conducted this appeal extremely ably. He has submitted a carefully prepared bundle. I have his well-researched skeleton argument, which would be a credit to many members of the English Bar. The defendant is well represented by Mr Max Davidson of counsel. I have a very helpful skeleton argument from him as well.

The Background

4. There is no dispute as to the facts. Mr Seiderer booked an economy class return ticket with British Airways to travel from London Heathrow to Munich. The outward flight was flight BA958, which was scheduled to depart at 20.15 and arrive at 23.05 on 12th December 2014. That flight was cancelled due to a systems failure of NATS, the air navigation service provider in the UK. The effect of the failure was that, from approximately 15.00, all departures were suspended from all London airports until further notice. At that time, British Airways had around 150 departures scheduled involving around 20,000 passengers. NATS was unable to estimate how long the issue would last and a zero arrival rate into London airspace was imposed until 19.00.

5. Mr Seiderer's flight was cancelled at 16.33 on 12th December 2014 when it became clear that the aeroplane would not be able to perform its prior flight to Geneva and return to Heathrow with sufficient time to arrive in Munich before the Munich airport closed. British Airways informed Mr Seiderer of the cancellation by text message.

6. When he learnt of the cancellation, Mr Seiderer contacted British Airways by phone and asked to be re-routed to his final destination of Munich at the earliest opportunity. A British Airways representative offered him a British Airways flight on the afternoon of the following day, 13th December 2014. Mr Seiderer was sitting in front of his computer and he saw that there was an earlier Lufthansa flight from London to Munich via Dusseldorf. Mr Seiderer referred to EU Regulation 261 of 2004, Article 8, and asked British Airways to re-route him on the Lufthansa flight. The British Airways' representative refused to do that.

7. As a result, Mr Seiderer booked himself onto the Lufthansa flight, which he considered to be the earliest opportunity to arrive at his final destination. The flight to Dusseldorf was with German Wings and the flight from Dusseldorf to Munich was with Lufthansa. Mr Seiderer departed Stansted at 7.50am on 13th December and departed Dusseldorf at 11.05.

8. On 15th December 2014, Mr Seiderer asked British Airways, via their online contact form, for compensation for the costs incurred, namely, the alternative flights, some additional travel costs and hotel accommodation at Stansted airport.

The Claim

9. British Airways refused to compensate Mr Seiderer and so he issued proceedings, which were transferred to the county court at Willesden. His claim form appears at tab 12 and reads as follows:

> "I was booked on flight BA958 from London Heathrow to Munich on 12 December 2014, booking code 5EP99Y. This flight got cancelled. In line with EU Regulation 261/2004 Article 8(1)(b), I requested to be re-routed to my final destination at the earliest opportunity, which British Airways refused to do. Due to the violation of such EU Regulation, I had to book my travel arrangements myself. On 15 December 2014, I requested compensation for the expenses, totalling GBP £1,085.37, and asked British Airways to reimburse me no later than 24 December 2014. Until today, I have not heard back from them. The claimant claims interest under s.69 of the County Courts Act 1984 at the rate of 8 percent a year from 24/12/2014 to 29/12/2014 on £1,085.37 and also interest at the same rate up to the date of judgment or earlier payment at a daily rate of 24p."

The claim was defended. British Airways' defence appears at tab 13 in the bundle. There is no need for me to refer to it, although I bear in mind its contents.

10. This claim was allocated to the small claims track. The small claims track trial was heard by District Judge Gill. Her judgment appears at tab 2 in the bundle. After referring to the evidence and submissions, she concluded at paragraph 11:

> "Having considered the evidence in this case and both parties' submissions on the law, that is Article 8 of Regulation 261/2004 and the case law, in particular the case of *Graham & Anor v Thomas Cook Group [2012] EWCA Civ 1355*, I am not satisfied that this claim has been proved on the balance of probabilities. I am going to dismiss the claim for the following reasons. It is quite clear from the decision of *Graham v Thomas Cook*, which is binding on me, that a breach of Article 8 does not give rise to a civil action for damages. This is quite clearly set out in paragraph 19 of that decision. It is said there that the conclusion of Her Honour Judge Hampton was correct, that breach of Article 8 does not give rise to a civil action for damages. The court makes clear in that paragraph that one cannot claim an action for damages if there is a breach of that Article. Paragraph 21 confirms that that regulation does not confer a right to compensation for a breach of

> Article 8, which had been claimed in that case. If there is a breach of Article 8, the remedies for breach are set out in Article 8."

At paragraph 12:

> "Even if the claimant is right in what he says, that there has been a breach of Article 8, I find that his claim must be dismissed due to what has been said by the Court of Appeal in the case of *Graham v Thomas Cook,* that such a breach does not give rise to a civil action for damages. For all those reasons, the claim is dismissed."

11. Mr Seiderer's notice of appeal is dated 17th July 2015 and appears at tab 5. The grounds of appeal follow. Mr Seiderer sets out the background, which I have already described, and effectively argues that the district judge was wrong to conclude that there was no power to bring a claim for damages in this court. I should add that Mr Seiderer no longer pursues what may be described as a "procedural issue" set out in his grounds of appeal.

The Regulation

12. Regulation EC number 261/2004 of the European Parliament and of the Council of 11th February 2004 appears at tab 7 in the bundle. Its title provides that it establishes common rules on compensation and assistance to passengers in the event of denied boarding and a cancellation or long delay of flights and repealing Regulation EEC number 295/91. So far as it is relevant, it provides as follows:

Recital 10:

> "Passengers denied boarding against their will should be able either to cancel their flights, with reimbursement of their tickets, or to continue them under satisfactory conditions, and should be adequately cared for while awaiting a later flight."

Recital 13:

> "Passengers whose flights are cancelled should be able either to obtain reimbursement of their tickets or to obtain re-routing under satisfactory conditions, and should be adequately cared for while awaiting a later flight."

Recital 22:

> "Member States should ensure and supervise general compliance by their air carriers with this Regulation and designate an appropriate body to carry out such enforcement tasks. The supervision should not affect the rights of passengers and air carriers to seek legal redress from courts under procedures of national law."

Article 1:

"Subject:

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1. This Regulation establishes, under the conditions specified herein, minimum rights for passengers when:

…

(b) their flight is cancelled."

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Article 2 contains definitions for the phrases "final destination" and "cancellation". There is no need for me to quote them. British Airways accept that the flight was cancelled.

Article 5:

"Cancellation:
C In case of cancellation of a flight, the passengers concerned shall:

(a) be offered assistance by the operating air carrier in accordance with Article 8; and

(b) be offered assistance by the operating air carrier in accordance with Article 9(1)(a) and 9(2), as well as, in event of re- routing when the reasonably expected time of departure of the new flight is at least the day after the departure as it was planned for the cancelled flight, the assistance specified in Article 9(1)(b) and 9(1)(c)."

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The rest of that Article is not relevant because it is conceded that what occurred to NATS was an extraordinary circumstance.

Article 8:

"Right to reimbursement on re-routing:

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1. Where reference is made to this Article, passengers shall be offered the choice between:

(a) reimbursement within seven days;

(b) re-routing, under comparable transport conditions, to their final destination at the earliest opportunity; or

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(c) re-routing at a later date."

The full wording of subparagraphs (a) and (c) are not relevant because Mr Seiderer chose rerouting under comparable transport conditions to his final destination at the earliest opportunity.

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Article 9:

"Right to care:

1. Where reference is made to this Article, passengers shall be offered free of charge:

   (a) meals and refreshments in a reasonable relation to the waiting time;

   (b) hotel accommodation in cases where a stay of one or more nights becomes necessary, or where a stay additional to that intended by the passenger becomes necessary;

   (c) transport between the airport and place of accommodation (hotel or other).

2. In addition, passengers shall be offered free of charge two telephone calls, telex or fax messages, or e-mails."

Article 12:

"Further compensation:

1. This Regulation shall apply without prejudice to a passenger's rights to further compensation. The compensation granted under this Regulation may be deducted from such compensation."

Was there a Breach of Article 8?

13. Mr Seiderer says there was. He says that the obligation is to reroute to the final destination at the earliest opportunity, even if that involves booking via another carrier. In this case, he says British Airways should have followed his suggestion that they reroute him on the Lufthansa flight. He says that he is a frequent traveller and, in his experience, Article 8 has always been interpreted that way. He says that the purpose of the Regulation and Article 8 is to protect air passengers.

14. In his skeleton argument, Mr Seiderer refers to four factors, which he says support his view:

   (a) His experience as he had frequently been rebooked a flight by other airlines in case of cancellation, e.g., KLM had rebooked him on Lufthansa flights and Lufthansa had rebooked him on British Airways flights in the past.

   (b) That in Evaluation of Regulation 261/2004, Final Report, European Commission, February 2010, which is copied at tab 10 in the bundle, it is stated that:

      (i) Several airlines provided us with additional evidence that they had complied with the Regulation. This included invoices showing costs incurred rerouting passengers via other airlines. In the appellant's view, this shows that airlines generally see it a necessity of compliance with

EU Regulation 261/2004 to reroute their passengers via other airlines.

(ii) Most national enforcement bodies believe that there were some issues with airline compliance and identified a number of frequently occurring problems, rerouting only on their own flights. Many NEBs recorded that some carriers will only reroute passengers via their own flights and will not consider using other carriers. This is particularly reported for low cost carriers who argue that their business model, particularly the use of secondary airports, may hinder rerouting via other carriers. In the appellant's view, this confirms that it is generally considered as non-compliance with EU Regulation 261/2004 if an airline refuses to reroute their passengers via other airlines.

(c) That in the answers to questions on the application of Regulation 261/2004, Directorate General for Energy and Transport at the European Commission, 17th February 2008, provided in tab 16 of this bundle, it is stated that:

(i) Question 21. Does the flight in case of rerouting have to be performed by the original operating carrier?

No. This flight does not necessarily need to be operated by the airline the passenger booked with (page 11). In the appellant's view, this confirms that airlines have a duty to reroute their passengers via other airlines under EU Regulation 261/2004.

(d) Mr Seiderer quotes from a book, Selling Tourism Services at a Distance: An Analysis of the EU Consumer Acquis by Joseph Maria Bech Serrat, published in June 2014.

15. The first of those two factors are illustrations of practice. The answers to the questions set out, the view of the Directorate General. The book sets out the opinion of a learned author. However, none of these is an indication of the law. They are not legally binding on me. They may be straws in the wind, but they are no more than that. I have to decide this question as a matter of construction of Article 8(1)(b).

16. Neither Mr Seiderer nor Mr Davidson is aware of any decisions, whether binding or not, in this country or other European national courts on the meaning of Article 8(1)(b). Mr Seiderer told me that he had Googled the provision in various languages. However, he has stressed that the European Court of Justice has in all the judgments that he has seen interpreted the Regulations as being for the protection of passengers.

17. In his skeleton argument, Mr Davidson says at paragraph 34:

"It is submitted that the respondent complied with its obligations by rebooking the appellant on the rebooked flight. It is the respondent's

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> case in the defence at paragraph 28 that the rebooked flight was the earliest flight on which the claimant could be rebooked."

Paragraph 35:

> "The additional flight booked by the appellant involved two legs and involved departure from a different airport to the originally scheduled flight. These were not comparable transport conditions to those of the original flight. The additional expenses incurred in booking these flights were incurred by the appellant's decision not to take his place on the rebooked flight."

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Mr Davidson has not repeated those paragraphs in his oral submissions. I do not accept the contention in the skeleton that the fact that there were two legs of the Lufthansa flight to Munich via Dusseldorf prevented that booking from amounting to comparable transport conditions within the Regulation.

18. In his oral submissions, Mr Davidson did not dispute that in some circumstances airlines would have to use other carriers. There is, for example, the situation where the airline whose flight was cancelled has only one weekly flight to a particular destination, whereas other carriers have multiple flights. He says however that where an airline has flights every day, they are free under the Regulations to choose those flights and fill them up in compliance with their obligation under Article 8.

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19. Further, he submitted that the phrase "earliest opportunity" in Regulation 8(1)(b) meant the earliest reasonable opportunity. He submitted that I should not simply apply a literal reading of Article 8, but should adopt an apposite interpretation and allow some qualification to the airline's obligation. His submission is that by rerouting the following day on a direct British Airways flight, British Airways did comply with Regulation 8(1)(b). I do not accept that submission. The wording of Article 8(1)(b) is clear. The words are "at the earliest opportunity." I can see no legal basis to insert or imply the word "reasonable."

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20. Further, in his reply to Mr Davidson's submissions, Mr Seiderer referred me to the opinion of the Advocate General in the case of *McDonagh v Ryanair, Case C-12/11*, which appears in the second bundle at tab 4. Ryanair had argued that the wording of Article 9 should be qualified so as to provide limitation to that right. In his opinion delivered on 22 March 2012 at paragraph 50, the Advocate General stated:

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> "I do not think that Articles 5 and 9 of Regulation No 261/2004 imply any such limitation of the provision of care for passengers whose flights have been cancelled owing to extraordinary circumstances."

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Paragraph 53:

> "Again, I consider that a limitation along the lines proposed by Ryanair would in some measure deprive Articles 5 and 9 of Regulation No 261/2004 of their effectiveness, since after a few days the air passengers concerned would be abandoned to their fate."

21. Mr Seiderer submits that the European Court of Justice in their judgment followed the opinion of the Advocate General. Mr Seiderer says that a literal meaning of the Regulation has to be followed. Otherwise, it would restrict the effectiveness of the Regulation. I agree. Therefore, I find that there was a breach of Article 8.

Does Breach of Article 8 Give Rise to the Right to Claim Damages in the County Court?

22. District Judge Gill held that she was bound by the decision of the Court of Appeal in *Graham & Anor v Thomas Cook Group [2012] EWCA Civ 1355*, 23rd July 2012. That judgment appears at tab 8 in the bundle. This was a claim arising out of the cancellation of a flight to Jamaica as a result of the Icelandic volcanic eruption in 2010. The claimant sought damages in the county court. Her Honour Judge Hampton held that breach of Article 8 did not give rise to a civil action for damages. Giving a judgment with which both Laws LJ and Sir Robin Jacob agreed, Toulson LJ, as he then was, said:

> "I then turn to the question whether HHJ Hampton was right to hold that breach of Regulation 8 does not give rise to a civil action for damages. In my judgment, her conclusion was plainly correct. It is a matter for each member state to decide how the Regulation is to be brought into effect under its law. In the UK, it is given effect through the Civil Aviation Regulations 2005 and through the regulatory powers of the CAA under the Enterprise Act 2002. The Civil Aviation Regulations do not purport to impose on a carrier a statutory duty for breach of which an action for damages may be brought, nor on the other hand do they take away any other cause of action which a claimant may have. Rather, the Civil Aviation Regulations make it a criminal offence to fail to comply with an obligation under the relevant articles of Regulation 261 and appoint the CAA as the designated body for the purposes of Article 16 of the Regulation; i.e. for the purposes of enforcing the Regulation. The CAA's enforcement powers are to be found in the Enterprise Act."

Paragraph 20:

> "Mr Graham submitted in his skeleton argument and in his oral submissions that this overlooks Article 12 of Regulation 261, which provides that the Regulation 'shall apply without prejudice to a passenger's rights to further compensation'."

Paragraph 21:

> "But that Regulation does not confer a right to compensation for breach of Regulation 8, which is what has been claimed in this case."

After referring to the European Court of Justice case, *Sousa Rodriguez v Air France SA [2012] 1 EMLR 40* at paragraph 22, Toulson LJ continued:

> "The passenger cannot rely on Article 12 to claim damages for failure by the carrier to comply with Article 8, as distinct from damages for

> breach of the underlying contract. Insofar as there is a breach of Article 8, the remedies for that breach are those set out in Article 8."

23. If that decision is binding upon me, Mr Seiderer's claim must fail. Mr Seiderer argues in his skeleton argument that I can distinguish the decision of the Court of Appeal in *Graham* on the basis that Miss Graham's claim for damages related to additional damages. I do not accept that. Toulson LJ made the position clear by saying a breach of Regulation 8 does not give rise to a civil action for damages.

24. Mr Seiderer's further argument is that, by analogy, I should follow two European Court of Justice cases. The first is the case of *McDonagh v* Ryanair, to which I have already referred, the decision of the ECJ being dated 31st January 2013, Case C12/11. The transcript is at tab 9 in the bundle. This is another case arising out of the disruption caused by the Icelandic Volcano, but this is a decision which post-dated the Court of Appeal hearing in *Graham*. Mr McDonagh's claim was brought under Article 9 of the Regulation, not Article 8. That is why Mr Seiderer says that it applies by analogy. The court stated at Paragraph 20:

> "The court has already had occasion to explain that, when an air carrier fails to fulfil its obligations under Article 9 of Regulation No 261/2004, an air passenger is justified in claiming a right to compensation on the basis of the factors set out in those provisions (see, to that effect, Case C-83/10 *Sousa Rodriguez and Others [2011] ECR I-9469*, paragraph 44) and that such a claim cannot be understood as seeking damages by way of redress on an individual basis, for the harm resulting from the cancellation of a flight concerned in the conditions laid down, *inter alia*, in Article 22 of the Montreal Convention (see, to that effect, *Sousa Rodriguez and Others*, paragraph 38).

Paragraph 23:

> "Article 16 cannot be interpreted as allowing only national bodies responsible for the enforcement of Regulation No 261/2004 to sanction the failure of air carriers to comply with their obligation laid down in Articles 5(1)(b) and 9 of that Regulation to provide care."

Paragraph 24:

> "Consequently, it must be held that an air passenger may invoke before a national court the failure of an air carrier to comply with its obligation, laid down in Articles 5(1)(b) and 9 of Regulation No 261/2004, to provide care in order to obtain compensation from that air carrier for the costs which it should have borne under those provisions."

25. The case of *Sousa Rodriguez v Air France*, C83-10, 13th October 2011, was referred to in both *Graham* and *McDonagh.* A transcript appears at tab 10 in the bundle. At paragraph 44, the court stated:

> "However, when a carrier fails to fulfil its obligations under Article 8 and Article 9 of Regulation No 261/2004, air passengers are justified in

> claiming a right to compensation on the basis of the factors set out in those articles."

26. In my judgment, there is a stark conflict between the decision of the Court of Appeal in *Graham*, where Toulson LJ said breach of Regulation 8 does not give rise to a civil action for damages, and *McDonagh*, where the ECJ said it must be held that an air passenger may invoke before a national court the failure of an air carrier to comply with its obligation, laid down in Articles 5(1)(b) and 9. In my judgment, there is no difference of principle between Articles 8 and 9. Both arise from Article 5. That view is supported by the statement in paragraph 44 of *Souza Rodriguez*.

What do I do in the Face of that Conflict?

27. Mr Seiderer referred me to Article 267 of the Treaty on the Functioning of the European Union, which is at tab 19 in the bundle. He said that if I were to follow *Graham*, there would be no right to claim damages in this court and, accordingly, there would be no judicial remedy under national law within the meaning of Article 267 and, accordingly, I should refer the matter to the European Court of Justice. If that were the case, it would not be for me to take that course of action, but for the Court of Appeal to do so.

28. Mr Davidson said that it would be open to me to grant a declaration that there had been a breach of the regulations, presumably under s.38 of the County Courts Act 1984. Mr Davidson also referred me to the Civil Aviation Denied Boarding Compensation and Assistance Regulations 2005, S.I. No. 975, which provide that breach of Articles 4 to 6 is a criminal offence which may be tried summarily. It might be that the Civil Aviation Authority would bring a criminal prosecution for failure to comply with Article 8 and that a Magistrates Court might award compensation. That would be a discretionary remedy. For many obvious reasons, a criminal prosecution would not be a proportionate, appropriate or satisfactory remedy for a breach of Article 8.

29. Before District Judge Gill, in his written skeleton argument and at the beginning of his oral submissions, Mr Davidson continued to argue that I was bound by the Court of Appeal decision in Graham. However, later in his oral submissions, to use his language, he rowed back from that submission, saying that it went too far. He now says that if the words of the European Court of Justice are flatly inconsistent with what the Court of Appeal said in *Graham*, this court would be bound to follow what the ECJ said in *McDonagh*, not *Graham*. In questions of European Law, decisions of the European Court of Justice take precedence over any inconsistent English or Welsh court decision.

30. I note that the regulations are directly applicable in member states without the need to implement the regulations into domestic law. That appears to be the effect of European Communities Act 1972, section 3(2), which is at tab 19 and which states:

> "Judicial notice shall be taken of the Treaties, of the Official Journal of the European Union and of any decision of or expression of opinion by the European Court on any such question as aforesaid."

31. He also mentioned the ECJ case of *Flaminio Costa v ENEL [1964] Case 6/64* dated 15th July 1964, which I have read. I am satisfied in those circumstances that I must

follow the ECJ decision in *McDonagh* and find that not only did British Airways breach Article 8, but also that Mr Seiderer has a right to claim damages in the county court. It follows that the appeal is allowed.

Quantum

32. I turn to the question of quantum. The damages for breach of Article 8 are agreed as the difference between the cost of the Lufthansa flight of £904.64, less the reimbursement of the British Airways flight of £214.78, with the result that the damages for breach of Article 8 are £689.86. In addition, though, Mr Seiderer claims the cost of a train, a bus and a hotel room at Stansted. Since the conclusion of submissions, I have given further thought to the question of any damages under Article 9. Although there is no specific reference to Article 9 in the claim form, it is clear that they were included in the grand total of £1,085.37. They were also, I am told, referred to by District Judge Gill during the course of the hearing. However, I have come to the conclusion that before deciding whether or not to allow the claim under Article 9 and, if so, the quantum, I require further submission, bearing in mind, in particular, what was said in *Sousa Rodriguez*, especially at paragraph 42.

THE JUDGE: The first thing, Mr Davidson; do you still take any point in relation to those damages?

MR DAVIDSON: Your honour, if I can just check precisely what those damages are for?

THE JUDGE: Can you help us, Mr Seiderer? Where do we find them particularised because they are not in the claim form, are they? I have seen them. I am not sure where it is.

MR SEIDERER: Your honour, they are in tab 11. That is the Stansted Airport bus to the hotel and then a bus from the hotel to the airport, it's really a shuttle bus actually. So, that was £3 each. Then there is the hotel, which was £65.83. There was a dinner at the hotel. I believe that is dinner, yes, £36.90. I guess the next one is there is a bus in Munich for €43.22.

THE JUDGE: Would you not have incurred that in any event?

MR SEIDERER: No, because actually my brother would have picked me up the first time, but I accept that that is kind of additional damage, which wouldn't *[inaudible]* so it is not directly Article 9, so I accept that. There is the Stansted Express from London to Stansted, £23.40. That's written on the ticket.

MR DAVIDSON: Your honour, what I would say is this. The extent that these are expenses which are recoverable under the terms of Article 9, I do not object to them. I would query whether, given that, as I understand it, London is Mr Seiderer's base, hotel accommodation was necessary.

THE JUDGE: What time was the flight out?

MR DAVIDSON: 7.50. 7.50am the following day.

MR SEIDERER: I can't remember exactly.

THE JUDGE: So, he would have to be there at 5.50. Where is your base, Mr Seiderer?

MR SEIDERER: In Kilburn, which takes me about—

MR DAVIDSON: Your honour, my understanding of this Regulation, particularly Article 9, is that when passengers are left stranded in a faraway place where they are typically on holiday and they have to incur hotel accommodation for that reason, then they are entitled to it. If they choose for a matter of their own convenience as opposed to it being necessary, which are the words used in Article 9(1)(b), then those, in my submission, your honour, should not be recoverable. The same I would say goes for a meal. It says, "Meals and refreshments in reasonable relation to the waiting time." That might well be if your flight is delayed and you have to wait six hours in the airport, you have to buy a meal there and you are entitled to refreshments there. It is not a claim for a meal, which Mr Seiderer would have had to buy in any case, a £36.90 meal at the Holiday Inn in Stansted. So, as a matter of principle, I do not have an objection, except where these expenses do not fall within the terms of Article 9. I say that the hotel expenses, the meal, the bus fare in Munich, which he would have had to incur in any case, he would have had to get from Munich Airport to wherever it was he had to go, those cannot be claimed under Article 9. Those are simply my submissions. So, in terms of the £6 bus fares and the train fare, I accept that those can be recovered under Article 9 for the purposes of this case and that would increase the damages by £29.40.

THE JUDGE: What do you say, Mr Seiderer?

MR SEIDERER: So, I agree to the Munich ticket, while that is not an expense that I would have had anyway, but fine, I agree to that. With respect to the hotel, because at the time in the morning, I wouldn't have been able to take the Stansted Express, I believe, I would have had to take a taxi from my home to Stansted, which would have probably been… I think the last time I took a taxi for *[inaudible]* something like £140. So, I think actually—

THE JUDGE: That is a very expensive taxi.

MR SEIDERER: Well, it is just a normal black cab taxi. Well, Stansted is quite far. It's about, I think, probably a one hour 20 minutes taxi drive.

THE JUDGE: Not at four o'clock in the morning.

MR SEIDERER: Oh, fine, yes. Okay, not at that time, that's right *[inaudible]* and I don't think that considering the… Well, 7.50, when would I have had to leave home—

MR DAVIDSON: Your honour, I would also say that the time for check-in typically finishes 45 minutes before the flight, so—

THE JUDGE: Having had one flight cancelled, I would not leave it until 45 minutes before arriving at the airport. I am sure you would not either, Mr Davidson.

MR DAVIDSON: I will not *[inaudible]* that point, clearly.

MR SEIDERER: So, from my perspective, yes, it was a matter of convenience to some extent that I decided to take the hotel, but also in considering the cost that otherwise would arise, I don't think there's much of a difference between a taxi and that.

HIS HONOUR JUDGE MADGE:

33. I have, as I imagine most judges do, some experience of travel from various addresses to airports. A black cab is not necessarily the best way of making such a journey. I am not satisfied that it was necessary to stay at the hotel. Clearly, it would not have been possible to get to Stansted in time for the flight by public transport. Approaching matters in a slightly rough and ready way, what I propose to do is to allow a reasonable sum in respect of a minicab or Uber or something like that rather than a black cab. Instead of the train, bus, hotel and meal, I will allow £90 in respect of additional out of pocket expenses, which would have been reasonably incurred and I assess damages in that amount.

[Judgment ends]