

**IN THE COUNTY COURT AT WILLESDEN**

**Claim No. A5QZ54C0**

9 Acton Lane  
Harlesden  
NW10 8SB

**Monday, 29<sup>th</sup> June 2015**

Before:

**DISTRICT JUDGE GILL**

Between:

**DANIEL SEIDERER**

Claimant

-v-

**BRITISH AIRWAYS**

Defendant

\_\_\_\_\_  
The Claimant appeared In Person

Counsel for the Defendant:

\_\_\_\_\_  
NOT KNOWN

**JUDGMENT APPROVED BY THE COURT**

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## JUDGMENT

DISTRICT JUDGE GILL:

1. This case concerns a claim brought by the claimant. He sets out the details of his claim on the claim form in the particulars of claim section, where he states that his flight was cancelled and therefore he says that there has been a breach of Article 8(1)(b) of Regulation 261/2004. He is seeking compensation for the expenses which he incurred as a result of this cancellation.
2. I have heard today from the claimant, who is in person and from counsel who is representing the defendant. The burden of proof is on the claimant who brings the case. The standard of proof is the balance of probabilities.
3. The law with which I am concerned is Article 8 of Regulation 261/2004 and I have also got case law before me, including the case of *Graham & Anor v Thomas Cook Group [2012] EWCA Civ 1355*, which is a judgment dated 23<sup>rd</sup> July 2012.
4. Dealing with the claimant's case first. He has given evidence today and made submissions. He explained during the start of the hearing when he was giving evidence how he came to book a flight, which was cancelled. He was due to travel from London Heathrow to Munich on 12<sup>th</sup> December 2014. He accepts that there was a problem with traffic control, as a result of which this flight was cancelled. He accepted he received a text message from the defendant to say it had been cancelled. He tried to re-book for the following day and did himself actually manage to re-book a flight for the following day. However, his complaint is that when he spoke to an operator of British Airways, he wanted to re-book an earlier flight, but the operator refused to book an earlier flight with an alternative or different company. He also says that British Airways have a number of flights from London Heathrow and other airports to Munich and they could have booked him on an earlier flight the next day rather than the one he was offered, which was later in the day. Therefore, he is applying for compensation and he explained what he is applying for.
5. He made reference to the trial bundle, which has been prepared by the defendant, and the skeleton argument on the case, which has been relied upon by the defendant and produced by the defendant's counsel today. That is a skeleton argument on the case. He accepts that he is not concerned with Article 7 and he is not raising issues with regard to Article 7. He accepts that this case falls under the extraordinary circumstances of reasons for which the flight was cancelled. His concern and claim relates to re-routing at the earliest opportunity. He says it was possible for the defendant to have re-routed him with another airline. Then I heard his evidence about documents he has brought along today, including a report dated February 2010, which is an evaluation of Regulation 261/2004 and he made comments about what is contained within that report. He has also brought along a document, dated 11<sup>th</sup> February 2004. It is an information document of the Directorate-General for Energy and Transport, Answers to Questions on the Application of Regulation 261/2004.
6. He was also briefly cross-examined primarily about the flight which he did take the next day, which he booked himself, the fact that it was a two-legged flight and that for the first leg of it, he actually travelled in a higher booking class. The claimant

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confirmed that he had booked economy class, but was upgraded. It was put to him that it was not possible to re-book everyone on earlier flights on the following day. The claimant said that there were plenty of earlier flights the next day and he does not understand how people were given priority and why he was not offered the option of an earlier flight.

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7. Then I heard submissions, firstly from the defendant's counsel. It is the defendant's position that they have fully complied with Article 8, but that even if they have not, even if they have breached Article 8, this does not give the claimant a right to a civil claim in damages. It is the defendant's position that they did offer to re-route the claimant at the earliest opportunity, but the claimant was not happy with this flight so took it upon himself to re-book a flight, which he eventually took the next day. Then I heard further submissions from the defendant's counsel about the fact that that flight was different in that there were two legs to that flight and also the claimant travelled in a higher class. That is clear from tab 10 of the defendant's trial bundle. This is a document giving details of the flight that was cancelled. There were 125 passengers due to fly on this cancelled flight. It would not be possible to put all of them on early flights the following day and there is no evidence that there was availability on earlier flights the next day. That the defendant has done all that it can to comply with the regulation and its obligations under the Regulation and even if has not, it does not give the claimant a right to civil damages.

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8. Then I heard submissions from the claimant. The claimant said there are about 50 flights a day by British Airways to Munich and whilst he accepts it is impossible to re-route all the passengers on earlier flights, he does not understand why other people may have been given priority. Then I heard further submissions from him about the documents which are referred to, about the concerns that airline companies are not allowing passengers to travel with other airline companies when trying to comply with their obligations under Article 8 in re-routing them. He says this is his concern about what has happened in this case, that when he spoke with the operator, the operator refused to re-route him via another airline company even though there was availability on that flight. Therefore, British Airways has not complied with its duties and obligations under Article 8 by failing to book him on an alternative flight at the earliest opportunity.

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9. Then I heard from the claimant about this case of *Graham v Thomas Cook*. He says that that case can be distinguished from the present case before me in that if one looks at paragraphs 3 and 4 of that decision, the claimant says it is clear that the claim for damages in this case is for different types of damages from which he is claiming for. He says the damages in that case were for general damages for distress, anxiety, inconvenience, disappointment, wasted expenditure and punitive or exemplary damages. I heard briefly in response from the defendant's counsel, again with further submissions about the case I have referred to of *Graham v Thomas Cook*.

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10. The claimant referred me to a document which he has filed and served today, which I referred to earlier, of 11<sup>th</sup> February 2004 and the evaluation of the Regulation where a number of airline companies are not complying with their obligation by re-routing with other airlines.

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

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*Graham v Thomas Cook*, 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 in *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 at 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 breach of Article 8, which has been claimed in that case. If there is a breach of Article 8, the remedies for breach are set out in Article 8.

12. So 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 those reasons, the claim is dismissed.

*[End of judgment]*