Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

4 October 2012 *

(Air transport — Regulation (EC) No 261/2004 — Compensation for passengers in the event of denied boarding — Concept of 'denied boarding' — Cancellation of a passenger's boarding card by an air carrier because of the anticipated delay to an earlier flight also operated by it which included check-in for the flight concerned)

In Case C-321/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Mercantil No 2, A Coruña (Spain), made by decision of 29 March 2011, received at the Court on 28 June 2011, in the proceedings

Germán Rodríguez Cachafeiro,

María de los Reyes Martínez-Reboredo Varela-Villamor

v

Iberia, Líneas Aéreas de España SA,

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, J. Malenovský, E. Juhász, T. von Danwitz and D. Šváby (Rapporteur), Judges,

Advocate General: V. Trstenjak,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Iberia, Líneas Aéreas de España SA, by J. Bejerano Fernández, procurador,

— the French Government, by G. de Bergues and M. Perrot, acting as Agents,

— the Finnish Government, by H. Leppo, acting as Agent,

— the European Commission, by K. Simonsson and R. Vidal Puig, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

* Language of the case: Spanish.

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 2(j), 3(2) and 4(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

2 The reference has been made in proceedings between, on the one hand, Mr Rodríguez Cachafeiro and Ms Martínez-Reboredo Varela-Villamor and, on the other, the airline Iberia, Líneas Aéreas de España SA ('Iberia'), following Iberia's refusal to compensate them for not allowing them to board a flight from Madrid (Spain) to Santo Domingo (Dominican Republic).

Legal framework

Regulation (EEC) No 295/91

3 Council Regulation (EEC) No 295/91 of 4 February 1991 establishing common rules for a denied-boarding compensation system in scheduled air transport (OJ 1991 L 36, p. 5), which was in force until 16 February 2005, provided at Article 1:

'This Regulation establishes common minimum rules applicable where passengers are denied access to an overbooked scheduled flight for which they have a valid ticket and a confirmed reservation departing from an airport located in the territory of a Member State to which the [EC] Treaty applies, irrespective of the State where the air carrier is established, the nationality of the passenger and the point of destination.'

Regulation No 261/2004

4 Recitals 1, 3, 4, 9 and 10 in the preamble to Regulation No 261/2004 state:

'(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.

…

(3) While [Regulation No 295/91] 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.

…

(9) The number of passengers denied boarding against their will should be reduced by requiring air carriers to call for volunteers to surrender their reservations, in exchange for benefits, instead of denying passengers boarding, and by fully compensating those finally denied boarding.

(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.'

5 Article 2 of Regulation No 261/2004, entitled 'Definitions', provides:

'For the purposes of this Regulation:

…

(j) "denied boarding" means a refusal to carry passengers on a flight, although they have presented themselves for boarding under the conditions laid down in Article 3(2), except where there are reasonable grounds to deny them boarding, such as reasons of health, safety or security, or inadequate travel documentation;

…'

6 Article 3 of that regulation, entitled 'Scope', provides in paragraph 2:

'Paragraph 1 shall apply on the condition that passengers:

(a) have a confirmed reservation on the flight concerned and, except in the case of cancellation referred to in Article 5, present themselves for check-in:

— as stipulated and at the time indicated in advance and in writing (including by electronic means) by the air carrier, the tour operator or an authorised travel agent,

or, if no time is indicated,

— not later than 45 minutes before the published departure time; or

…'

7 Article 4 of Regulation No 261/2004, entitled 'Denied boarding', reads as follows:

'1. When an operating air carrier reasonably expects to deny boarding on a flight, it shall first call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the operating air carrier. Volunteers shall be assisted in accordance with Article 8, such assistance being additional to the benefits mentioned in this paragraph.

2. If an insufficient number of volunteers comes forward to allow the remaining passengers with reservations to board the flight, the operating air carrier may then deny boarding to passengers against their will.

3. If boarding is denied to passengers against their will, the operating air carrier shall immediately compensate them in accordance with Article 7 and assist them in accordance with Articles 8 and 9.'

8 Article 7 of that regulation, entitled 'Right to compensation', provides in paragraph 1:

'Where reference is made to this Article, passengers shall receive compensation amounting to:

(a) EUR 250 for all flights of 1 500 kilometres or less;

(b) EUR 400 for all intra-Community flights of more than 1 500 kilometres, and for all other flights between 1 500 and 3 500 kilometres;

(c) EUR 600 for all flights not falling under (a) or (b).

…'

9 Articles 8 and 9 of that regulation, read in conjunction with Article 4 thereof, provide a right to reimbursement or re-routing and a right to care for passengers who are denied boarding.

The dispute in the main proceedings and the question referred for a preliminary ruling

10 The applicants in the main proceedings, Mr Rodríguez Cachafeiro and Ms Martínez-Reboredo Varela-Villamor (or 'the applicants'), both bought airline tickets from Iberia for the journey from Corunna (Spain) to Santo Domingo. That ticket comprised two flights: flight IB 513 Corunna-Madrid on 4 December 2009 (from 13.30 to 14.40), and flight IB 6501 Madrid-Santo Domingo the same day (from 16.05 to 19.55).

11 At the Iberia check-in counter at Corunna airport, the applicants checked their luggage in — direct to their final destination — in accordance with the conditions laid down in Article 3(2) of Regulation No 261/2004, and were given two boarding cards for the two successive flights.

12 The first flight was delayed by 1 hour and 25 minutes. In anticipation that that delay would result in the two passengers missing their connection in Madrid, at 15.17 Iberia cancelled their boarding cards for the second flight scheduled for 16.05. The referring court notes that, on arrival in Madrid, the applicants presented themselves at the departure gate in the final boarding call to passengers. The Iberia staff did not, however, allow them to board on the grounds that their boarding cards had been cancelled and their seats allocated to other passengers.

13 The applicants waited until the following day in order to be taken to Santo Domingo on another flight and they reached their final destination 27 hours late.

14 On 23 February 2010, Mr Rodríguez Cachafeiro and Ms Martínez-Reboredo Varela-Villamor brought an action before the Juzgado de lo Mercantil No 2, A Coruña (Commercial Court No 2, Corunna), seeking a decision ordering Iberia to pay them the sum of EUR 600 each by way of compensation for 'denied boarding', pursuant to Articles 4(3) and 7(1)(c) of Regulation No 261/2004. Iberia disputed those claims, contending that the facts on the basis of which the action had been brought before that court did not amount to a case of 'denied boarding', but should rather be construed as a missed connection, since the decision to deny the applicants boarding was not attributable to overbooking, but was caused by the delay to the earlier flight.

15 The referring court also notes that Iberia paid the compensation provided for under Articles 4(3) and 7 of Regulation No 261/2004 to seven passengers for denied boarding on the Madrid-Santo Domingo flight in question.

16 In that context, the referring court seeks to ascertain whether the concept of 'denied boarding' refers exclusively to situations in which flights have been overbooked initially or whether that concept may be extended to cover other situations such as that of the applicants.

17 In those circumstances the Juzgado de lo Mercantil No 2, A Coruña, decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'May the concept of "denied boarding" contained in Article 2(j), in conjunction with Articles 3(2) and 4(3), of [Regulation No 261/2004], be regarded as including a situation in which an airline refuses to allow boarding because the first flight included in the ticket is subject to a delay attributable to the airline and the latter mistakenly expects the passengers not to arrive in time to catch the second flight, and so allows their seats to be taken by other passengers?'

The question referred for a preliminary ruling

18 By its question, the referring court asks, in essence, whether Article 2(j) of Regulation No 261/2004, read in conjunction with Article 3(2) of that regulation, must be interpreted as meaning that the concept of 'denied boarding' includes a situation where, in the context of a single contract of carriage involving a number of reservations on immediately connecting flights and a single check-in, an air carrier denies some passengers boarding on the ground that the first flight included in their reservation has been subject to a delay attributable to that carrier and the latter mistakenly expected those passengers not to arrive in time to board the second flight.

19 In that regard, it is to be noted that, pursuant to Article 2(j) of Regulation No 261/2004, characterisation as 'denied boarding' presupposes that an air carrier refuses to carry a passenger on a flight for which he had a reservation and presented himself for boarding in accordance with the conditions laid down in Article 3(2) of that regulation, unless there are reasonable grounds for denying that passenger boarding, such as the reasons mentioned in Article 2(j).

20 In the main proceedings, the question raised by the referring court is based on the premiss that the applicants presented themselves for boarding on the Madrid-Santo Domingo flight in accordance with the conditions laid down in Article 3(2) of Regulation No 261/2004. In addition, it is apparent from the file that the applicants were prevented from boarding that flight not because of an alleged failure to comply with those conditions, but because their reservations had been cancelled as a result of the delay on the earlier Corunna-Madrid flight.

21 Without prejudging the possible consequences of the fact that, as a result of that delay, the applicants reached their final destination (Santo Domingo) 27 hours after the scheduled arrival time indicated when they reserved their travel, the Court observes that, as regards the reasons for a carrier denying boarding to a passenger who holds a reservation and has duly presented himself for boarding, the wording of Article 2(j) of Regulation No 261/2004 does not link 'denied boarding' to a carrier's 'overbooking' the flight concerned for economic reasons.

22 As regards the context of that provision and the objectives pursued by the legislation of which it is part, it is apparent not only from recitals 3, 4, 9 and 10 of Regulation No 261/2004, but also from the *travaux préparatoires* for that regulation — and in particular from the Proposal for a regulation of the European Parliament and of the Council establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights, presented by the Commission of the European Communities on 21 December 2001 (COM(2001) 784 final) — that the European Union ('EU') legislature sought, by the adoption of that regulation, to reduce the number of passengers denied boarding against their will, which was too high at that time. This would

be achieved by filling the gaps in Regulation No 295/91 which confined itself to establishing, in accordance with Article 1 thereof, common minimum rules applicable where passengers are denied access to an overbooked scheduled flight.

23 It is in that context that by means of Article 2(j) of Regulation No 261/2004 the EU legislature removed from the definition of 'denied boarding' any reference to the ground on which an air carrier refuses to carry a passenger.

24 In so doing, the EU legislature expanded the scope of the definition of 'denied boarding' beyond merely situations where boarding is denied on account of overbooking referred to previously in Article 1 of Regulation No 295/91, and construed 'denied boarding' broadly as covering all circumstances in which an air carrier may refuse to carry a passenger.

25 That interpretation is supported by the finding that limiting the scope of 'denied boarding' exclusively to cases of overbooking would have the practical effect of substantially reducing the protection afforded to passengers under Regulation No 261/2004 and would therefore be contrary to the aim of that regulation - referred to in recital 1 in the preamble thereto - of ensuring a high level of protection for passengers. Consequently, a broad interpretation of the rights granted to passengers is justified (see, to that effect, Case C-344/04 *IATA and ELFAA* [2006] ECR I-403, paragraph 69, and Case C-549/07 *Wallentin-Hermann* [2008] ECR I-11061, paragraph 18).

26 Accordingly, to accept that only situations of overbooking are covered by the concept of 'denied boarding' would have the effect of denying all protection to passengers who find themselves in a situation such as that of the applicants, by precluding them from relying on Article 4 of Regulation No 261/2004, paragraph 3 of which refers to the provisions of that regulation relating to rights to compensation, reimbursement or re-routing and to care, as laid down in Articles 7 to 9 of that regulation.

27 In the light of the foregoing, denial of boarding by an air carrier in circumstances such as those of the main proceedings must, in principle, be included in the concept of 'denied boarding' within the meaning of Article 2(j) of Regulation No 261/2004.

28 Nevertheless, it must be confirmed that, as laid down in that provision, there are not reasonable grounds to deny boarding, 'such as reasons of health, safety or security, or inadequate travel documentation'.

29 In that regard, it is to be noted that, in using the expression 'such as', the EU legislature intended to provide a non-exhaustive list of the situations in which there are reasonable grounds for denying boarding.

30 None the less, it cannot be inferred from such wording that there are reasonable grounds to deny boarding on the basis of an operational reason such as that in question in the main proceedings.

31 The referring court states that, in the context of a single contract of carriage involving a number of reservations on two immediately connected flights and a single check-in, the first of those flights was subject to a delay attributable to the carrier in question, that the latter mistakenly expected the passengers in question not to arrive in time to board the second flight and that, as a consequence, it allowed other passengers to take the seats on that second flight which were to have been occupied by the passengers to whom boarding was denied.

32 However, such a reason for denying boarding is not comparable to those specifically mentioned in Article 2(j) of Regulation No 261/2004, since it is in no way attributable to the passenger to whom boarding is denied.

33 In addition, it cannot be accepted that an air carrier may increase considerably the situations in which it would have reasonable grounds for denying a passenger boarding. That would necessarily have the consequence of depriving such a passenger of all protection, which would be contrary to the objective of Regulation No 261/2004 which seeks to ensure a high level of protection for passengers by means of a broad interpretation of the rights granted to them.

34 In a situation such as that in the main proceedings, that would, moreover, result in the passengers concerned suffering the serious trouble and inconvenience inherent in a denial of boarding, even though that denial is attributable, in any event, to the carrier alone, which either caused the delay to the first flight operated by it, mistakenly considered that the passengers concerned would not be able to present themselves in time to board the following flight or sold tickets for successive flights for which the time available for catching the following flight was insufficient.

35 Consequently, there are no reasonable grounds for a denial of boarding such as that at issue in the main proceedings which must therefore be characterised as 'denied boarding' within the meaning of Article 2(j) of Regulation No 261/2004.

36 In the light of the foregoing, the answer to the question referred is that Article 2(j) of Regulation No 261/2004, read in conjunction with Article 3(2) of that regulation, must be interpreted as meaning that the concept of 'denied boarding' includes a situation where, in the context of a single contract of carriage involving a number of reservations on immediately connecting flights and a single check-in, an air carrier denies boarding to some passengers on the ground that the first flight included in their reservation has been subject to a delay attributable to that carrier and the latter mistakenly expected those passengers not to arrive in time to board the second flight.

Costs

37 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Article 2(j) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, read in conjunction with Article 3(2) of Regulation No 261/2004, must be interpreted as meaning that the concept of 'denied boarding' includes a situation where, in the context of a single contract of carriage involving a number of reservations on immediately connecting flights and a single check-in, an air carrier denies boarding to some passengers on the ground that the first flight included in their reservation has been subject to a delay attributable to that carrier and the latter mistakenly expected those passengers not to arrive in time to board the second flight.

[Signatures]