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Was a flight with four legs (and two carriers) a single booking?

Chelluri v Air India Ltd (2021) EWCA Civ 1953

IN BRIEF

The Court of Appeal followed *Wegener (2018)* and held that the claimant/appellant could not make a claim because she had made a single booking and could not therefore rely on the constituent parts of that booking for the purposes of compensation.

Her claim arose on the third of four legs.

The issue raised on this appeal was whether an air passenger with a single booking, departing from one country outside the EU/UK, and arriving at another country outside the EU/UK, could rely on the relevant Regulation dealing with compensation for flight delays, in circumstances where the third of the four legs that made up that single reservation was late leaving Heathrow.

The appeal raised two grounds.

Ground 1 argued that the judge was wrong to conclude that the CJEU decision in Case-537/17 *Wegener v Royal Air Maroc SA (2018)* obliged him to hold that the claimant/appellant could not make a claim because she had made a single booking departing from Kansas City, Missouri, and could not therefore rely on the constituent parts of that booking for the purposes of compensation. Ground 2 argued that, if the proper interpretation of *Wegener* was as set out by the judge, then *Wegener* was wrongly decided and/or this court should not follow it.

The claimant brought a claim under EU Regulation 261/04 ("the Regulation") which provides a compensation mechanism for delayed and cancelled flights. Delta Airlines was the carrier for the first two legs

and the defendant/respondent was the carrier for legs three and four. The District Judge allowed the claimant's claim on the basis that the flights operated by the defendant were entirely separate from the flights operated by Delta. As a result, he said that the claimant's journey was therefore not to be treated as a single flight for the purposes of the Regulation. The defendant appealed and the judge below allowed the appeal. The judge found that, as a result of the decision in *Wegener*, what mattered was the overall journey that had been booked, not its component parts. He said that he was bound by *Wegener* and the subsequent authorities and that, because the overall journey had started and finished outside the EU, the appeal would be allowed and the claim dismissed.

Ground 1: The proper interpretation of *Wegener*

The Court of Appeal drew two general conclusions from the case law that had been set out in detail in the judgment:

a) For the purposes of the jurisdiction provision encapsulated in Article 3(1)(a), a flight from X to Y by air, which comprised more than one leg, was to be treated as a whole, provided that it was booked as a single unit. That did not extend to any return flight from Y back to X.

b) For the purposes of the jurisdiction provision encapsulated in Article 3(1)(a), such a flight from X to Y, regardless of the number of legs, departed from its initial place of departure.

These conclusions dovetailed appropriately with the approach taken by the CJEU to the calculation of delay and compensation. What mattered was "the first point of departure".

Accordingly, on the basis of the authorities, the judge was right as a matter of law to conclude that in this case, where there was a single booking covering the whole of the flight, Article 3(1)(a) of the Regulation did not apply. That meant that, subject to ground 2, the judge was right to refuse the appellant's claim.

Ground 2: Could/should this court decide that *Wegener* is wrong?

There was no principled basis to depart from the decision in *Wegener*. There had been no change in any relevant piece of legislation, and no recent authority, which could justify the separate treatment of the component legs of a single booking for the purposes of article 3(1)(a). Moreover, *Wegener* has been repeatedly followed and referred to in the CJEU's subsequent cases. It was both unnecessary and undesirable to depart from *Wegener* to bring about such consequences without express consideration of the point by the legislature.

Regarding other arguments, the court found that there was much debate about the potential difference between "flight" on the one hand, and "passenger transport" or "air transport operation" on the other. Those arguments were sterile. What mattered was the actual wording of Article 3(1)(a) and, in particular, the reference to the "passengers departing from an airport". That meaning had been settled by *Wegener* and the subsequent CJEU cases.

In addition, there was much debate in argument about the difference between "layovers" and "stopovers" and what happened if either was extended for one reason or another. The approach adopted by *Wegener* seemed to eliminate that debate. It also did away with at least some of the complications surrounding "connecting flights". Where, as here, stopovers were arranged for the convenience of the air carriers, not the passengers, who had no say in the location or extent of the stopover, then the passengers were simply to be regarded as being en route from their places of initial departure to their destinations. It also made for coherence. EU/UK carriers were caught

because of Article 3(1)(b). Non-EU/UK carriers were caught under Article 3(1)(a) if the single booking initially departed from the EU/UK, no matter where the journey ended. If, however, the single booking with a non-EU/UK carrier departed from outside the EU/UK, it was not covered by the Regulation, wherever it landed along the way.

The full judgment may be found at: Chelluri v Air India Ltd [2021] EWCA Civ 1953 (21 December 2021) (bailii.org)