

söp_Conciliation recommendation

Regarding the conciliation procedure F 207130/22 concerning the complaint of

Ms / Mr ...

(complainant)

versus

...

(respondent)

the conciliation body suggests the following:

The respondent pays the complainant 270.00 EUR.

Reasoning:

Judging by the information available to us, following **facts** can be assumed:

- The complainant booked tickets via a third party for a flight from C. to E. in September The following flight segments were planned:
 - (flight number) from C. to F. (departure 1:50 am, arrival 8:25 am) and
 - (flight number) from F. to E. (departure 11:00 am, arrival 11:55 am).

The flight distance between C. and E. amounts to 8,420 km (calculation according to the "great circle route method"). According to the booking confirmation dated August ... , the outbound flight tickets were issued by the respondent and the inbound flight tickets were issued by ... (flight company). The ticket costs amounted to 211,587.00 INR for two people (fare: 60,646.00 INR per person, taxes and fees: 44,262.00 INR per person).

- According to the complainant, she was not carried on flight (flight number) due to not being able to present a transit visa for Germany (EU country). A free rerouting was not offered. The complainant booked herself a replacement flight with another airline.
- The complainant claimed a reimbursement of their additional ticket costs from the respondent.
- The respondent did apparently not respond to the claim.
- The complainant is not satisfied with this and is requesting a conciliation process. She is claiming the costs of her replacement flight amounting to 1,330.00 EUR. She notes that she holds a "UK visa" (visa for destination country and non-EU country) and her husband holds a "USA visa".
- During the conciliation process, the respondent explains that the complainant was not able to present a transit visa and therefore could not be carried on the flight. It has already issued a partial refund of 51.66 USD.

To establish prima facie evidence, the respondent provides extracts from its internal booking system. Herein a refund of 51.66 USD is noted and marked with "CA" (indicating a refund to a third party/travel agent, note by söp). Furthermore, the taxes and fees are specified. The respondent notes that the fare was non-refundable.

An amicable settlement of the dispute seems appropriate. The aim of the conciliation is a fair balance of the parties' interests.

In favour of the complainant we have taken the following findings into account:

- The complainant experienced great inconveniences. She could not travel with her husband as planned and had to carry substantial additional costs in order to fly to the United Kingdom. She feels misinformed by the respondent. The apparently missing answer to the complaint will probably fall short of the expectations towards a customer-oriented airline.
- According to Regulation (EC) No 261/2004, in conjunction with the jurisdiction of the CJEU, in case of cancellation, long delay and denied boarding, passengers shall receive compensation as well as care services.

The UK has implemented the EU Regulation into national law („The Air Passenger Rights and Air Travel Organisers' Licensing (Amendment) (EU Exit) Regulations 2019“, source: <https://www.legislation.gov.uk/ukxi/2019/278/contents/made,,,Regulation>). Section 6 of the Withdrawal Act 2018 also incorporates all CJEU case law made until 31 December 2020 into domestic law. The UK Regulation applies since 1 January 2021.

- If boarding is denied to passengers against their will, they may be eligible for lump sum compensation (Art. 4 (3) in conjunction with Art. 7 (1) Regulation).

Denied boarding pursuant to the Regulation means an airline's refusal to carry passengers on a flight, although they have a confirmed reservation and present themselves for boarding on time (Art. 2 (j), Art. 3 (2) Regulation).

The complainant had a confirmed reservation and presented herself for boarding on time. She was nevertheless denied boarding.

The exact amount of compensation depends on the respective flight distance. For flights of more than 3,500 km, the compensation amounts to 520.00 GBP (Art. 7 (1) (c) Regulation). The flight distance between C. and E. amounts to 8,420 km.

- In cases of denied boarding, passengers additionally have the choice between a reimbursement of the full ticket cost and a re-routing, under comparable transport conditions, to their final destination at the earliest opportunity (see Art. 4 (3), Art. 8 (1) Regulation). If the air carrier fails to fulfil its obligations, passengers have a right to compensation of the cost arisen as a result (CJEU, case Sousa Rodríguez and Others, 13 October 2011, C-83/10, paragraph 44).
- In the case of a not boarded flight, even when a fare is not refundable, there can be a right to reimbursement of taxes and fees. These are raised by the air carrier for third parties and usually require the actual carriage of the passenger. The flight was not boarded in this case.

The amount of taxes and fees is shown in the submitted booking documents as a total of 44,262.00 INR per person for the complete return ticket. The taxes and fees are not specified in the booking confirmation, which speaks in favour of a full refund of taxes and fees. The conciliation body is basing a refund on 50 % of this number, as the respondent only issued the outbound tickets. This amounts to 22,131.00 INR for the outbound flight of the complainant (272.25 EUR, on ..., source: www.oanda.com).

The respondent has already issued a refund of 51.66 USD. However, the refund was issued to the travel agent. The complainant has explained that she had not heard back from the respondent before filing her complaint.

In favour of the respondent we have taken the following findings into account:

- Reasonable grounds could rule out denied boarding as defined by the Regulation, Art. 2 (j) Regulation. These could primarily be factors relating to the passenger such as health risks, security threats or incomplete travel documents. This includes travel restrictions in the country of origin, transit and destination. In the case at hand, the complainant was denied carriage due to not being able to present a transit visa.

Passengers are generally responsible for obtaining all required travel documents and visas and for complying with all laws and regulations of the countries of destination and transit. Contrary to package tour operators, carriers are not obliged to advise passengers accordingly. This falls solely within the passenger's responsibility.

Citizens from India (non-EU country) need a transit visa when travelling through Germany (EU country). While residents of the United Kingdom were exempt from this requirement pre-Brexit, they have to adhere to the visa requirement now that the UK is no longer part of the European Union. There are other countries outside the EU whose residents may travel through Germany without a transit visa; however, residents of the UK are not included in this list (see source above). A US visa/residence card is, indeed, accepted. The complainant could not present a transit visa, which indicates reasonable grounds to deny boarding. It should be noted that airlines are required to check travel documents before a flight and are to only carry passengers if they fulfil all entry/transit requirements. Otherwise, they may be subjected to significant fines. This has been confirmed by the German border police upon inquiry by söp. According to their information, transit visas are not always possible to check by the authorities, but airlines are required to check for them and risk being fined if they fail to do so. Likewise, passengers who are traveling through Germany without a transit visa may face prosecution.

On the whole, the conciliation body assumes that there were reasonable grounds to deny boarding.

Recommendation:

The respondent participates in the söp conciliation process. The legal dispute can thus be resolved quickly and the effort of a closer investigation of the circumstances can be avoided. Hereby the parties involved also avoid the financial and procedural risks associated with a possible lawsuit. Moreover, such a resolution of the dispute is suited to contribute to the restoral of customer satisfaction. The proposed solution may differ from a court decision. Possible ancillary claims (in particular legal fees and communication cost) are not subject of the summary examination in the course of the conciliation process.

Taking into account all circumstances (especially a right to a refund of taxes and fees on the one hand and reasonable grounds to deny boarding on the other hand) it seems appropriate for the amicable dispute resolution: The respondent pays the complainant 270.00 EUR in total. This amounts to approximately the taxes and fees as shown in the booking confirmation. This recommendation shall take account of the overall assessment.

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| | |
|------------------------------|---------------------------|
| denied boarding | |
| number of passengers | 2 |
| recommendation amount | payment 270.00 EUR |

Acceptance:

The parties involved are given the opportunity to accept this recommendation by the conciliation body

until latest ...

The recommendation is not binding for the parties involved, that means neither the complainants nor the respondent are obliged to accept it.

If the recommendation is accepted by both sides, it becomes legally binding between the two parties involved.

If the recommendation is rejected or not accepted within the mentioned deadline, the conciliation process will have ended unsuccessfully. In this case the possibility to initiate judicial proceedings will remain unscathed.

The notice about the parties' acceptance can be communicated informally, for example by email to flugkontakt@soep-online.de.

Berlin, ...

(name)

Lawyer / Conciliator