

BAR UK GENERAL MEETING LEGAL UPDATE

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EU261 latest - Virgin case
Huzar case
Status of revisions

EU ETS – Status and compliance headaches

(Package Travel Directive revision and potential effect on airlines)

(Rogers v Hoyle (AAIB investigation))

Virgin:

- Delay Orlando – Gatwick due to failure in fire detectors in one engine
- Facebook page
- 90 claimants

"the passengers have been left with no alternative other than to instruct us to enforce their legal rights through the Courts. The cumulative value of this claim exceeds £50,000" [Bott & Co](#)

Ronald Huzar v Jet2.com

Facts:

- Flight Malaga to Manchester.
- Inbound flight – left engine fuel advisory light illuminated indicating possible defect in fuel shut-off valve.
- Problem eventually traced to a wiring defect in fuel value circuit. Wiring needed replacement.
- Replacement aircraft sourced, flight arrived Manchester 27 hours late.

Huzar v Jet2.com

District Judge (first instance):

- given nature of the defect, Jet2.com took all reasonable measures in servicing their aircraft
- this sort of fault is beyond the control of the carrier
- therefore the "extraordinary circumstances" defence in EU261 applies

Huzar v Jet2.com

On appeal to Manchester County Court claimant:

- accepted that the technical fault was unexpected and could not have been predicted by regular inspection and maintenance.
- accepted wiring failed within its lifespan

But argued: test of extraordinary circumstances wrongly applied

The test in Wallentin v Alitalia:

Circumstances are only extraordinary if they relate to an event "not inherent in the normal exercise of the activity of the air carrier concerned and is beyond the actual control of that carrier on account of its nature or origin"

Question for the Court in Huzar was: "whether delay due to an unexpected, unforeseen and unforeseeable technical defect can amount to an extraordinary circumstance".

Manchester County Court Judgment:

Overriding purpose of EU261 is to promote consumer protection

Relied on Wallentin which referred to:

- EU261 recitals which list events which "may produce" extraordinary circumstances; and to
- "the resolution of a technical problem" being the relevant event which causes delay

To conclude:

- it is the resolution of a technical problem which causes the delay/cancellation
- once a technical problem has been discovered it is inherent in the normal activity of the carrier to have to resolve it (and it is therefore not "extraordinary")
- the resolution of the problem is entirely within the control of the carrier
- so it does not matter how the problem was identified or that it was unexpected and unforeseeable
- and therefore delay caused by the resolution of an unexpected, unforeseen and unforeseeable technical problem cannot be said to be an extraordinary circumstance under EU261

Manchester County Court reached this conclusion despite:

- Two other cases have adjudged this extraordinary circumstances
- That it means the EU261 defence of extraordinary circumstances has little effect in this type of case
- That NEB list supports Jet2.Com's case

- Not binding on other courts (but it can and will be referred to for guidance and Bott & Co will milk the publicity)
- An appeal is planned
- Cases are being stayed pending appeal

For BAR UK Members:

- be even more wary of technical problems cases – claimants' lawyers will use the Huzar case
- if proceedings issued, seek stay pending the Huzar appeal

22 January 2014: Committee on Transport and Tourism reported on the amendments

5 February 2014: 1st reading in EU Parliament

Edited highlights

- Annex of extraordinary circumstances an exhaustive list
- Financial protection to be provided by airlines against insolvency!
- Delays: 3-5-7 hours
- Re-routing on other carrier's services if original carrier cannot do so to arrive within 8 hours of scheduled reservation
- Changes to assistance obligations and limitations

Parliament's position goes to the Council

Commission now describes passenger rights as a "medium term" focus, i.e. after the EU elections

Acceptance that extensive disagreement in the Council, many legal issues to resolve

End result will be a compromise but no time soon

- Applies to all airlines for flights into/out of/within the EU
- "Stop the clock" for 12 months in Autumn 2012: for 2012 EU ETS applies only to flights within the EU. For 2013 full EU ETS will apply again. Compliance deadlines 31 March 2014 (reporting) and 30 April (surrendering carbon allowances)

- EU now proposes:
 - Stop the clock continues for 2013
 - 2014-2020: flights into/out of/within EU must comply with EU ETS i.e. account for emissions for the part of the flight in EU airspace

Disagreement over Commission proposal (including France and UK) – should apply ETS only to flights within the EU

Unlikely to be resolved before March/April

So do airlines have to comply for 2013 or not? Potential penalties for failure to comply

Discuss with IATA; seek clarification from Environment Agency

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