***[Civil Aviation Authority v Ryanair DAC](https://www.bailii.org/ew/cases/EWCA/Civ/2022/76.html" \t "_blank)***

EU Regulation 261/2004 entitles passengers whose flights are cancelled to compensation unless the cancellations are caused by ‘extraordinary circumstances’.

The Court of Appeal has this week clarified that strikes about pay and conditions not involving external factors, cannot amount to “extraordinary circumstances”.

At Whitestone Chambers we often represent airlines defending claims under EU Regulation 216/2004. Extraordinary circumstances normally include such things as airport closures, hurricanes, storms and air traffic control issues. Extraordinary circumstances are normally external factors outside the airline’s control, not arising in the normal course of operations.

In [***Civil Aviation Authority v Ryanair DAC***](https://www.bailii.org/ew/cases/EWCA/Civ/2022/76.html), the court held that Ryanair must pay compensation for flights cancelled in 2018 as a result of strike action by the airline’s employees.

The Court drew a distinction between strikes about pay and conditions and a sympathy strike whose aims were wholly unrelated to the strikers’ employer’s activities.

The judge also held that a strike where staff sought to have flights ‘re-routed in response to a terrorist threat would represent “extraordinary circumstances”’. It is not very common for such strikes to happen, which is perhaps why they would be considered extraordinary.

The judge said the possibility of disagreements and even strikes in relation to pay and employment conditions is ‘inherent in running the business of an air carrier and so a strike about pay or employment conditions will not be “extraordinary circumstances” regardless of whether the employees’ demands are seen as reasonable or achievable’. ‘The fact that employees are represented by a trade union will make no difference,’

He added: ‘The regulation would not afford passengers the high level of protection intended if an airline could escape paying compensation on the basis that a strike which had caused a cancellation had arisen from an unreasonable demand by or on behalf of its staff.’

We do consider that the decision is rather harsh on low cost airlines who may pay pilots and cabin crew less in order to increase margins. This decision means that airlines are likely to want to avoid any strike action occurring, knowing that the Courts will make them pay for disgruntled customers’ cancelled flights. It will be cheaper to offer more money to employees to avoid strikes. In turn this may result in increased ticket prices. Beware the law of unintended consequences! We predict that this dispute will now progress to the Supreme Court on appeal.

Peter Causton

© 2022 Whitestone Chambers