AVIATION - SPAIN

Update on abusive clauses in passenger contracts

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Introduction

On 8 January 2019 Gijón Commercial Court No 3 ruled in a case dealing with some of Volotea's transport terms and conditions (for further details please see "Court examines alleged abusive clauses in airline terms and conditions"). The Association of Financial Users (ASUFIN), a consumer protection association that filed the initial claim, disagreed with some of the judgment's points and lodged an appeal. On 22 June 2020 the Provincial Audience of Asturias gave its judgment in appeal; while it confirmed some of the first-instance court's decisions, it overruled others. This article focuses on the most controversial decisions.

Administration fee for no-shows

ASUFIN had challenged a clause which allowed Volotea to charge a €5 administration fee per passenger and flight if a passenger did not use their ticket and claimed a refund to which they were entitled. ASUFIN argued that this type of clause was abusive in accordance with European Court of Justice case law (judgment of 6 July 2017, case C-290/16) and the Spanish Supreme Court case law (judgment of 25 October 2019).

During the first-instance proceedings, Volotea had proven that it had signed a contract with an external service provider for technical support, customer service and other business processes, to whom it had outsourced the management of passenger refund requests for the non-use of tickets. Volotea had also proved that the €5 fee charged to passengers had been calculated on the basis of the fee payable to the service provider plus Volotea's internal costs.

In line with the commercial court's reasonings, the provincial audience held that it is within business logic to outsource the management of customer claims and that it is also logical to charge the costs of such service to passengers when they decide not to use their ticket. The provincial audience found the €5 administration fee legitimate and reasonable and even went on to state that the charge would also be justified had Volotea decided to use its internal resources to manage the customer claims.

Thus, it can be concluded that these kinds of charge are acceptable provided that they are not used to obtain a profit but merely to cover the airline's administration or management costs. If challenged, the airline may need to be ready to disclose its internal figures to the courts to explain how the charge amount has been calculated.

Baggage restrictions

Unlike the first-instance court, the provincial audience considered that Clause 6.2.II of Volotea's terms and conditions was abusive. This clause declared generally that the transport of fragile objects, cash or negotiable securities, precious metal or stones, electronic apparel, computers, objects of value and personal identity cards in baggage was forbidden.

As submitted by ASUFIN, the provincial audience held that the clause made no distinction between checked baggage and carry-on baggage and therefore had to be interpreted as encompassing both types of baggage. Volotea had argued that its terms and conditions included a specific section for carry-on baggage (Clause 6.8), so that it had to be inferred that Clause 6.2 could refer only to checked baggage. The court dismissed this argument on the grounds that average consumers cannot reach this conclusion by simply reading the standard terms and conditions. Therefore, the court declared that the clause, as drafted, was abusive as it unduly prevented passengers from carrying essential items such as identity documents or cash on board.

Comment

Once again, the provincial audience's reasoning highlights the need to draft terms and conditions addressed to consumers in the clearest and most transparent way possible.

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