

Úrskurður Samgöngustofu nr. 48/2023 vegna kvörtunar um neitun á fari með flugi Iberia nr. IB3661 þann 14. september 2022.

I. Erindi

Þann 21. október 2022 barst Samgöngustofu (SGS) kvörtun frá ABC (kvartendur). Kvartendur áttu bókað far með flugi Iberia nr. IB3661 frá Keflavík til Madrídará. Kvartendum var neitað um far með fluginu.

Í kvörtuninni kemur fram að kvartendur áttu bókað far með flugi Iberia nr. IB3661 þann 14. september frá Keflavík til Madrídará. Upphaflegur áætlaður brottfaratími flugsins var kl. 01:40. Raunverulegur brottfaratími var kl. 03:42, þ.e. seinkun á brottför sem nemur tveimur klukkustundum og tveim mínútum.

Iberia tilkynnti kvartendum um seinkun á brottför flugsins. Kvartendur mættu til innritunar tímanlega en þegar þeir ætluðu að fara í gegnum öryggisleit var búið að loka henni. Kvartendur fóru ekki strax í öryggisleit að innritun lokinni.

Kvartendur fara fram á staðlaðar skaðabætur og endurgreiðslu kostnaðar á grundvelli reglugerðar EB nr. 261/2004 um sameiginlegar reglur um skaðabætur og aðstoð til handa farþegum sem er neitað um far og þegar flugi er aflýst eða mikil seinkun verður, sbr. reglugerð nr. 1048/2012 um skaðabætur og aðstoð til handa farþegum í flugi sem neitað er um far og þegar flugi er aflýst, seinkað eða flýtt eða vegna tapaðs farangurs eða tjóns á honum.

II. Málavextir og bréfaskipti

Við meðferð málsins sendu kvartendur til SGS kvörtunina sem þeir sendu til Iberia vegna neitunar á fari með flugi nr. IB3661 þann 14. september 2022. Í kvörtuninni sagði m.a.:

The flight IB3661 had a planned departure time from Keflavik airport at 01:40 of 14th September of 2022 with planned boarding time between 01:10 and 01:25 of the same day according to the boarding pass.

Hours earlier from the planned departure time, the passengers mentioned above were notified that the flight IB3661 was delayed and the updated departure time of the flight was 03:10 impacting on a total of 1.5h of delay from the initial departure time at 01.40. Once the passengers completed the check-in and got the boarding passes they decided to stay in the airport in the resting area prior to the security screening due to the delay communicated to them. That delay was announced via the airport screens with the new departure time at 03:10.

Kvörtunin var send Iberia til umsagnar þann 24. október 2022. Í svari Iberia sem barst þann 26. október fjallaði kom eftirfarandi fram:

According to the laws that regulate a situation of denied boarding, they do not consider that this occurs when there are justified reasons for not accepting a passenger to the flight, such as the presentation to the flight outside the check-in deadline or boarding, incorrect tickets or reservations, lack of travel documents or security or health reasons. Passengers denied boarding due to any of these circumstances, as was the case of Mr. Campos Molano and the rest of the passengers on the party, are not entitled to any kind of compensation or assistance.

According to our records, flight IB3661 on September 14, 2022, left with available seats, so there was no overbooking situation either.

It should be noted that, according to the passengers' own account, the problem when accessing the boarding area was due to the closure of the Reykjavík Airport security controls, therefore, as it is a service provided and managed by the airport authority, our company is not responsible for its operation.

SGS sendi kvartendum umsögn Iberia þann 16. desember 2022. Í svári kvartenda sem barst þann 23. desember kom eftirfarandi fram:

After receiving the email from ICETRA on December 16, 2022 which included the response from Iberia Express dated on October 26, 2022, we [the affected passengers] consider that the Iberia Express' response is fully lack of reasonable arguments as we remark in the following paragraphs:

Iberia Express' response #1

“According to the laws that regulate a situation of denied boarding, they do not consider that this occurs when there are justified reasons for not accepting a passenger to the flight, such as the presentation to the flight outside the check-in deadline or boarding, incorrect tickets or reservations, lack of travel documents or security or health reasons. Passengers denied boarding due to any of these circumstances, as was the case of Mr. Campos Molano and the rest of the passengers on the party, are not entitled to any kind of compensation or assistance”.

Passengers' response #1

We did not comply with any of the mentioned reasons by Iberia Express. As we perfectly described in the first claim report filed to ICETRA and we reproduce in this passenger' response:

- We were present in the security screening before the Iberia Express check-in time, which it was between 01:10 – 01:25 and we were there at 01:05.
- We did not hold incorrect tickets or reservations as Document #3 (attached to first claim report filed to ICETRA) demonstrates.
- We did hold travel documents (i.e. passports and boarding pass).
- We did not present any health reasons (i.e. we held COVID-19 passport).
- We did not present any security circumstances (i.e. non-permitted baggage).

Additionally, Iberia Express response #1 is only lip service as do not provide any evidence.

Iberia Express' response #2

“According to our records, flight IB3661 on September 14, 2022, left with available seats, so there was no overbooking situation either”.

Passengers’ response #2

Nothing to comment as we did not claim any overbooking issue. In any case, it is clear that flight IB3661 left with available seats as we (the three passengers affected by this claim) and other seven unrelated passengers were not able to board the flight because the reasons object of this matter. Iberia Express’ response #3

“It should be noted that, according to the passengers’ own account, the problem when accessing the boarding area was due to the closure of the Reykjavík Airport security controls, therefore, as it is a service provided and managed by the airport authority, our company is not responsible for its operation”.

Passengers’ response #3

We agree that the matter to not been able to board the flight was because the security screening was closed once we arrived it (01:05 am) as we duly described in the first claim report filed to ICETRA.

Additionally, we do not comment on Iberia Express argument related to *“Reykjavík Airport security controls, therefore, as it is a service provided and managed by the airport authority, our company is not responsible for its operation”* because it is a regulatory issue that is beyond our knowledge.

Nevertheless, Iberia Express omits relevant evidence, which is the Document #5 attached to first claim report filed to ICETRA.

Document #5 provides response from Isavia in this matter mentioning the following *“According to the procedure the ground handler servicing IB confirmed that the service could be closed and was therefore closed when you came to the security gate”.*

Even we do not comment which is responsible for Keflavik security screening, it is clear that ground handler servicing IB (whose responsibility ultimately falls on Iberia Express) confirmed that the service [security screening] could be closed even before all the passengers passed the control at 01:05.

Therefore, Iberia Express’ response #3 is, once again, lack of reasonable arguments based on the evidence provided by us.

III. Forsendur og niðurstaða Samgöngustofu

Samgöngustofa fer með eftirlit með réttindum neytenda samkvæmt ákvæðum XVI. kafla laga um loftferðir nr. 80/2022 og skal grípa til viðeigandi aðgerða til að tryggja að réttindi farþega séu virt, sbr. 2. mgr. 207. gr. laganna.

Farþegar og aðrir sem eiga hagsmuna að gæta geta skotið ágreiningi er varðar fjárhagslegar kröfur og einkaréttarlega hagsmuni samkvæmt ákvæðum XVI. kafla laga um loftferðir til Samgöngustofu, sbr. 1. mgr. 208. gr. laganna. Náist ekki samkomulag eða sátt skal Samgöngustofa skera úr ágreiningi með úrskurði.

Samkvæmt 1. mgr. 204. gr. sömu laga er flugrekanda skylt að veita farþegum aðstoð og eftir atvikum greiða þeim bætur, í samræmi við þau skilyrði sem sett eru í reglugerð sem ráðherra setur, ef: tjón hefur orðið vegna tafa á flutningi, farþega er neitað um far, flugi er aflýst eða þegar flutningi er flýtt.

Um réttindi flugfarþega er fjallað í reglugerð EB nr. 261/2004 um sameiginlegar reglur um skaðabætur og aðstoð til handa farþegum sem neitað er um far og þegar flugi er aflýst eða mikil seinkun verður, sem var innleidd hér á landi með reglugerð nr. 1048/2012. Samkvæmt 3. gr. reglugerðar nr. 1048/2012 er Samgöngustofa sá aðili sem ber ábyrgð á framkvæmd reglugerðarinnar samanber 16. gr. reglugerðar EB nr. 261/2004.

Kvartendur lögðu fram kvörtun vegna neitun á fari með flugi nr. IB3661 þann 14. september 2022. SGS hefur skoðað hvort að kvartendur eigi rétt á skaðabótum vegna neitunar á fari á grundvelli reglugerðar EB nr. 261/2004.

Í 3. gr. reglugerðar EB nr. 261/2004 er fjallað um gildissvið reglugerðarinnar. Í a-lið 2. mgr. 3. gr. er tilgreind sú skylda að farþegum beri að innrita sig eigi síðar en flugrekandi mælir fyrir um, eða 45 mínútum fyrir auglýstan brottfarartíma ef engin innritunartími er tilgreindur. Samkvæmt gögnum málsins mættu kvartendur tímanlega til innritunar en fóru ekki strax í gegnum öryggisleit. Þegar kvartendur ætluðu að fara í gegnum öryggisleit var búið að loka öryggisleitinni og kvartendur mættu því ekki til byrðingar fyrir flug þeirra til Madrídar. Í máli þessu fengu kvartendur sannanlega skilaboð sem tilkynntu um breyttan brottfarartíma og áætlanir um seinkun á brottför. Hins vegar fengu kvartendur ekki tilkynningu um breyttan innritunartíma og er það það ávallt á ábyrgð farþega að mæta tímanlega til innritunar og byrðingar í samræmi við samningsskilmála flugrekanda. Í samningsskilmálum Iberia segir:

After checking in, it is absolutely essential for all passengers—whether travelling with luggage or not—to be at the boarding gate of their flight as early as possible. The boarding gate closes 20 minutes prior to departure.

Flights cannot be delayed due to the failure of passengers to arrive on time. Should passengers arrive late, we are entitled to enforce our "no show" policy and fees.

The boarding cut-off time is the minimum time prior to the official scheduled departure time of the flight stated on the coupon, by which time you must have checked in for your flight, dropped off your baggage and gotten your boarding card. Once this time has passed, the boarding gate will close. The carrier incurs no liability whatsoever for not allowing you to board the flight if you show up when the boarding gate is already closed.

Með hliðsjón af framangreindu telur SGS að þar sem að kvartendur fengu ekki tilkynningu um breyttan innritunartíma hefðu þeir átt að mæta til innritunar og byrðingar á upprunalegum og tilkynntum innritunartíma óháð skilaboðum sem gáfu til kynna að brottför flugsins hefði seinkað. Þar sem kvartendur mættu of seint til að fara í gegnum öryggisleit er ekki um bótaskylda neitun á fari að ræða. Ber því að hafna kröfum kvartenda.

Úrskurðararorð

Kröfum kvartenda um staðlaðar skaðabætur og endurgreiðslu á útlögðum kostnaði úr hendi Iberia samkvæmt 3. mgr. 4. gr. reglugerðar EB nr. 261/2004 sbr. reglugerð 1048/2012, er hafnað.

Samkvæmt 4. mgr. 208. gr. laga um loftferðir nr. 80/2022 verður úrskurði Samgöngustofu ekki skotið til annarra stjórnvalda. Þegar úrskurður hefur verið kveðinn upp geta aðilar lagt ágreining sinn fyrir dómstól á venjulegan máta.

Reykjavík, 23. mars 2023.

Ómar Sveinsson

Andri Rúnar Gunnarsson