

**Úrskurður Samgöngustofu nr. 148/2023 vegna kvörtunar
um aflýsingu á flugi Iberia nr. IB3661
þann 25. september 2022.**

I. Erindi

Þann 15. mars 2023 barst Samgöngustofu (SGS) kvörtun frá A (kvartandi). Kvartandi átti bókað far með flugi Iberia (IB) nr. þann 25. september 2022 frá Keflavík til Madrídar og fluginu var aflýst.

Við meðferð málsins endurgreiddi IB kvartanda flugfargjaldið.

Kvartandi fer 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

Kvörtunin var send IB til umsagnar þann 17. mars 2023. Í svari IB sem barst þann 24. mars 2023 kom eftirfarandi fram:

On this occasion, we were forced to cancel the flight due to the adverse weather conditions registered that day in Reykjavik. As it was an event outside our responsibility, European Community Regulations establishes that no compensation is due.

According to our records, [...] contacted our Contact Center upon arrival at the airport and requested the refund of her ticket. We tried to offer a new flight but passenger refused this possibility and asked for refund. Finally we were able to recover flight IB 3661, which operated on September 26th, 2022.

As the air carrier tried to provide the assistance required by Article 8, but the passenger has nonetheless made her own re-routing arrangements, then the air carrier may conclude that it is not responsible for any additional costs the passenger has incurred and may decide not to reimburse them.

The ticket was reimbursed on September 24th, 2022 since [...] did not accept the protection flight.

SGS sendi kvartanda umsögn IB þann 24. mars 2023. Í svari kvartanda sem barst þann 20. júní 2023 kom eftirfarandi fram:

I apologize for the delay in my response, as I only recently came across your email. I have been informed by AESA that they have redirected the complaint to your department. Iberia has consistently resorted to spreading falsehoods and shorts answers, with me with the consumer office and AESA, and now it appears they are doing the same with you. Allow me to present the facts as they occurred.

In the early hours of September 25th, I had a return flight to Spain booked with Iberia. However, that flight was canceled, and we only became aware of this through the airport screens, as Iberia

took more than 5 hours to contact us. They simply sent an SMS stating the flight had been canceled. We approached the counter where a man was handling the canceled flights, and his response was that they would provide us with a hotel but had no information about the next available flight. Upon receiving this information, I decided to call Iberia, and their response was highly inconsistent and contradictory. Initially, they stated that the flight had been canceled due to technical issues, and there was a flight later that night on which they would rebook us. However, they later claimed that all seats were taken, and the next available flight to Spain would depart in four days. Considering my work obligations the following day, I could not afford to spend an extra four days or more in Iceland.

When I mentioned that there was another flight with Vueling, I asked them to rebook both me and my companion. However, they refused, providing the excuse that they encountered difficulties in reassigning us with Vueling. Their only solution was for us to pay for the Vueling tickets ourselves and then file a claim to recover the cost of the return ticket we had already paid to Vueling. They assured us that the reimbursement would be processed without any issue. To our surprise, while standing in line to board the Vueling flight, other passengers informed us that Iberia had rebooked their flights with Vueling at no additional cost.

I kindly request that you understand my frustration. I have had to file complaints in multiple places, and I see my rights being violated while being labeled as a liar. Imagine the difficulty of being stranded in a foreign airport where you don't speak the language, while the airline keeps changing their version of events, and "proposed" solution was to send us to a hotel amidst an impending snowstorm, with no clear date for our return flight.

This return flight has undoubtedly marred my visit to your beautiful country, as we ended up taking over 10 extra hours to return, going through Barcelona and then Madrid, and on top of it all, our luggage was lost. Furthermore, Iberia continuously lies without providing any evidence that they attempted to rebook us. What sense does it make for me to decline their offer to manage my return and prefer to stay in Iceland without knowing when I can return, while paying an extra 400 euros for another ticket because I urgently needed to be back in Madrid for work the following day?

I kindly ask that you take into account everything I have mentioned and all the information I have provided, including the payment receipts for the Vueling tickets and my complaints against Iberia. I have been dealing with this company for over six months, which has caused me immense stress and anxiety due to the injustice of this situation. I am extremely grateful for any assistance and cooperation you can provide, as you are the only ones who have reached out to inquire about the situation instead of redirecting me elsewhere.

Please accept my apologies for any spelling mistakes, as English is not my first language.

I am adding the documents which include a bank receipt to Vueling for the cost of the two tickets I had to pay to Vueling (approximately 457 per person, and I'm only asking for one), the responses from Iberia (in Spanish), the complaints filed with the Consumer Office, AESA, and Iberia. The Vueling tickets, Iberia tickets, and my ID are also included.

Þann 27. september 2023 sendi SGS erindi til IB. Í erindinu var óskað eftir staðfestingu á að IB hafi upplýst kvartanda um aflýsingu flugsins og að honum hafi verið boðið nýtt flug. Í svari IB sem barst þann 29. september 2023 kom eftirfarandi fram:

In response to your request received on September 26th, please find attached accreditation of the mail sent to the passenger informing the flight I23661 on September 25th from KEFLAVIK to MADRID was rescheduled to depart on September 26th at 01:40 due to adverse weather conditions at the departing airport.

Þann 18. október 2023 sendi SGS svar IB til kvartanda. Í svári kvartanda sem barst þann 26. október 2023 kom eftirfarandi fram:

Upon receiving the SMS to which Iberia referred, we contacted the airline directly, and it was at that moment that we were informed that no flights to Madrid were scheduled until at least the 28th. Furthermore, the 1:40 a.m. flight on the 26th was also canceled. As you can verify in the following link, our flight was indeed canceled, and the next flight operated by Iberia did not take place until the 28th.

Madrid-ISL As you can see in the image, the flight from Madrid to Iceland was canceled, which they told us was going to be our plane, and it never made it to Iceland. As a result, our flight on the 25th from Iceland to Madrid was also canceled until further notice.

ISL-Madrid In the following image, you can verify that Iberia did not operate another flight from Iceland to Madrid until the 28th, not the 26th, as they claim there was a flight.

Since I needed to return to work immediately, I expressed my inability to wait for an additional 3-4 days in an Icelandic hotel, and moreover, with no guarantee that it wouldn't be further delayed. It was at this point that Iberia instructed me to purchase a ticket on Vueling, citing internal company policies between Iberia and Vueling that made direct booking more complex. They assured me that once I arrived in Madrid, they would refund the cost of this ticket without any issues, as it was their responsibility.

I understand that I am repeating these points, but I want to ensure that all the relevant information is clear:

- Initially, we received highly confusing information, with Iberia stating that the issue was due to technical problems and now claiming it was due to meteorological issues, and that they won't take responsibility, despite other airlines operating on the same night.
- They did not offer us a viable option to return with them until several days after the original flight date, and I reiterate, with no guarantee or set date.
- They misled us by asserting that they could not directly purchase Vueling tickets, even though later we observed them assisting other passengers with this process.
- After submitting a complaint directly to Iberia, they summarily denied any responsibility without providing a clear explanation and without even contacting us, highlighting their lack of humanity and concern for their passengers.
- When escalating the matter to the relevant mediation authorities, they have consistently made false statements, initially claiming that they offered to rebook us on Vueling and we declined, and now asserting that they would rebook us on a flight the following day, which is easily disproven with the information available in the link I provided, showing that the next flight did not operate until the 27th.

I would like to emphasize the distress caused by Iberia's false information, as it has led to significant anxiety and stress, first by leaving us stranded at the airport, and later by making us appear as liars. This is something that should not be done to individuals. Additionally, it has resulted in a loss of valuable time for you, as you are not only attempting to mediate, but also receiving false and erroneous information from Iberia. I am clear in my decision that I will never fly with this company again. It is essential to have the decency to acknowledge that you are dealing with human beings, something that Iberia appears not to understand or care about.

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.

Um aflýsingu flugs og þá aðstoð sem flugrekandi skal veita í slíkum tilvikum er fjallað um í 5. gr. reglugerðar EB nr. 261/2004. Samkvæmt 1. mgr. 5. gr. skal farþegum ef flugi er aflýst, boðin aðstoð af hálfu flugrekandans í samræmi við 8. gr. og a-lið 1. mgr. 9. gr. og 2. mgr. 9. gr. Í 8. gr. reglugerðarinnar er fjallað um rétt farþega til þess að fá endurgreitt eða að fá flugleið breytt. Þar kemur nánar tiltekið fram að flugfarþegar eigi eftirfarandi kosta völ; að fá innan sjö daga endurgreitt að fullu upprunalegt verð farmiðans, að breyta flugleið, með sambærilegum flutningsskilyrðum, til lokaákvörðunarstaðar eins fljótt og auðið er, eða að breyta flugleið, með sambærilegum flutningsskilyrðum og komast til lokaákvörðunarstaðar síðar meir.

Auk framangreinds gildir að sé flugi aflýst eiga farþegar rétt á skaðabótum frá flugrekanda í samræmi við 7. gr., hafi ekki verið tilkynnt um aflýsingu á þann hátt sem mælt er um í i) – iii) liðum c-liðar 1. mgr. 5. gr. Þetta gildir nema flugrekandi geti sýnt fram á að flugi hafi verið aflýst af völdum óviðráðanlegra aðstæðna sem ekki hefði verið hægt að afstýra jafnvel þótt gerðar hefðu verið allar nauðsynlegar ráðstafanir, sbr. 3. mgr. 5 gr. reglugerðarinnar.

Loftferðalögum nr. 80/2022 og reglugerð EB nr. 261/2004 er ætlað að tryggja ríka vernd fyrir farþega sem neytendur flugþjónustu. Meginreglan samkvæmt reglugerð EB nr. 261/2004 er réttur farþega til skaðabóta skv. 7. gr. reglugerðarinnar sé um að ræða aflýsingu eða mikla seinkun á brottfarartíma flugs og ber að skýra undantekningarreglu 3. mgr. 5. gr. reglugerðarinnar þröngt, sbr. dóm Evrópudómstólsins frá 22. desember 2008, í máli C-549/07 Friederike Wallentin-Hermann v Alitalia.

Kvartandi átti bókað far með flugi Iberia (IB) nr. þann 25. september 2022 frá Keflavík til Madridar og var fluginu aflýst.

Óviðráðanlegar aðstæður á grundvelli reglugerðar EB nr. 261/2004.

Eitt álítaefni þessa máls er hvort að aflýsingu á flugi kvartanda megi rekja til óviðráðanlegra aðstæðna í skilningi 3. mgr. 5. gr. reglugerðar EB nr. 261/2004. Flugrekandi í máli þessu hefur lagt fram gögn

sem sýna fram á að erfiðar veðuraðstæður hafi verið fyrir hendi á Keflavíkurflugvelli. Á upphaflega áætluðum komutíma fyrra flugs sömu vélar til Keflavíkur frá Madrid sem síðar átti að framkvæma flug kvartanda. Að jafnaði falla slæmar veðuraðstæður undir óviðráðanlegar aðstæður í skilningi 3. mgr. 5. gr. reglugerðarinnar sbr. einnig 14. inngangслиð reglugerðarinnar.

Sérfræðingur SGS í flugrekstrardeild, staðfesti veðurgögn IB og í svari hans sagði:

Það var rok og rigning í Keflavík frá kvöldi 24. sept. fram undir hádegi 25. sept. Á tímabili í kringum miðnætti sýnist mér vindáttin vera óhagstæð og gæti farið út fyrir hliðarvindstakmarkanir ef bremsuskilyrði eru ekki góð. Á þeim tíma var veðrið sem verst og ansi líklegt að það hafi farið yfir takmörk fyrir landingu/flugtak.

Með hliðsjón af framangreindu og svari sérfræðings flugrekstrardeildar SGS verður ekki séð að IB hafi getað komið í veg fyrir aflýsingu á flugi kvartanda sem kom til vegna aflýsingar á fyrra flugi vélarinnar sem síðar átti að framkvæma flug kvartanda, þ.e. flug IB3660 frá Madrid til Keflavíkur þann 24. september 2022.

Telur SGS því að rekja megí aflýsingu á flugi kvartanda til óviðráðanlegra aðstæðna sbr. 3. mgr. 5. gr. reglugerðar EB nr. 261/2004, sbr. reglugerð nr. 1048/2012. Eru skilyrði bótaskyldu skv. 7. gr. reglugerðarinnar því ekki uppfyllt og ber að hafna kröfu kvartanda um staðlaðar skaðabætur úr hendi Iberia.

Endurgreiðsla á útlögðum kostnaði á grundvelli reglugerðar EB nr. 261/2004.

Kvartandi gerir kröfu um að fá endurgreiddan mismun á fargjaldinu sem hann greiddi fyrir flutning til Madridar og því fargjaldi sem hann greidd síðar fyrir til að komast til Barselóna.

Samkvæmt 1. mgr. 8. gr., sbr. einnig 1. mgr. 5. gr. reglugerð EB nr. 261/2004 bar IB skylda til að bjóða kvartanda nýtt flug með sambærilegum flutningsskilyrðum, til lokaákvörðunarstaðar eins fljótt og auðið var eða við fyrsta hentugleika fyrir farþegann, með fyrirvara um sætaframboð.

Í gögnum málsins kemur fram að IB hafi þegar endurgreitt kvartanda flugfargjaldið fyrir hið aflýsta flug til Madridar. Jafnframt kemur fram að IB hafi boðið kvartanda nýtt flug til lokaákvörðunarstaðar næsta dag.

Í kafla 4.2. í útgefnum leiðbeiningum ESB um túlkun á reglugerð EB nr. 261/2004 frá 10. júní 2016 er kveðið á um eftirfarandi:

As a general principle, when the passenger is informed about the cancellation of the flight and is correctly informed on the available choices, the choice offered to passengers under Article 8(1) is to be made once. In such cases, as soon as the passenger has chosen one of the three options under Article 8(1)(a),(b) or (c), the air carrier no longer has any obligation linked to the other two options.

Samkvæmt gögnum málsins bauð IB kvartanda nýtt flug næsta dag, sbr. a-lið 1. mgr. 8. gr. og a-lið 1. mgr. 5. gr. reglugerðar EB nr. 261/2004, vegna aflýsingar á flugi nr. IB 3661 þann 25. september 2022. Kröfu kvartanda um endurgreiðslu kostnaðar er því hafnað.

Úrskurðarorð

Kröfu kvartanda um staðlaðar skaðabætur úr hendi Iberia samkvæmt reglugerð EB nr. 261/2004 sbr. reglugerð 1048/2012, er hafnað.

Kröfu kvartanda um endurgreiðslu á útlögðum kostnaði samkvæmt reglugerð EB nr. 261/2004, sbr. reglugerð nr. 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. Málshöfðun frestar ekki heimild til aðfarar skv. 6. mgr. 208. gr. laganna.

Reykjavík, 31. október 2023

Ómar Sveinsson

Andri Rúnar Gunnarsson