



REPUBLIC OF KENYA

IN THE NATIONAL CIVIL AVIATION ADMINISTRATIVE REVIEW TRIBUNAL

COMPLAINT NO. 1 OF 2018

STELLA KENDI GITONGA VS SKYWARD EXPRESS LIMITED

JUDGEMENT

This is a claim for refund of Air fare allegedly paid by the complainant to the respondent through their agent with the intention to travel to Mombasa. The complaint was filed in this court on 12/04/2018. The respondent filed their memorandum of response on 23/04/2018 in which they denied.

The appellant's case

The Appellant, Stella Kendi Gitonga, filed a complaint with National Civil Aviation Administrative Review Tribunal on 12th April, 2018 through a letter stating that she purchased two air tickets online from Alternative Airlines Travel Agent in the names of Stella Kendi Gitonga and Kenneth Murungi Gitonga intending to travel from Nairobi – Mombasa on 23rd March 2018 via Skyward Express Airline Ltd and paid Kshs. 32,000/- of which she was issued with E-tickets via email. On 21st March she called the airline to confirm the bookings and was asked for the E-ticket reference numbers and she gave JQX9K4, JQ999T but she was told the numbers were unknown to the airline. After being informed that those were not their reference numbers and being frustrated she made alternative travel arrangements and travelled to Mombasa via Jambojet on 23rd March 2018.

Upon her return she called skyward Express seeking refund of the ticket fare but was told that the booking was made for her two seats for travel on 23rd March, 2018 but she did not show up and hence the airline recorded the bookings as a “No-Show” case, of which according to the airline terms and conditions is un-refundable.

The prayer of the appellant is that the airline refunds her full fare since she was not able to travel and accused the airline for failing to properly advise her on her bookings.

The Respondents' Case

The respondent through their Advocates Kakai Mugalo & Company averred that their sole travel agent is Hahn Air Systems which is based in Germany and whose contract document was filed on 24th May 2018. They denied any direct business relationship with Alternative Airlines Travel Agents as a contracted sales agent for Skyward Airlines Express, in their memorandum of response at paragraph 2, but acknowledges in paragraph 3 that Alternative Airlines is registered in Hahn Air booking system. Their witness Jennifer Aswani who is a Skyward Airlines Reservations Manager in her statement filed on 25th May 2018 confirms that Mrs. Gitonga Stella Kendi and Mr. Murungi Kenneth Gitonga had booked tickets on 21st March for travel on 23rd March 2018 under reference A7J397 and AJ737H, but the travelers did not show-up for travel. She further states that fares for no-show cases are not refundable. This is also affirmed in the respondent's memorandum of response at paragraph 9 (ii). She avers that the complainant was to blame for failing to show up when the date approached and that she was also negligent that she did not provide the correct reference numbers and that is why they could not confirm her bookings. Dw1 the witness for the respondent also told the tribunal in her oral evidence that the maximum fare for that route is Kshs 8,500/= and therefore the only money that they may have received is Kshs 17,000/=.

The respondent's prayer is that the appellants claim be dismissed.

ISSUES:

The issues for determinations are: -

1. whether the complainant made any bookings with the respondents
2. whether the complainant made any payments"
3. whether the complainant made any cancellations
4. whether the complainant is entitled to a refund

Determination

1. whether the complainant made any bookings with the respondents

The complainant testified and told the tribunal that she made her booking with the respondent through alternative airlines on 21/3/2018 through the agent known as alternative airlines. The respondent witness Ms. Jeniffer Aswani told court that indeed there were two bookings made and that on the travel date two seats went free and a “No Show” was recorded. From these two confirmations by both parties it is not in doubt that bookings had been made, if bookings had not been made then definitely there would have been no reservations made.

2. Whether the complainant made any payments"

The complainant did not provide proof that she had made any payments to the defendants, we would have expected that she would have given us the payment slip if by bank, or mpesa transaction statement, none was given to us. However, it is the evidence of the complainant that she made payment and provided several email correspondences, of interest is the email sent from alternative airlines dated 22/03/2018 in which the airline confirms that payment had been done and that they were not refundable. Further the respondent also confirmed that the bookings were actually made and that could not have happened if the payment had not been received. It is therefore right from the evidence to conclude that payment was made to the airline by the complainant in as much as no proof was given.

3. Whether the complainant made any cancellations

The complainant told the tribunal that she made a cancellation via email however that email was not given to us, neither did the respondent confirm whether they had received any cancellation of the booking. It is therefore right to conclude that there was no proof of cancellation given to the tribunal.

4. Whether the complainant is entitled to a refund

This issue encompasses all the other three issues decided above. The complainant alleges that she made a booking which we have found that she did, we have also established that she made payment, the issue of contention lies on when she made enquires to the airline and she was told that those were not the reference numbers, and for that reason alone she was not able to travel and had to make alternative arrangements. The respondent’s arguments is that they first do not have any agreements with alternative airlines which was the booking agent, on the other hand they confirm that indeed they made bookings for the complainant, so the question that one asks is how did they book her if they did not have an agreement with alternative airlines, their own evidence is contradictory and it only allows one to make one conclusion that they are aware of the entity know as Alternative airlines.

Secondly the airline has a duty to inform the passengers of the correct booking numbers, the date of travel, the amount payable and the even confirm that the bookings have been done. That duty is not transferable to any other person. When the complainant provided JQX9K4 and JQ999T as references which were wrong that would have raised a red flag to the airline to make a follow up on who this customer is and give a proper response. It would appear that the airline dismissed the customer. It is a high time that airlines ought to move with technology and create room to its customers. We are aware that airlines operate under very stringent

timeframes, but these operations ought to be weighed as against the rights of the customers. In this case the airline was negligent in the manner in which they handled this particular customer on her bookings, had they confirmed their bookings she would have travelled, they ought to have gone out of their way to confirm and more so especially when she had called to confirm the bookings and they later realized that she was not coming to travel.

Having analyzed as above, it is our finding that the complainant has made out her case on a balance of probability and that the airline is to blame.

So how much is owed"

The complainant stated that she had paid Kshs 32,000/=. But provided no proof of this payment. The respondent on the other hand stated that the maximum fare on that route is Kshs 8,900/= per person translating to Kshs 17,800/=. Their witness however, told court that their agents can charge over and above that amount, again it is therefore probable that the agent would have charged more than Kshs 17,800/= for the two seats. In the circumstances we find that the complainant is entitled a refund of Kshs 17,800/= as per the respondent plus what the agent would have charged which we estimate at Kshs 5,000/=. The complainant has been coming to the tribunal and she is therefore entitled to costs which we shall assess at Kshs 10,000/=.

We therefore enter judgment for the claimant as follows:

Refund Kshs 22,800.00

Costs Kshs 10,000.00

Total Kshs 32,800.00

Orders accordingly

Dated Signed and delivered at Nairobi by the National Civil Aviation Administrative Review Tribunal on this 21st day of June, 2018

HON. Peter Muholi - Chairman

Kuria Waithaka - Member

Alice Awuor – Member

Eutyachus Karumba – Member

Patrick Ochieng - Member



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