

(2012) 05 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

NATIONAL AVIATION COMPANY OF INDIA LTD

APPELLANT

Vs

R K Agarwal

RESPONDENT

Date of Decision : 02-05-2012

Acts Referred:

Citation : 2012 0 NCDRC 285 : 2012 2 CPJ 554

Hon'ble Judges : ASHOK BHAN , VINEETA RAI J.

Final Decision : petition is disposed

Judgement

1. NATIONAL Aviation Co.of India Ltd. and others (hereinafter referred to as the "Petitioner ") have filed this revision petition against the order of the State Commission in Appeal No.518 of 2007 which had upheld the order of the District Forum in favour of R.K. Agarwal and others (hereinafter referred to as the "Respondents ") who were original complainants before the District Forum.

2. THE facts of the case are that Respondents/Complainants had purchased 10 tickets for Rs.17,884/- from Petitioner/Airlines for travel from Delhi to Indore by Flight No.7134 departing on 24.11.2002 to attend a family function as also a business conference. However, when the Respondents reached the Airport, they were told by the officials of the Petitioner/Airlines that only some of the 10 passengers can be accommodated on the scheduled flight and the remaining passengers would be accommodated in another flight on the next date. Since the Respondents had planned to visit Indore for a specific function which required their travelling together as a family group, they did not board that flight and thereafter getting no sympathetic response to their grievance to refund their money from the Petitioner/Airlines, Respondents filed a complaint before the District Forum on grounds of deficiency in service and requested that Petitioner/Airlines be directed to pay Respondents, Rs.17,884/- along with interest 24% per annum, Rs.10 lakhs towards the damages for mental agony and harassment and Rs.2,000/- as litigation costs. Petitioner on being served admitted that the Respondents did have 10 confirmed tickets but stated that since Respondents arrived only 18 minutes prior to the departure of the flight instead of the

statutory 30 minutes during which time 3 wait-listed passengers were accommodated, it was not possible to accommodate all the 10 Respondents on this flight. However, Petitioner/Airlines managed to issue 9 boarding passes and also stated that Respondents were assured that the remaining one passenger would be put on a flight to Indore the next day but they declined the offer. There was therefore, no deficiency in service on the part of the Petitioner/Airlines since in "No Show " cases refunds are not entertained and in fact it was the Respondents who erred in not reaching the Airport before the stipulated time for boarding the flight.

3. THE District Forum allowed the complaint and directed the Petitioner/Airlines to return the air fare including all charges and taxes amounting to Rs.17,884/- as well as Rs.3,000/- to each Respondent toward compensation and litigation cost within a period of 30 days from the date of order.

4. AGGRIEVED by this order, Petitioner/Airlines filed an appeal before the State Commission which dismissed the appeal by observing as follows: "We have deprecated the practice of the airlines to refuse boarding of the passengers with confirmed status of the ticket even if they report 1/2 hour before scheduled time for security purpose etc. This amounts to unfair trade practice as on the one hand they refuse to refund the amount of tickets to those passengers who did not report in time and on the other hand allow the other passengers from the waiting list to travel by the same, thereby ending up with double amount for one seat. It amounts to becoming unjustly rich. "

Hence, the present revision petition. Counsel for both parties made oral submissions. Proxy Counsel for Petitioners vehemently argued that the Fora below erred in concluding that there was deficiency in service on the part of the Petitioner/Airlines because as per the Tariff Manual dealing with the various terms and conditions of airlines tickets, it is clearly stated in Section 5.3 under the heading "No Show " that passengers who fail to report 30 minutes before the scheduled time of departure will not be issued boarding passes and will also not be entitled to any refund except PSF and IATT. The 10 passengers (Respondents) who were admittedly informed about the two hours delay in the flight, reached the Petitioner 's ticket counter just 18 minutes prior to the departure of the flight by which time, 3 waitlisted passengers were accommodated. Despite this, Petitioner/Airlines managed to issue boarding passes to 9 of the Respondents with the assurance that the remaining Respondent would be accommodated in next day 's flight. Respondents, however, decided not to travel. Since, it was Respondent who violated the terms and conditions as stated above, there was no deficiency in service on Petitioner 's part and State Commission erred in making adverse observations against the Petitioner/Airlines of unfair trade practice whereas Petitioner/Airlines did their best to accommodate Respondents on flight though they had violated the terms and conditions of the tickets, by reaching late.

5. COUNSEL for Respondent on the other hand stated that the Fora below after

taking into consideration all the facts and circumstances of the case had rightly concluded that there is clear deficiency in service and unfair trade practice as a result of which the Respondents had to miss an important function.

6. WE have considered the submissions made by the learned Counsel for both parties and have gone through the evidence on record. The fact that Respondents had purchased 10 air tickets from the Petitioner/Airlines is not in dispute. It is also on record that as per the Tariff Manual applicable to passengers on flights, they are required to check-in at least half an hour before the flight which they failed to do. Under these circumstances, we are of the view that Petitioner/Airlines was justified in accommodating some waitlisted passengers a few minutes prior to the flight. We also note that 9 of the 10 Respondents were issued boarding passes even though they had arrived after the stipulated time. We cannot, therefore, uphold the orders of the Fora below that Petitioners were guilty of any deficiency in service. However, keeping in view certain extenuating circumstances; namely, that the flight did get delayed by two hours which could have caused some confusion as also the fact that Respondents because of marginal delay did miss an important family function, we are inclined to uphold the order of the Fora below directing the Petitioner/Airlines to refund the ticket amount to Respondents. However, since as stated earlier, there was no deficiency in service on the part of the Petitioner/Airlines, there is no justification in awarding Rs.3,000/- to each Respondent towards compensation and costs and this part of the orders of the Fora below is set aside. To sum-up, the order of the Fora below directing the Petitioner/Airlines to refund Rs.17,884/- to the Respondents being cost of the tickets is upheld. However, since there was no deficiency in service on the part of Petitioner/Airlines, award of Rs.3,000/- to each of the Respondents towards costs and other expenses is set aside.

7. THE revision petition is disposed of on the above terms.