

Chicago Court Rules Montreal Convention Preempts an Airfare Class Action for Weather-Cancelled Flights

Alert

01.21.2021

By Roy Goldberg

In an [opinion issued on January 15, 2021](#), the Circuit Court for Cook County, Illinois dismissed an attempted class action lawsuit seeking refunds for flights canceled by Interjet Airlines.

The plaintiff claimed that her January 30, 2019 flight from Chicago to Mexico was cancelled because of the Polar Vortex that brought sub-zero temperatures into the area, and that she chose to buy a ticket on another airline rather than fly on Interjet's next available departure, which was five days later. The plaintiff asserted that Interjet had agreed in its contract of carriage to refund the airfare for a flight that was cancelled, even due to poor weather. The proposed class was to consist of all "persons in the United States who" in the last decade "(1) purchased an airplane ticket for an Interjet flight originating in the United States; (2) which was subsequently cancelled; (3) who refused Interjet's alternative transportation options; and (4) were not offered a refund equal to the fare and charge paid or a credit for future travel."

The state court judge granted summary judgment for Interjet, ruling that the 1999 Convention for the Unification of Certain Rules for International Carriage by Air (the "Montreal Convention") preempted and barred the plaintiff's claim and putative class action. The Convention applied to the plaintiff's claim for breach of contract because her flight to Mexico was international. In addition, Article 19 of the Convention applied because the plaintiff was essentially complaining about a "delay" in air transportation. Article 19 states: "The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures."

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The plaintiff argued that Article 19 did not apply because of a narrow exception to application of Article 19 where the airline has engaged in “complete nonperformance” of its contractual obligations. However, “complete nonperformance” typically occurs when an airline goes out of business or strands passengers with no effort to re-accommodate them. By contrast, Interjet rescheduled the plaintiff to fly five days later. The plaintiff’s decision to refuse that offer and buy a ticket on a different carrier was her own decision, and it did not somehow create an obligation on Interjet to refund her airfare, or to pay any other damages. The court ruled that the plaintiff failed to allege the existence of “complete nonperformance” of the relevant contract by Interjet, and, therefore, the Montreal Convention applied and preempted the plaintiff’s claim.

The key lesson from this case is to remember that the Montreal Convention exists and protects international airlines against attempted class actions relating to airline flights that are cancelled or delayed where, as here, the airline acted reasonably under the circumstances.

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