Case No: HQ05X03112

Neutral Citation Number: [2006] EWHC 1566 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

29th June 2006

Before:

THE HON. MR JUSTICE EADY

– –

Between:

Raphael Wiseman	**Claimant**
−and −	
Virgin Atlantic Airways Ltd	**Defendant**

– –
– –

The Claimant appeared in person
Katherine Howells (instructed by **Clyde** &**Co) f**or the **Defendan**t

Hearing date: 13 June 2006

– –

Judgment

The Hon. Mr Justice Eady:

1 The Claimant is Dr Raphael Wiseman, who sues Virgin Atlantic Airways Ltd for breach of contract. He had purchased a return ticket from Gatwick Airport to Port Harcourt, in Nigeria, for him to fly out on 19 April and to return on 13 May 2004. Unfortunately, as he told me, when he came to present his return ticket to members of the Defendant's staff at Port Harcourt on the appointed day, he was not permitted to board.

2 It seems that one of the staff asked him for a bribe to enable him to board the aircraft which he refused to give, whereupon he was accused of having a fake passport. He gave evidence also to the effect that he was ridiculed by various members of the Defendant's staff and accused of being a criminal.

3 Dr Wiseman had been accompanied to the airport by a group of friends from his church (referred to, originally in paragraph 9 of the Particulars of Claim, as his "entourage"). He claims that he suffered embarrassment and loss of face because they, or some of them, heard the accusations made against him. He does not, however, appear to have made a claim in defamation as such; indeed this would not have been possible for a number of reasons, not least because these proceedings were launched well over a year after the relevant allegations were made and they were, in any event, published outside the jurisdiction of this court. Nonetheless, Dr Wiseman has sought to include this head of damage, among others, as part of his claim in contract.

4 Eventually, Dr Wiseman was permitted to return to London on a flight leaving on 25 May 2004, after presenting himself regularly at the Defendant's premises and seeking to overcome their reluctance. He undoubtedly suffered inconvenience and expense as a result of the Defendant's failure to honour its return ticket. Indeed, according to his evidence, he was treated appallingly. Moreover, none of his account of these events was actually challenged in cross−examination, and the Defendant has always from the outset admitted breach of contract.

5 The only dispute before me was as to the quantification of Dr Wiseman's compensation. It is clear that the law permits him to recover damages for breach of contract on a strictly limited basis, and in accordance with long established principles, despite the humiliation and embarrassment he felt. I am concerned with assessing, so far as possible, the actual financial loss he suffered as a result of the breach. The burden naturally remains on him throughout to establish each head of claim as being recoverable, as a matter of law, and to prove the extent of his loss in respect of each item.

6 Dr Wiseman is claiming £19,999 plus interest, whereas the Defendant puts his recoverable loss including interest at just over £2,300. Why a case of this sort should be in the High Court is not clear, but it would serve no purpose at this stage to pursue the point.

7 Submissions were directed to the losses claimed in accordance with various categories. The only category accepted as legitimate by the Defendant is that described as "the Claimant's expenses". These include various items which the Defendant has acknowledged, in principle, as being recoverable (although some minor points were taken as to the figures):

i) The cost of reasonable hotel accommodation during Dr Wiseman's enforced stay in Nigeria from 13 to 25 May 2004;

ii) Reasonable restaurant bills for the same period;

iii) Taxi fares in and out of Port Harcourt as he was trying to make his

arrangements for his return to England;

iv) Postage and telephone bills.

8 There were quibbles about whether Dr Wiseman could have obtained cheaper rooms at the hotel, but I accept that he made enquiries as to what was available and, in effect, took what he was given. His approach in the witness box was effectively that, as a "beggar", he was not in a position to be a chooser. I do not consider his room rate was unreasonable in all the circumstances and therefore will allow his claim for hotel accommodation. When converted from Nigerian currency this amounts to £867.77.

9 The restaurant bills come to £347.46. There were some misunderstandings and haggling about certain items, which I need hardly rehearse at this stage, but the figure claimed has been agreed.

10 In respect of taxi fares the Defendant concedes £834.71. This corresponds to the total for which receipts have been produced. Additionally, I award £75 as the reasonable cost of postage and £22.30 for telephone calls.

11 The next category to be considered is that of the expenses incurred by Dr Wiseman's former fiancée. She is MS Nicole Brandt who lives in Germany. Dr Wiseman's case is that the engagement was broken off because of his enforced stay in Nigeria, and that he had to reimburse certain expenses which she incurred during that period. His plan had been to meet her at Stansted on her arrival on 14 May 2004.

12 This is all most unfortunate, of course, but I am satisfied that none of these heads of claim is recoverable against the Defendant. MS Howells advanced a number of basic reasons. The expenses were incurred, first of all, by MS Brandt rather than Dr Wiseman, and she had no contractual relations with the Defendant herself. I accept that Dr Wiseman chose to reimburse her for at any rate part of the cost claimed but that factor does not render the sums recoverable against the airline. The fact that MS Brandt incurred expenses during her limited stay in England (whether reimbursed or not) cannot be said to flow from the Defendant's breach. It would in any event be too remote.

13 My attention was drawn to certain passages in *Chitty on Contracts* (29th edn) at para. 26−044 *et seq.* The principles relating to remoteness, and the public policy considerations underlying them, are long established and well known. There is no need for detailed discussion. I merely record that reliance was placed, in the course of submissions, on a number of authorities, including *Hadley* **v** *Baxendale* (1854) 9 Exch 341; *Victoria Laundry (Windsor) v Newman Industries* [l949] 2 KB 528; *The Heron II* [1969] 1 AC 350; and *Hobbs* v *LSW Railways* (1875) LR 10 QB 111, 117−1 19 (Cockburn CJ), 122 (Mellor J).

14 I am not satisfied on the balance of probabilities, in any event, that the Defendant's breach of contract actually caused the relationship with MS Brandt to break down but, even if it did, there could be no claim for distress or "loss of society": see e.g. *Chitty* at para 26−073; *McGregor on Damages* at para. 3−032; *Watts v Morrow* [1991] 1 WLR 1421.

15 There is also a claim for the expenses of the "entourage" who were held up in Port Harcourt and had to stay the night because it would not have been safe for them to return home until the next day. I am afraid that I cannot see any legal basis for awarding the Claimant any sum to take account of these matters. It would be too remote.

16 The Claimant's non−pecuniary losses, as claimed, are also irrecoverable. I have already mentioned the defamation aspect. It is long established that compensation for injury to reputation and/or hurt feelings is not recoverable in a claim for breach of

contract, save in very exceptional circumstances, none of which is of relevance here: see e.g. *Addis v Gramophone Co* [1909] AC 408; *Malik v Bank of Credit & Commerce International SA* [l998] AC 20; *Jarvis v Swans Tours Ltd* [l973] QB 233.

17 There is a claim specifically in respect of Dr Wiseman's mental trauma. I can well believe that some mental distress was caused by the way he was treated, but again there is no authority to support the proposition that this is to be reflected in damages for breach of a contract of this kind. That is the primary point. There was another point canvassed in argument concerning an order made by Master Fontaine on 2 June 2006. Dr Wiseman was not to be allowed to pursue this aspect of the claim unless he provided written authority to the Defendant for access to his GP records by 4pm on 7 June. He posted the authority, but it did not arrive in time. This is of less significance, however, than the basic legal principle. Even if the authority had been provided more promptly, it would still not have overcome this fundamental problem.

18 There is a qualification to that principle which does not apply to Dr Wiseman's case. It is possible to recover for mental suffering if it is directly related to physical inconvenience or discomfort. Here none is pleaded; nor could it be in the light of the arrangements already described for Dr Wiseman's accommodation, subsistence and transport: see e.g. the discussion in *Chitty* at para. 26−073 and that of Bingham LJ (as he then was) in *Watts* v *Morrow* (cited above) at p. 1445, and of Ralph Gibson LJ at pp. 1440−4 1.

19 So too, sometimes the law recognises that it is appropriate to compensate for nervous shock or anxiety, properly to be categorised as a breakdown in health, but it is necessary to demonstrate that, at the time the relevant contract was entered into, it would have been in the contemplation of the parties that such a breakdown would be "a not unlikely consequence" of a breach. In this context, I must conclude that it would not have been in the contemplation of the parties that the mere fact of not permitting a passenger to board the aircraft for his return flight would lead to a breakdown in health (although obviously it would cause inconvenience and, quite possibly, also frustration, temporary anxiety and distress).

20 MS Howells took an additional point; namely, that there was no convincing evidence before the court of a breakdown in health. There was some evidence in the form of records but the first visit to his GP took place nearly a year after the material events (March 2005). I am prepared to accept that Dr Wiseman received some medication to help him sleep, but there is some uncertainty as to exactly why that symptom came about. The most likely explanation is that it was caused by a combination of factors. At one point, for example, Dr Wiseman was citing as (at least) a contributory factor the physical attack he suffered at the time of a robbery while he was in Nigeria. It may be that his humiliation and embarrassment at the hands of the Defendant's employees was a factor also, and that the breakdown of the relationship with his fiancée played its part as well. Dr Wiseman's explanation for the time lag, between May 2004 and the first contact with his GP in March 2005, is that he was trying to manage without medication and only resorted to medical advice when his symptoms could no longer be tolerated. That may well be true. I am prepared to accept that it was.

21 In the end, however, there is little point in my attempting to analyse, on a speculative basis, the precise contribution made by these various life events towards Dr Wiseman's sleeplessness and associated problems. I do not have enough evidence to come to any conclusion. More importantly, on the other hand, I am quite satisfied that

this aspect of his claim is defeated by the remoteness argument: see e.g. *Hobbs* v *LSW Railway* (cited above) and *Cook* v *Swinfen* [1967] 1 WLR 457.

22 I have already referred to Dr Wiseman's unfortunate and distressing experience, during the period he was forced to remain in Nigeria, when he was assaulted by robbers. It is manifestly true that if he had left Nigeria on 13 May, in accordance with his contractual entitlement, no such robbery would have happened. It is elementary, however, that this does not render the consequences of the attack compensatable by way of damages for the breach. The robbery was a supervening event. It was simply not caused by the breach at all and therefore, strictly, it is inappropriate to analyse the matter in terms of remoteness.

23 It is perhaps pertinent to have regard to the hypothetical example explored by Baron Bramwell in *Burton* v *Pinkerton* (1867) LR 2 Ex. 340, 350. That was a case in which the Plaintiff agreed to serve on a ship for twelve months with the Defendant, its master. The Plaintiff left the ship when the Defendant insisted on going to a Peruvian port with a cargo which included ammunition, despite the fact that Peru was then at war with Spain ("'two powers at peace with England"). The Plaintiff felt himself entitled to leave the ship at Rio because he regarded the proposed voyage as both illegal and more dangerous than he anticipated at the time of entering into his contract. He was imprisoned for some days as a "Peruvian deserter" and upon his release discovered that the ship had gone, still with some of his clothes on board. The jury awarded him damages in respect of both the imprisonment and the clothing. On appeal, both heads of damage were held to be too remote. Baron Bramwell observed:

> "It is true that in one sense the defendant's conduct *caused* the imprisonment: but for that, no doubt, the plaintiff would not have been imprisoned. That, however, is not enough. Suppose, for instance, the plaintiff had met robbers whilst ashore, and been injured by them, he certainly could have recovered nothing from the defendant for such injury, yet the defendant might, in that case also, be said to have caused the damage. According to the ordinary rule, damage to be recoverable by a plaintiff must inevitably flow from the tortious act of the defendant. It must be caused by him as the *causa causans* , and this imprisonment was not so caused".

24 Barons Martin and Channell agreed and the Plaintiff was held only entitled to recover in respect of lost wages and possibly something for inconvenience. A new trial was ordered as it was impossible to disentangle how much the jury had included under each of the heads. The case is of some interest here because the refusal to permit Dr Wiseman to board the aircraft was not the *causa causans* of the robbery either, but only a causa sine qua non.

25 In the result, I award Dr Wiseman damages for breach of contract in respect of the total sum proved on account of the personal "expenses"; that is to say those itemised at [7] to [10] above. He therefore succeeds only to the extent of £2,147.24 together with interest at the agreed rate of 8% per annum.