

IN THE EDMONTON COUNTY COURT

BETWEEN:

MR DAVID RICHARD SMITH

Claimant

- AND -

BRITISH AIRWAYS PLC

Defendant

WITNESS STATEMENT OF LISA WILLIAMS

I, Lisa Williams, of Kennedys Law LLP, 25 Fenchurch Avenue, London EC3M 5AD, WILL SAY as follows:

1. I am an Associate (FCILEx) at Kennedys Law LLP practising from the above address. I have knowledge of this claim and am duly authorised to make this statement on behalf of the Defendant (herein referred to as the Respondent).
2. The facts and matters stated herein are within my own knowledge and belief, or where they are not within my direct knowledge, I describe herein the source of my information and belief.
3. I make this statement in relation to the Claimant's (herein referred to as the Applicant) application for pre-action disclosure. The hearing of the Applicant's application is listed to take place at 10.30am on 18 December 2019 at the County Court at Edmonton.
4. This matters concerns an alleged event when the Applicant was on board flight BA105 from London Heathrow, United Kingdom (LHR) to Dubai, United Arab Emirates (DXB) on 22 February 2018. As the Court will see from the first Witness Statement of David Richard Smith dated 06 August 2018 and the "letter before claim" from Nathan Paralegals & Company to the Respondent dated 02 June 2019 (which accompanied the Applicant's application dated 06 August 2019), the Applicant alleges that whilst he was on board the Flight, a trolley rolled into him whilst he was holding a glass of wine, spilling the said glass of wine over him ("the alleged

event"). It is unclear but implied from the communications that the Applicant was seated in his allocated seat for the Flight during the time of the alleged event.

5. The Applicant seeks damages in the sum of £1,000 which is broken down as:
 - a) £500 for damaged clothing and;
 - b) £500 for general and/or special and/or punitive damages, which are unspecified and undocumented and;
 - c) interest.
6. The Applicant made a complaint to British Airways in March 2018 about the alleged event. In response, the Respondent explained to the Applicant that there was no Incident Report regarding the alleged event and that on this basis it was unable to meet the Applicant's request for compensation. In the communications between the Applicant and Respondent, the Applicant confirmed that he did not complete any Incident Report at the time of the alleged event. A copy of the relevant correspondence is attached for the Court's record.

7. The Applicant then filed a complaint with CEDR for the alleged event, claiming the sum of £490 which was broken down as:
 - a) £40 for a tie;
 - b) £50 for a white shirt;
 - c) £80 for a black jumper;
 - d) £150 for black trousers;
 - e) £20 for underwear and;
 - f) £150 for a blue jacket.

8. In rejecting the Applicant's claim, the Adjudicator acknowledged that the Applicant had first contacted the airline on 10 March 2018, over 2 weeks after the alleged event, initially only referring to wine being spilt over his face, shirt, jumper and trousers. But that in the CEDR claim, the Applicant added that his jacket, tie and trousers were also stained. In addition, in the CEDR claim, the Applicant had only submitted photographs of a stained shirt and had not submitted any evidence of the cost of cleaning or replacing it. During the course of the CEDR claim, as a gesture of goodwill, the Respondent offered to reimburse the Applicant £50 in respect of his alleged wine-damaged shirt.

9. The Adjudicator found that there was no basis for the claim within the remit of either the Montreal Convention, Regulation EC261/2004, in contract and/or pursuant to Section 9 of the Consumer Rights Act 2015. A copy of the CEDR adjudicator's decision is attached for the Court's record.
10. On 06 August 2019, the Applicant filed this application for pre-action disclosure, pursuant to CPR Part 31, in particular CPR 31.8. The Applicant seeks an order that the Respondent disclose:
 - a) *all electronic and/or paper documents namely passenger details of the passenger that travelled next to the Claimant on flight number NU95YY British Airways 105 to Dubai flight"; and*
 - b) *The cabin crew incident logs recording the incident with the Claimant and the Defendant's in-flight catering trolley.*
11. The application was served on the Respondent on 20th August 2019.
12. By letter dated 26 September 2019 (attached), the Respondent informed the Applicant that disclosure of the details of the passenger sitting next to him was not permissible under the General Data Protection Regulation ("GDPR") and that the incident which he seeks does not exist. The Applicant was invited to withdraw this application.

Part 31 Disclosure and Inspection of Documents

13. CPR 31.16(3)(d) states that the Court may make an order under this rule only where disclosure before proceedings have started is desirable in order to:
 - i. dispose fairly of the anticipated proceedings;
 - ii. assist the dispute to be resolved without proceedings; or
 - iii. save costs.
14. The Court has the power to order pre-action disclosure of documents provided that those documents would be disclosed any way in the proceedings. We refer the Court to the value of this claim. This claim is a claim with a financial value of not more than £10,000. If proceedings were issued then there would be no doubt that this matter would be allocated to the Small Claims Track and subject to the rules in accordance with CPR Part 27.

15. CPR 27.2(b) specifically disapplies Part 31 (disclosure and inspection) to the Small Claims Track, such that it is for the parties to determine which documents they wish to rely on, and standard disclosure obligations do not apply.
16. Giving consideration as to whether the Court should exercise its discretion to order specific disclosure, the Respondent submits as follows:

Documents of the Passenger sat next to the Applicant

17. Under the GDPR, an organisation must protect its customers' data. This means that the Respondent does not have permission to release the personal data of customers to the Applicant, absent certain condition, as defined under the GDPR, being met. Those conditions do not arise in this instance.
18. The Court will note that throughout the letters of claim, the Applicant's first witness statement and the CEDR claim presented by the Applicant, he has consistently referred to the passenger seated next to him being female.
19. Attached for the Court's record is a copy of the Applicant's passenger record. As the Court will see, he was seated in seat 43H. The flight was operated by aircraft G-BYGC, which is a Boeing 747-400. Attached also for the Court's record is a copy of the seat layout for rows 28 to 55. As the Court will note, the seat next to the Applicant's allocated seat (43H) is 43J.
20. I confirm that I have inspected the document recording the name of the passenger seated in seat 43J. The passenger record is for a male, not a female, with the title "Mr".
21. It was explained in a telephone conversations I made on 05 November 2019 to the Applicant and subsequently to Lesley from Nathan Paralegals & Company, that I had examined the passenger record for the person booked in the seat next to the Applicant and that it is in the name of a male not a female.
22. In response to that telephone conversation, the Applicant has submitted his second witness statement.

23. I have read the Applicant's second witness statement dated 19 November 2019 and note that the Applicant now alleges that the lady sat next to him was actually travelling with her male partner and that she could have changed seats with her partner (paragraph 7 of the second witness statement of the Applicant).
24. I confirm that I have inspected the booking record for the passenger allocated seat 43J and that he was travelling in a party of 28 other passengers, and not as a couple as the Applicant alleges.
25. In addition, the contact details for the passenger allocated seat 43H and for his group booking are the contact details of a cruise company.

Incident Report

26. As explained above, and in the Applicant's own communications, no Incident Report exists and the Applicant did not complete one.
27. For the sake of clarity, attached is an extract from the Respondent's Ebasis system, which is their incident reporting system, covering the date of the incident and the flight concerned, confirming that no Incident Report exists concerning the Applicant's alleged event.
28. For these reasons the application is resisted by the Respondent.
29. The Respondent seeks its costs of dealing with and responding to this application.

Statement of Truth

I believe that the facts stated in this witness statement are true.

Signed:



Lisa Williams, Associate (FCILEX), Kennedys Law LLP, Solicitors for the Defendant

Dated:

10/12/2019

IN THE EDMONTON COUNTY COURT

BETWEEN:

MR DAVID RICHARD SMITH

Claimant

- AND -

BRITISH AIRWAYS PLC

Defendant

EXHIBIT "LW1"

	<u>DOCUMENT</u>
1.	Correspondence
2.	CEDR Adjudication
3.	Letter dated 26 th September 2019 in response to this Application
4.	Applicant's passenger record
5.	Seat layout
6.	Ebasis extract

Contact Information

Name - Mr David Smith

Executive club membership number - 19602415

Home Address

172 Millicent Grove

London

England

N13 6HS

United Kingdom

Issue Reported

Issue 1

Type of Issue - On board the aircraft: The cabin crew - The crew communicated poorly + I am not satisfied with the way my problem was resolved by the crew + I have a complaint about spillage or damage to clothing or belongings

Analysis Code - 4 CC COMM

Passenger(s) Affected

Name - Mr David Smith

Email - davidrichard.smith@yahoo.com

Travel Details

Booking Reference - NU95YY

Marketing Flight Number - BA0105

Operating Flight Number - BA0105

Booked Cabin code M

Booked Cabin name World Traveller

Flown Cabin code M

Flown Cabin name World Traveller

Scheduled Departure Date - 22 Feb 2018

Departing - Heathrow (LHR)

Arriving - Dubai (DXB)

Airline - British Airways

Issue 2

Type of Issue - On board the aircraft: The cabin crew - The crew communicated poorly + I am not satisfied with the way my problem was resolved by the crew + I have a complaint about spillage or damage to clothing or belongings

Analysis Code - 4 CC PR

Passenger(s) Affected

Name - Mr David Smith

Email - davidrichard.smith@yahoo.com

Travel Details

Booking Reference - NU95YY

Marketing Flight Number - BA0105

Operating Flight Number - BA0105

Booked Cabin code M

Booked Cabin name World Traveller

Flown Cabin code M

Flown Cabin name World Traveller

Scheduled Departure Date - 22 Feb 2018

Departing - Heathrow (LHR)

Arriving - Dubai (DXB)

Airline - British Airways

Issue 3

Type of Issue - On board the aircraft: The cabin crew - The crew communicated poorly + I am not satisfied with the way my problem was resolved by the crew + I have a complaint about spillage or damage to clothing or belongings

Analysis Code - 4 OEX SDC

Passenger(s) Affected

Name - Mr David Smith

Email - davidrichard.smith@yahoo.com

Travel Details

Booking Reference - NU95YY

Marketing Flight Number - BA0105

Operating Flight Number - BA0105

Booked Cabin code M

Booked Cabin name World Traveller

Flown Cabin code M

Flown Cabin name World Traveller

Scheduled Departure Date - 22 Feb 2018

Departing - Heathrow (LHR)

Arriving - Dubai (DXB)

Airline - British Airways

Files Uploaded

file 1

Original file name - IMG_0049.JPG

Saved file name - Piy1QfbgxfSBmaX1520692300966IMG_0049.JPG

File description - undefined

file 2

Original file name - IMG_0050.JPG

Saved file name - EpH9DGoypUehAJ91520692339773IMG_0050.JPG

File description - undefined

file 3

Orgi

al file name - IMG_0051.JPG

Saved file name - 7WlzDTJRC9n3rIW1520692376547IMG_0051.JPG

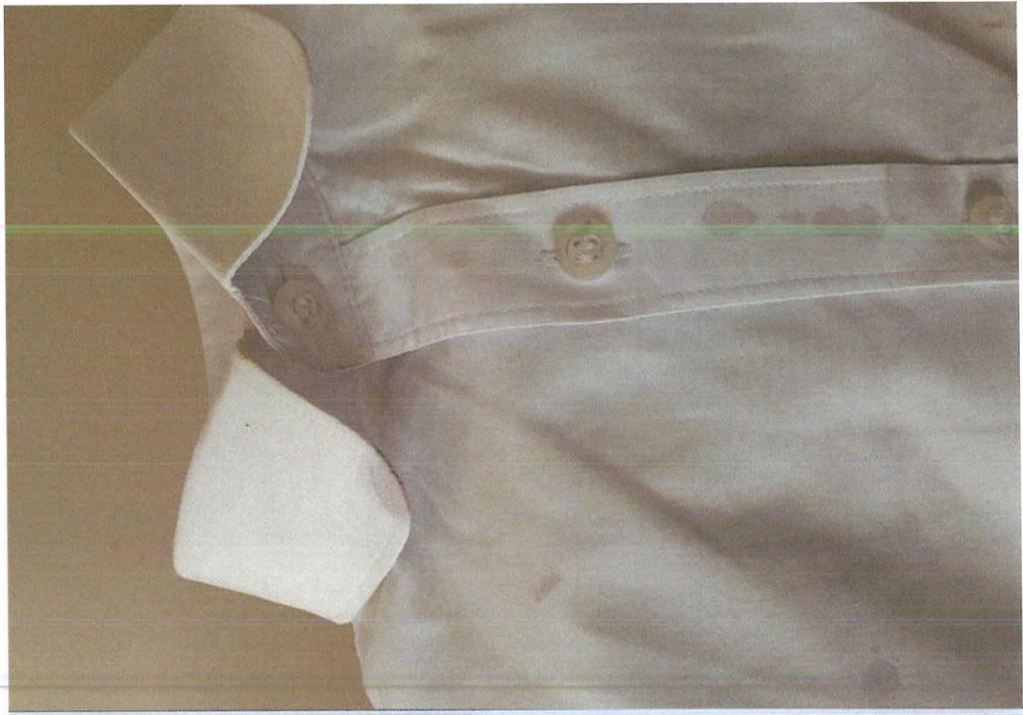
File description - undefined

Portal Text

Case Type - Portal Text

Case Text - To whom it might concern David Richard Smith 172 Millicent Grove London N13 6HS
Date : 10 March 2018 Subject : Wine spillage Dear Sirs I would like to inform you about a bad
experience during my flight to Dhabi 22nd March 2018 The awful experience left me feeling very
upset stressed shocked me and traumatised We were about 2 hours into the flight at this stage
food and drink had been served I was sitting in an Aisle seat in economy class next to a polish
couple I was tucking into my meal at the same time I was pouring a glass of red wine into a glass
container which was in my left hand I was pouring the wine with my right hand the glass was now
full Then sudfenly the whole glass of red wine was knocked out of my hand by the food trolley I
was now in a state of shock All the red wine was spilled into the air and came down all over my face
white shirt jumper trousers and all over the woman that was sat next to me It was unbelievable and
Shocking the cabin lady was so apologetic and brought us some wipes The trolley was being
pushed by one cabin crew and was accidentally steered into my arm normally two cabin crew push
and steer I sat the rest of the flight with wine smelling wet clothes It was very traumatic and
embarrassing to say the least other passengers were looking at and laughing My white shirt is still
stained with red wine I will forward you an attachment once I know you receive my letter This is the
second time I'm attempting to send you my complaint Yours Sincerely David Richard Smith





Letter



Std Letter ID: UKONBE02

Cabin Spillage

Letterhead: UK EMAIL

Issue:

Letter Lang ID: UK ENGLISH

Proofed: Not Proofed

Send To: Smith, David Richard (PA)

Entered By: ROHAN LODAYA (EX)

Email To: davidrichard.smith@yahoo.com

Date Entered: 21/03/2018 04:40:03

Subject: Your Response from BA Customer Relations

Batch ID:

Ready

Date Sent: 21/03/2018 04:43:18



Thanks for letting us know about what happened when you flew with us to Dubai on 22 February. I apologise for the delay in our reply. I completely understand why you're annoyed your clothes were ruined due to a spillage on board our flight. You don't expect this when you travel with us and I'm sorry we've let you down.

I'd request you to send us the incident form you may have filled on board our flight using the link below:

<https://baggageclaim.britishairways.com/additional-baggage-claim-information?cid=17626816&locale=en-GB>

Thanks for getting in touch with us so we could make amends and I look forward to hearing from you soon. In the meantime, if there's anything else I can help you with, please feel free to reply to me directly.

Letter



Std Letter ID: EUKGEN07

UK CR Template

Letterhead: UK EMAIL

Issue:

Letter Lang ID: UK ENGLISH

Proofed: Not Proofed

Send To: Smith, David Richard (PA)

Entered By: ROHAN LODAYA (EX)

Email To: davidrichard.smith@yahoo.com

Date Entered: 31/03/2018 13:37:59

Subject: Your Response from BA Customer Relations

Batch ID:

Ready

Date Sent: 31/03/2018 13:39:32

Thanks for writing back to us.

I'd like to inform you that we've not received the incident form. Therefore, I'd request you to again send us the incident form you may have filled on board our flight using the link below:

<https://baggageclaim.britishairways.com/additional-baggage-claim-information?cid=17626816&locale=en-GB>

Thanks for getting in touch with us so we could make amends and I look forward to hearing from you soon. In the meantime, if there's anything else I can help you with, please feel free to reply to me directly.

Best regards

Rohan Lodava

Letter



Std Letter ID: EUKGEN07

Letterhead: UK EMAIL

Letter Lang ID: UK ENGLISH

Send To: Smith, David Richard (PA)

Email To: davidrichard.smith@yahoo.com

Subject: Your Response from BA Customer Relations

Ready

UK CR Template

Issue:

Proofed: Not Proofed

Entered By: ROHAN LODAYA (EX)

Date Entered: 13/04/2018 18:00:04

Batch ID:

Date Sent: 13/04/2018 18:08:11



BRITISH AIRWAYS

Dear Mr Smith

Thanks for coming back to us. I understand how disappointed you're. Hopefully I can explain you our position.

It's unusual for something like this to happen but when it does, we make sure we have a record of it. I'm afraid I've been unable to find any information about the incident you've described. This means I can't reimburse you for your clothes. I know this isn't what you wanted to hear and I'm sorry to disappoint you.

Thanks again for taking the time to let us know what happened. We value your support as a Blue member of our Executive Club. I hope we can welcome you on board again soon. Please feel free to contact me directly using the blue link below if I can help you with anything else.

BRITISH AIRWAYS



Dear Mr Smith

Thanks for coming back to us about your flight to Dubai on 22 February. I apologise for the delay in my response. You're clearly unhappy with our previous response and I understand why, but hopefully I can explain our position to you below.

As we've discussed previously, we're unable to find any information about the incident you've described. Therefore, we cannot reimburse you for your clothes. I'm sure you'll understand we must apply a consistent approach to situations like this, so we're fair to all our customers. This means we won't make an exception. I know this will be disappointing to hear since it's clear you expected more from us.

I understand from your email, how strongly you feel about this issue. I want to assure you we've taken the matter seriously and done all we can to make changes, so we can try to avoid this happening again.

Thanks again for getting in touch. We really appreciate your support as a Blue Executive Club member and I hope our decision won't stop you from choosing to fly with us again. Please use the blue link below to contact me directly if I can help with any other separate issues.

Best regards

BRITISH AIRWAYS



Dear Mr Smith

Thanks for writing back to us. I completely understand why you're annoyed your clothes were ruined due to a spillage on board our flight to Dubai on 22 February. You don't expect this when you travel with us and I'm sorry we've let you down.

As previously discussed, we're unable to find any information about the incident you've described. It's unusual for something like this to happen but when it does, we make sure we have a record of it. Therefore, we cannot reimburse you the cost of your clothes. I'm sorry to disappoint you.

If you're satisfied we've resolved the issues you've raised, we kindly remind you to close your case on the Resolver website.

I understand from your email, how strongly you feel about this issue. I want to assure you we've taken the matter seriously and done all we can to make changes, so we can try to avoid this happening again.

Thanks again for getting in touch. We really appreciate your support as a Blue Executive Club member and I hope our decision won't stop you from choosing to fly with us again. Please use the blue link below to contact me directly if I can help with any other separate issues.

Best regards

Rohan Lodaya
British Airways Customer Relations

From Address: ecpmail@britishairways.com

Received: 2018-03-21 15:59:19

Subject: Re Case Id = 19602415

Attachments:

Your name: David Richard Smith

Email: davidrichard.smith@yahoo.com

Message: Dear Sir / Madam Good afternoon Thank you for the e - mail your sincere apologies the unfortunate inflight incident when a food trolley being pushed by a cabin crew lady was accidentally driven into my arm at the same time I was pouring a glass of red wine and saturated my cloths and the polish lady sitting next to me on my right was also saturated This incident left me feeling stressful shocked and traumatised for the remainder of the flight I didn't know of any inflight incident report forms I could have filled at the time he never crossed my mind to ask I was feeling embarrassed upset and even ashamed to sit in my seat covered and soaked in wine and next to a passenger who must have been feeling the same way I'm sorry their isn't a incident report form to add but why didn't the cabin crew offer me one she didn't and never ever came back to me to see if I was ok I wasn't okay I felt terrible If you need proof then why don't you ask the cabin crew members of the incident she was a slim woman blonde hair and their was only two women serving at the time one on each aisle Or ask the polish couple who where sitting next to me about the incident as the woman too was soaked in red wine Yours Sincerely Mr David Richard Smith

From Address: ecpmail@britishairways.com

Received: 2018-03-31 16:26:02

Subject: Re Case Id = 17626816

Attachments:

Your name: David Richard Smith

Email: davidrichard.smith@yahoo.com

Message: Dear Mr Lodaya In response to your e-mail dated 31st March 2018 You asked me 10days ago in your e-mail about me sending you an in flight incident report I may have filled onboard at the time of the wine spillage My reply was I wasn't aware of any inflight incident report form to fill in My answer is no I didn't fill in an incident report Why didn't the cabin crew lady who spilt the wine all over me give me a the form at the time of the incident I was in economy class at the time there was only two women serving one on each aisle please ask them about the incident The women was slim with blond hair Surely the cabin crew should have helped me more The head of cabin crew should have been informed of the incident nobody seemed to care especially the woman who spilt the wine Please investigate further who was the senior cabin crew member on that flight so you can get to the bottom of this dreadful incident Meanwhile why don't you send me an incident report form to fill in now while you are investigating further Please find out who was the senior cabin crew member on the flight so he can talk to the crew who was serving me at the time in economy class there was only 2 cabin crew Kind & Best regards Mr David Richard Smith

From Address: ecpmail@britishairways.com

Received: 2018-04-16 23:08:36

Subject: Re Case Id = 17626816

Attachments:

Your name: David Richard Smith

Email: davidrichard.smith@yahoo.com

Message: Dear Mr Lodaya Thank you for your e-mail dated 13th April 2018 in response to my complaint regarding a British Airways cabin crew members negligence Your absolutely right I am very very disappointed your poor inconsiderate and non compassionate handling of my complaint The incident happened on 22 February 2018 when I was a fare paying passenger being flown to the UAE in a British Airways boeing 747 aircraft flying at 40,000 feet I was sitting in an aisle seat in economy class next to a Polish couple at the rear of the Aircraft I was relaxing and enjoying my meal at the same time I was pouring myself a glass of red wine when suddenly and without any warning the cabin food trolley was driven into my left arm upsetting the whole of the glass of red wine all over my face shirt trousers and my jumper and all over the Polish woman sitting next to me This left me in a state of complete shock and disbelief I couldn't believe what had happened to me the cabin woman was panicking and was saying sorry sorry and quickly went to get some towels For more than 6 hours I sat in wet cloths smelling of red wine I couldn't have a shower not even change my cloths absolutely degrading and embarrassing treatment I was in the hands and care of the cabin crew for the duration of the flight the cabin crew woman was irresponsible careless and negligent In my opinion she didn't carry out her cabin crew duties to a satisfactory and responsible standard she is trained and paid to do I was in her care and with no customer service after what happened just left to dry out best as possible I complete disregard for my well being I was never offered to fill in any incident report forms after the incident and at any time during the remainder of the flight Its surly the cabin crews duty and responsibility to look after and care for all onboard passengers during the flight any such incidents This particular cabin crew member failed her onboard duties It shouldn't be my responsibility to ask for an incident form how do I know what forms BA use it's surly down to the cabin crew I wasn't aware of any such form BA crew must have know this form existed for any such incidents but never used it on this occasion You state in your e- mail there is no record of any incident regarding wine spillage on that flight It's like you don't believe me but it did actually happen I'm not making it up I'm Sorry but thats how I interpret what your saying it's a disgrace and disrespectful to a fare paying British Airways passenger You say there is no record of the incident then please make a record on my behalf what my complaint is about please be with the customer On this occasion you didn't make sure an incident report form was filled in and recorded I'm flying at 40.000 feet my cloths are soaked in wine the most uncomfortable feeling the last thing on my mind is filling in an incident report form I have no knowledge of and should be the cabin crews responsibility Please could you contact the Senior Cabin crew member who was in charge of the crew on that flight explain to him what happened and why didn't the crew member who caused the accident fill in an incident report form to contact me so I can describe to him the cabin woman in question a slim blonde haired British woman so we ca get to the bottom of this awful onboard incident Also may you contact the polish couple that were sitting next to me and ask them about the incident In the meantime I won't be flying again with British Airways until I get a satisfactory conclusion thank you Best regards David Richard Smith Thanks for coming back to us I understand how disappointed you're. Hopefully I can explain you our position. It's unusual for something like

this to happen but when it does, we make sure we have a record of it. I'm afraid I've been unable to find any information about the incident you've described. This means I can't reimburse you for your clothes. I know this isn't what you wanted to hear and I'm sorry to disappoint you. Thanks again for taking the time to let us know what happened. We value your support as a Blue member of our Executive Club. I hope we can welcome you on board again soon. Please feel free to contact me directly using the blue link below if I can help you with anything else. Best regards
Rohan Lodaya
British Airways Customer Relations
Your case reference is:17626816

From Address: "David Richard Smith" <davidrichard.smith37nox@email.resolver.co.uk>

Received: 2018-05-22 20:34:49

Subject: Customer Relations DirectComplaint

Attachments:

Dear

I am writing to you to raise an issue about: Flights - departure UK

The issue that I have experienced was: Dear Sir/Madam I flew with BA on 22 February 2018 from London Heathrow to Dubai BA 105 departure 20-40 about 1 hour into the flight the cabin crew were serving food and drink I was sitting in an aisle seat basically I was pouring a glass of red wine I was holding the glass in my left hand and pouring the wine with my right hand when suddenly the cabin lady drove the food trolley into my arm and completely knocked the whole of the full glass of wine into the air and the wine landing on my cloths completely soaking them my face my white shirt collar tie jumper and my trousers I sat for the remainder of the flight in wine soaked cloths all the cabin crew done was give me wipes and sorry sorry I couldn't change my cloths take a shower I arrived in Dubai smelling of alcohol not a good thing passing through immigration smelling of wine also I had a business meeting to attend on my arrival I have complained to customer relations 3 times without success they keep on asking me for an incident report form I have filled in I wasn't aware of any such form and why didn't the cabin crew offer me the form it's like they don't believe me but it actually happened I gave them so many things to investigate my complaint but they never done anything the crew never looked after me just left me to stew in my smelly cloths even the woman sitting next to me got soaked my cloths were ruined I sent them a photograph of my stained shirt I said in my last e-mail you fill in an incident report form on my behalf they didn't

It occurred on: February 22nd, 2018

My case reference number is 17626816 please investigate for me why can't they fill in an incident report form for me reinvestigate and for customer services to reply to my request to find out who was head of cabin crew for him to contact me or investigate the crew there was only two women cabin crew serving me one of them is responsible

I look forward to your prompt response on this matter. As recommended by Trading Standards, I would like to keep a complete record of my case, so please reply back via this email account.

Yours faithfully,

David Richard Smith

Booking reference and/or flight number: NU95YY BA 105

Reference:

172 Millicent Grove

London

N13 6HS

Resolver Case Reference: RES5396145

From Address: "David Richard Smith" <davidrichard.smith37nox@email.resolver.co.uk>

Received: 2018-09-04 09:49:21

Subject: Customer Relations DirectYour Response from BA Customer Relations

Attachments:

Dear ,

NU95YY BA 105

I am writing to complain about an issue with Flights - departure UK.

I have already raised my issue within your organisation, but I feel that my issue is still unresolved, hence my need to involve you in helping to resolve this problem.

Here is what happened: Dear Sir/Madam I flew with BA on 22 February 2018 from London Heathrow to Dubai BA 105 departure 20-40 about 1 hour into the flight the cabin crew were serving food and drink I was sitting in an aisle seat basically I was pouring a glass of red wine I was holding the glass in my left hand and pouring the wine with my right hand when suddenly the cabin lady drove the food trolley into my arm and completely knocked the whole of the full glass of wine into the air and the wine landing on my cloths completely soaking them my face my white shirt collar tie jumper and my trousers I sat for the remainder of the flight in wine soaked cloths all the cabin crew done was give me wipes and sorry sorry I couldn't change my cloths take a shower I arrived in Dubai smelling of alcohol not a good thing passing through immigration smelling of wine also I had a business meeting to attend on my arrival I have completed to customer relations 3 times without success they keep on asking me for an incident report form I have filled in I wasn't aware of any such form and why didn't the cabin crew offerer me the form it's like they don't believe me but it actually happened I gave them so many things to investigate my complaint but they never done anything the crew never looked after me just left me to stew in my smelly cloths even the woman sitting next to me got soaked my cloths were ruined I sent them a photograph of my stained shirt I said in my last e-mail you fill in an incident report form on my behalf they didn't. This happened on February 22nd, 2018

My case referance number is 17626816 please investigate for me why can't they fill in an incident report form for me reinvestigate and for customer services to reply to my request to find out who was head of cabin crew for him to contact me or investigate the crew there was only two women cabin crew serving me one of them is responsible

Please reply back via this email address, as I would like to keep all my communications in one place.

Yours sincerely,

David Richard Smith

172 Millicent Grove

London

N13 6HS

RES5396145

Here is the whole case history:

1. Email from me to company.

From: davidrichard.smith37nox@email.resolver.co.uk

To: gsrrplies@contact.britishairways.com

Subject: RE: Your Response from BA Customer Relations

Date: 28th May 2018 at 17:19

> Dear Sir /Madam

>

> I received a reply today from BA regarding wine being spilled all over my cloths during a night flight to Dubai 22nd February 2018 caused by a food trolley being pushed into me by incompetent cabin crew whilst pouring a glass of red wine in my seat which left me feeling traumatised

>

> Resolver offered me a chance to contact BA again to try and resolve the issue

>

> Resolver sent my complaint to BA which ended up with the same customer-relations guy

>

Independent Redress Scheme for Air Passengers



ADJUDICATOR'S DECISION 552835 David Smith v British Airways Date of Decision: 17 December 2018

Passenger(s): David Smith.

Flight: BA105 London Heathrow (LHR) to Dubai (DUB) on 22 February 2018 ("the Flight").

Agreed facts

- The Passenger was booked on the Flight.

Issues in dispute

- The Passenger claims £490.00 for replacement clothes being: £40.00 tie; £50.00 white shirt; £80.00 black jumper; £150.00 black trousers; £20.00 underwear; and, £150.00 blue jacket.

Decision making principles

- In order to succeed in a claim against the Airline, the Passenger must prove on a balance of probabilities that the Airline has acted in breach of its aviation services contract or its obligations under Regulation 261/2004 of the European Parliament ("the Regulation"), Regulation 1107/2006 ("the 2006 Regulation") or the Montreal Convention 1999 ("the Convention") such that it owes compensation to the Passenger.
- I have carefully considered all of the issues raised and the documents provided. Both the Passenger and the Airline should be reassured that if I have not referred to a particular issue or document, this does not mean that I have not considered it in reaching my decision.

Reasons for decision

1. The Passenger's position is that on the Flight he was hit by the drinks trolley and was soaked by a glass of red wine that he was in the process of pouring. The passenger next to him was also hit by the wine. The incident caused the Passenger to suffer from terrible memories and traumatic stress. The passenger found the cabin crew to be disrespectful. The Passenger was not offered the chance to fill in any incident report form. The Passenger seeks compensation for his ruined clothes.
2. The Airline's position is that there is no report regarding an accident or spillage on the Flight. When accidents occur on board it is a requirement that a Cabin Safety Report is completed. In instances of spillages, a spillage form is required to be completed. The Passenger first contacted the Airline on 10 March 2018, more than seven days after the incident. The Passenger's initial complaint to the Airline only referred to wine being spilled on his face, shirt, jumper and trousers

and the Passenger submitted photographs of the stained shirt. The Passenger now also refers to his jacket, tie and trousers as being stained. The Airline does not admit any liability to the Passenger but, as a gesture of goodwill, it will reimburse the Passenger with £50.00 for his shirt.

3. In so far as the Airline has any liability to the Passenger, Article 29 of the Convention provides:

In the carriage of persons, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

4. I am satisfied that the Convention provides the exclusive framework for any liability of the Airline, within which framework, remedies may also lie under the Regulation and the Airline's Contract of Carriage to the extent that they are not precluded by the Convention.

5. As the claim does not relate to a delayed or cancelled flight, and as the Passenger was not denied boarding or involuntary downgraded, I find that he has no basis for seeking any redress under the Regulation.

6. Turning to the Convention, Article 31 provides:

(2) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of checked baggage and fourteen days from the date of receipt in the case of cargo.

[...]

(4) If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.

Given that the damage was to the clothes that the passenger was wearing, I consider that this is equivalent to damage to checked baggage rather than to cargo. As I have seen no evidence that the Passenger made a complaint to the Airline in writing within seven days of the incident, I find that he has not brought the claim within the required timescale under the Convention and he therefore has no remedy under the Convention.

7. Turning to the contract between the Airline and the Passenger, I am satisfied that the contract is one of carriage and that the Passenger was transported to his destination in accordance with the

contract. I am also satisfied that the Airline has no liability to the Passenger for any distress, anxiety, frustration, displeasure or vexation suffered as the contract was a simple contract for carriage and not one to provide pleasure, relaxation or peace of mind.

8. However, section 49 of the Consumer Rights Act 2015 ("the CRA") provides that:
 - (1) every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill.
9. The s54(3)(a) of CRA provides for a remedy of a right to a price reduction. I am satisfied that such a remedy does not constitute damages and is therefore not precluded by Article 29 of the Convention.
10. I must therefore consider whether or not the Airline exercised reasonable care and skill in order to determine whether or not the Passenger has the right to a price reduction of the ticket.
11. The degree of care and skill required under the CRA is not a high one. It merely has to be 'reasonable'. I note the Passenger's initial email to the Airline on 10 March 2018 which states, *'I was tucking into my meal at the same time I was pouring a glass of red wine into a glass container which was in my left hand I was pouring the wine with my right hand the glass was now full Then suddenly the whole glass of red wine was knocked out of my hand by the food trolley I was now in a state of shock All the red wine was spilled into the air and came down all over my face white shirt jumper trousers and all over the woman that was sat next to me It was unbelievable and Shocking the cabin lady was so apologetic and brought us some wipes The trolley was being pushed by one cabin crew and was accidentally steered into my arm normally two cabin crew push and steer I sat the rest of the flight with wine smelling wet clothes It was very traumatic and embarrassing to say the least other passengers were looking at and laughing My white shirt is still stained with red wine I will forward you an attachment once I know you receive my letter.'*
12. On the evidence before me, I note that the crew member was apologetic and brought the Passenger some wipes. I note that the Passenger states that the trolley should have been pushed by two persons but I have seen no evidence to support this. I have also seen no evidence to satisfy me that the crew were grossly negligent or unprofessional. Furthermore, I note that the Passenger has only submitted photographs of a stained shirt and has not submitted any evidence of the costs of cleaning or replacing it.
13. Having considered the circumstances and the actions taken, and whilst I sympathise with the Passenger for the problems experienced, I find that I am satisfied that the crew took reasonable

care and skill. Accordingly, I find that the Passenger has no entitlement to a price reduction under the CRA.

14. On this basis, I find that the Passenger's claim is unable to succeed.

Decision

- The Passenger's claim is unable to succeed.



ANTHONY NELSON LLB (Hons) PGDip (LPC)
Adjudicator

Your ref

Our ref LWIL/B3332-957272 (MWEL)

Kennedys

By Post and Email: davidrichard.smith@yahoo.com

Mr David Richard Smith
172 Millicent Grove
London
N13 6HS

25 Fenchurch Avenue
London
EC3M 5AD
United Kingdom

t +44 20 7667 9667
f +44 20 7667 9777
DX 766 London City
kennedyslaw.com

t +44 20 7667 9734
lisa.williams@kennedyslaw.com
26 September 2019

Dear Sir

**MR DAVID RICHARD SMITH V BRITISH AIRWAYS PLC
CLAIM NO: F01ED769 - APPLICATION HEARING 10:30AM ON 18 DECEMBER 2019 AT THE
COUNTY COURT AT EDMONTON**

We write further to the above referenced matter and confirm that we have been instructed to act on behalf of the Defendant and enclose by way of service the Notice of Change and confirm the same has been filed with Court. We ask that all future correspondence be directed to ourselves regarding this matter.

By way of a preliminary issue, can you clarify if you have solicitors on record for you as it is unclear from the Application. There is correspondence from Nathan Paralegals & Company attached to the Application however your details are on the Application Notice as to the address to which documents should be sent. Please let us know if we should be corresponding with your legal representatives rather than yourself in this matter.

Turning to the Application, you seek disclosure of the following:

1. Records for the passenger who sat next to you on flight BA105 to Dubai;
2. Cabin crew incident logs recording the incident with the Claimant and Defendant's inflight catering trolley.

Further to our client's GDPR obligations, disclosure of special category data is prohibited pursuant to Article 9. Our client may only disclose special category data where processing

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is “*necessary for the establishment, exercise or defence of legal claims or whenever Courts are acting in their judicial capacity*” (Article 9.2(f)). We do not consider that electronic and/or paper documents for the passenger who booked to travel in the seat next to you is necessary for the establishment of your legal claim. Therefore, we do not consider that our client would benefit from an exclusion under Article 9(2) GDPR or that the Court will permit lawful disclosure.

In any event, the electronic and/or paper documents for the passenger booked to travel in the seat next to you may not identify the person who was actually sat next to you. We cannot guarantee that it would be the same person named in flight records since passengers can move around on flights.

We presume that the purpose of your request is to obtain the contact details for the person sat next to you. However, the passenger records will only identify the name of the person booked in the seat next to you. BA may not necessarily hold on record any contact details for that person, especially if their booking is made via a travel agent or someone else, for example.

In relation to the cabin crew incident logs, in your previous communications to British Airways you have already confirmed that you were not provided with an Incident Report form to fill in and that one was not completed. Therefore, we do not understand the reason for your request.

In addition, you have previously been informed in communications with BA and via the claim you have already brought with CEDR, that no such Incident Report exists.

For the sake of clarity, we enclose a print out from our client’s incident reporting system, known as Ebasis, showing a search of any reports concerning flight BA105 between 21 and 23 February 2018. No results were found. In other words, no Incident Report exists.

It is with this that we request that you withdraw your Application as there are no grounds for the same and your Application holds not merit. We put you on notice that should you continue with the Application then our client will be seeking their costs of having to respond to the same.

We look forward to hearing from you.

Yours faithfully




Kennedys





eBASIS

BRITISH AIRWAYS
25-Sep-2019

Home New Incident My Lists My Stream Incident List Filters Charts Admin Logoff Help

Search for: Go  **Incidents (excl. Paracetamol) (s) (0) - Where Operator and Flight Number Is Equal To " BA105 " And Incident Date Between " 21-Feb-18 " and " 23-Feb-18 "**

No results were found for the requested search

 Edit Filter
 Print List
 Close
 Refresh

PASSENGER DETAILS

BRITISH AIRWAYS
30-OCT-2018 17:39

Key Details

Opnl Leg Id

Flight Date	Pax on Seg Id	First	Last	Pnr Ref	Pnr Owner	Carrier Code	Fit No	Opnl Suffix
22-FEB-2018	1050282324	25005822	25005822	NU95YY	1A	BA	105	
Stations						Cabin	Pax	
Uplift	Disch	Est Dep Tm	Sched Dep Tm	Schd Arr Tm	Leg	No	Cd	Grp Cd
LHR	DXB	22-FEB-2018 20:40	22-FEB-2018 20:40	23-FEB-2018 03:45	S		M	
Title	First Nm	Initials Txt		Last Nm				
MR	DAVID	D		SMITH				

Seat Details

Seat No	Orig Seat No	Protection	Preallocate	A Edit Sts	S Edit Sts	A Edit Cds	S Edit Cds	Medical	Priority	Pref Outstanding	Class Change
43H								N			
First Check In		Stn	Address	Typ	Term	Time					
		LHR	BA00610C	M	5	22-FEB-2018 19:19					
Last Check In											
Onload											
Offload											
First Boarding		LHR	BA00A675	B	5	22-FEB-2018 20:09					
Last Boarding		LHR	BA00A675	B	5	22-FEB-2018 20:09					
First Deboarding											

Transfer

Carrier Flight		Stations		Departure		Arrival		Connec		Chk In	Bkd Sect
leg Id	cd	No	Suf	Uplift	Disch	Time	Terminal	Time	Terminal	Typ	No
Bkd Inb											
Act Inb							Pax Id		Flown Class		
Bkd Onw											
Act Onw							Pax Id		Flown Class		

Bag Details Pool Ind N Pool Code 10A2BA0011C940AB Pax Count No of Bags 1 Bag Wts 16 Hand Bag Wts

DCS Details Urp Ref Ticket No 1258769562824 CAA Ref Ticket Type E SPR Ref
 Rebate Check In CAC Booking Mtd CPR Thru Checked N Booking Class O Boarded Y

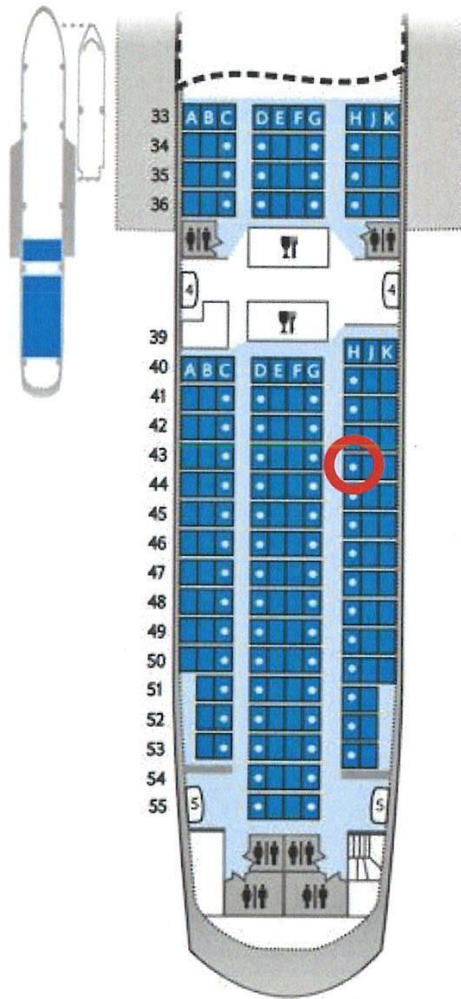
Indicators Rec Loc Value
 Sex Y O M Child N Infant N Unacc Minor N VIP N Self Service N
 Passport Y O 707215154 Staff Travel Sts Yield Sts Airmiles Redem N Industry Discout
 Passport Name Y O Security No LHR-273
 Birth Date Y O 28-JUN-48 Number Carrier Tier Code
 Nationality Y O GBR FQTV Data

PASSENGER DETAILS

Bag Tag Details

Number	Cx Cd	Flt No	Flt Dt	Uplift Stn Cd	Discharge Stn Cd
214758	BA	105	22-FEB-2018	LHR	DXB

Boeing 747-400
299 seat layout: rows 33 to 55



Boeing 747-400
345 seat layout: rows 28 to 55



eBASIS

Incidents (excl. Paracetamol) (s) (1) - Where Aircraft Reg Is Equal To "G-BYGC" And Incident Date Between "22-Feb-18" and "23-Feb-18"

ID	Source	A/C Type	Aircraft Reg	Date	HDR	HLR	Incident Title	Status	Coordinator Name	City or Station
CSR			B747-400	G-BYGC	22-Feb-2018					Hand baggage dispute
LOS ANGELES										

Aircraft Tour

Search by

From date To date Aircraft registration eg. GBNLC

Flight	Flight date	Route	Planned dep	Actual dep	Airborne	Landed	Actual arr	Planned arr	Ac. type
BA 282	22-FEB-18	LAX - LHR	00:30/22	Y 00:30/22	01:01/22	10:04/22	Y 10:13/22	10:55/22	S4
BA 105	22-FEB-18	LHR - DXB	20:40/22	Y 20:38/22	21:01/22	03:31/23	Y 03:43/23	03:45/23	S4

Claim No. F01ED769

IN THE EDMONTON COUNTY COURT

B E T W E E N :

MR DAVID RICHARD SMITH

Claimant

-and-

BRITISH AIRWAYS PLC

Defendant

WITNESS STATEMENT OF LISA WILLIAMS

Kennedys
25 Fenchurch Avenue
London
EC3M 5AD

T: 020 7667 9734

F: 020 7667 9777

Ref: 54/LWIL/B3403-957272

Solicitors for the Defendant

