

Before the Arbiter for Financial Service

Case ASF 241/2024

ZH

(Complainant)

Vs

Atlas Insurance PCC Limited

(Reg. No C 5601)

(Service Provider or Atlas)

Sitting of 21 February 2025

The Complaint¹

Having seen the complaint filed on 20 December 2024, whereby Complainant challenges the Service Provider's decision to refuse his claim under his Travel Policy for loss of his flight from Malta to South Africa (via Dubai) on 13 August 2023 due to what he defines as "loss" of his passport.

Following partial refund from the airline, he is claiming €1,163.41 for which he expects settlement under his travel policy number TRY2000059467 in accordance with its provisions for "Cancellation/Abandonment" and/or "lost passport" for which a maximum cover of €7,500 applies.²

The Complainant argued:

"On the 13th August 2023 I was booked to fly to South Africa from Malta. I have a current Italian passport as well as an expired Italian passport. Both are identical from the outside. Leaving for the airport I took my bags, got into the lift, and went downstairs where my wife was waiting for me in her car. In the car I did a last check and realised that I did not have my passport. My wife informed me it

¹ Page (p.) 1 - 6 and attached documents p. 7 - 46

² P. 14

would be in our stationery closet, so I returned to my apartment and took the passport which I placed in my 'man bag' and we drove to the airport.

When I arrived at the airport, my wife dropped me off at departures and left. Once in the queue I realised that I had taken the expired passport. I was unable to contact my wife at this time, so it was not possible for me to retrieve the passport from my home and return to the airport in time.”³

The Reply⁴

In their reply of 21 January 2025, the Service Provider stated:

“In this case, I would like to refer to our policy wording, which is one of the annexes of the formal complaint submitted by Mr ZH. Mr ZH is claiming for missed departure which is treated in Section I, page 33. Loss of passport outside Malta is covered under our policy, however the passport was not lost. It was left behind in error, and it was not outside Malta. So we have to base our claim handling on Section I – Missed Departure. The policy is a named perils basis policy and therefore we have to look at what cover is provided under this section. I am reproducing here ‘What is Covered’ under this section, which clearly does not include travelling with an invalid passport in hand:

‘We will pay You up to the Missed Departure Limit under the Limits section on page 8 for reasonable additional accommodation (room only and not incurred in Malta) and travel expenses (economy only) necessarily incurred if:

- 1. You fail to arrive at the departure point in time to board the Public Transport on which You are booked to travel as a result of:*
 - a) the failure of other scheduled Public Transport or,*
 - b) delay to a connecting scheduled flight or,*
 - c) an accident to or breakdown of the vehicle in which You are travelling or,*
 - d) an accident or breakdown occurring ahead of You on a motorway or dual carriage way which cause an unexpected delay to the vehicle in which You are travelling or,*

³ *Ibid.*

⁴ P. 51

- e) *strike, industrial action or adverse weather conditions;*
2. *You are denied boarding the flight You are booked to travel on due to overbooking of passengers.”*

The Hearing

During the hearing of 12 February 2025 Complainant stated:

“... what happened is I had a flight to South Africa. I left my apartment in Mosta, went down to the car and was checking everything.

At the last minute, I realised I had not taken my passport. My wife told me it was in the stationery cupboard upstairs. I went upstairs, took the passport, went back down to the car, and went to the airport. When I arrived at the airport, I realised that I had taken the wrong passport because I had an expired passport and the current passport, and they're identical from the outside.

I reported the incident to the airline, and I got a partial refund from them, so I'm looking for the balance that is outstanding, which I've claimed. Now the argument seems to be from Atlas Insurance that the passport was not lost and that the cover would only be from outside of Malta.

So, I cited two dictionary definitions of what 'lost' means. The Collins dictionary says: 'unintentionally put an object where it cannot readily be found, so as to lose it temporarily'. And Oxford Dictionary says: 'lose, mislay something to put something somewhere and then be unable to find it again, especially for a short time.' So that's the starting argument.

The second argument is that Ms Attard Montalto said that loss of passport outside of Malta is covered but not when left in error and not outside Malta.

She cited page 33 of the policy (page 37 of the process) which says:

*'We will pay **You** up to Missed Departure Limit and the Limits section on page 8 for reasonable additional accommodation (room only and not incurred in **Malta**) ...'*

To me, that does not refer to the missed flight; that's referring to accommodation in wherever I would be going. On page 3 of their policy (page 22 of the process), it says:

*'**You** cutting short the **Trip** after **You** leave **Your Home** ...'*

That is the second disagreement that we have.

I mean basically, the two questions that I have are what the definition of lost is and where does the policy cover start. They are saying that it starts from abroad and I'm saying no, it started from when I left my home.”⁵

Under cross-examination, the Complainant stated:

“Asked whether I arrived on time at the Malta International Airport on the day of the flight, I say, yes.

Asked the exact reason why I was denied boarding, I say that I was not denied boarding because when I was in the queue to check in, obviously, I took out my passport. I had the boarding pass and then, I realised I've got the expired passport, so I didn't carry on to the check-in desk because I know it's an expired passport.

So, I went to the airline help desk, and I told them, ‘Look, this is the situation: I'm not going to get enough time to go back to get the passport and come back to the airport,’ and so they put it on record. It was an Air France flight and then, Air France gave me, I think, a refund of 20% or something. So, I'm looking for the balance.

Asked whether I had a valid passport at this time, I confirm that I had a valid passport at this time.

Asked where my valid passport was at that time when I arrived at the airport, I said it was at home.”⁶

Following agreement by the parties that the proofs of the Service Provider can be heard in the same session, Terry Callus, on behalf of Atlas, stated:

“The Missed Departure section referred to in this meeting (page 33 of the policy; page 37 of the process) is intended to cover situations where travellers failed to arrive at the airport due to a number of reasons. It could be an accident in the highway. It could be works in the highway. It could be strikes of public transportation. So, the intention of the Missed Departure section is to cover situations where travellers fail to arrive at the airport.

With regard to loss or stolen passports (we cover not only lost but stolen passports as well) which create a situation where a traveller cannot travel, we

⁵ P. 53 - 54

⁶ P. 55 - 56

provide a number of benefits. One of them is the expense for this traveller to get an emergency passport because you need to get an emergency passport. If you need an emergency passport, you'll probably need to travel to an embassy and that expense would be covered.

Also, if you miss your connecting flights and you need to rebook flights, that would be covered as well. So, you are in a situation where your passport is lost or stolen whilst abroad where you need to incur extra expenses because there's no way that you can travel. But the proviso is that the passport has to be lost or stolen. That is under the section of Baggage (Section E – Baggage and Passport, page 26 of the policy; page 34 of the process).

So, there, we provide for accommodation, travel and even the emergency passport expense that one would incur.

The final situation that we provide cover for under Section A – Cancellation, which is similar to the complainant's; and I can feel for the complainant, but the wordings of the policy are different.

The cover starts when you leave your home. And if you leave your home and you have your passport on you, and from your home to the airport your passport is either stolen or lost (perhaps it is in your backpack and it's lost), and you arrive at the airport and you realise that it's been lost from your home to the airport, again, that is a situation where you cannot travel. And if you cancel your trip because you do not have the passport, it disappeared or it was stolen and you will lose your flights, perhaps accommodation that you booked, or excursions that you booked, that situation would also be covered under Section A – Cancellation.

So, there has to be loss or theft which occurs after you leave your home because the travel policy starts covering risks after you leave your home.

Our issue with the complainant's case is the fact that the passport wasn't even taken outside of the home; so, the risk didn't occur after he left his home. It wasn't taken at all, and it wasn't lost because he knew where it was.

I am referring to Section A, point 9, that says:

*'Loss or theft of **Your** passport and/or visa during **Your Trip** meaning **You** are unable to continue **Your Trip**.'*

That is a brief explanation of the policy and where the issue of the passport arises.”⁷

The Arbiter stated that having heard both sides, the issue that the cover would only start once you arrive at a foreign destination is not really the case. The parties seem to agree that in certain claims, the cover starts once you leave your home. There isn't a difference between the parties. So, the major difference is the definition of 'lost'.

Both parties expressed their agreement.

The Complainant had no questions to the Service Provider by way of cross-examination.

Final submissions

In their closing arguments, both parties gave their interpretation of what lost passport means in terms of the provisions and wording of the travel policy in question.

Analysis and Considerations

The Arbiter will decide the Complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.⁸

The Arbiter has to decide whether the policy covers the unrefunded part of the airline ticket of the flight which was missed because Complainant mistakenly took the wrong passport with him to the airport and when he realised his error, there was no time left to go back and return to the airport with his valid passport in time to catch the flight.

The relevant sections in the travel policy on which a claim can be considered are:

Section A – Cancellation or Abandonment Charges under which the following is covered:

9. *“Loss or theft of **Your** passport and/or visa during **Your Trip** meaning **You** are unable to continue **Your Trip**.”*⁹

⁷ P. 55 - 56

⁸ Cap. 555, Art. 19(3)(b)

⁹ P. 31 emphasis as per policy wording.

And Section I – Missed Departure.¹⁰

During the hearing, it was agreed by both parties that for the purpose of these clauses, the cover started from the moment the insured left his home to proceed to the airport.

Consequently, the point at issue was whether the passport was considered ‘lost’ for the purpose of Section A, point 9, and Section I of the policy.

The Complainant maintains that the flight was missed because at the time he was due to check-in for his flight, he realised he left his valid passport at his residence and, therefore, at that time the passport was ‘lost’. He refers to dictionary definitions of ‘lost’ as follows:

Collins: ‘unintentionally put (an object) where it cannot readily be found and so lose it temporarily’

Oxford: ‘lose/mislay something to put something somewhere and then be unable to find it again, especially for only a short time’.

The Service Provider argues that the passport was not lost as the Complainant admits he knew exactly where it was, and it was only through negligence that he lost his flight as he did not make the necessary good faith preparations to ensure he was carrying all that was needed with him before leaving home for the airport.

The Service Provider explained that had the passport been genuinely lost or stolen during the trip to the airport, they would have settled the claim.

Decision

The Arbiter finds the Complainant’s expectations that that travel insurance should cover losses caused by his negligent behaviour as unreal. Travel insurance is meant to cover unforeseen events which occur to a normal person exhibiting normal behaviour.

The fact that Complainant admits he was fully aware where his valid passport was when he realised he brought an expired passport with him to the airport cannot be considered as a loss for the purpose of Section A, point 9, of the policy.

¹⁰ P. 37 already quoted in the reply of the Service Provider

His valid passport was not lost, mislaid or stolen, temporarily or otherwise. It was just left behind through negligent behaviour which is not an insurable event covered by any of the provisions of Section I – Missed Departure.

The Arbiter accordingly dismisses the complaint and orders parties to bear their own costs of these proceedings.

Alfred Mifsud
Arbiter for Financial Services

Information Note related to the Arbiter’s decision

Right of Appeal

The Arbiter’s Decision is legally binding on the parties, subject only to the right of an appeal regulated by article 27 of the Arbiter for Financial Services Act (Cap. 555) (‘the Act’) to the Court of Appeal (Inferior Jurisdiction), not later than twenty (20) days from the date of notification of the Decision or, in the event of a request for clarification or correction of the Decision requested in terms of article 26(4) of the Act, from the date of notification of such interpretation or clarification or correction as provided for under article 27(3) of the Act.

Any requests for clarification of the award or requests to correct any errors in computation or clerical or typographical or similar errors requested in terms of article 26(4) of the Act, are to be filed with the Arbiter, with a copy to the other party, within fifteen (15) days from notification of the Decision in terms of the said article.

In accordance with established practice, the Arbiter’s Decision will be uploaded on the OAFS website on expiration of the period for appeal. Personal details of the Complainant(s) will be anonymised in terms of article 11(1)(f) of the Act.
