**Quddiem l-Arbitru għas-Servizzi Finanzjarji**

**Każ ASF 113/2025**

**RD u TH**

**(l-'Ilmentaturi')**

**Vs**

**Atlas Insurance P.C.C. Ltd.**

**(C 5601)**

**(il-'Fornitur tas-Servizz'/'Atlas')**

**Seduta tat-28 ta' Novembru 2025**

**L-Arbitru,**

**L-Ilment**

Ra l-ilment[1] imressaq mill-Ilmentaturi datat 30 Mejju 2025 fejn ilmentaw li Atlas ma kinux ġusti meta irrifjutaw il-*claim* fuq it-*travel insurance* li kienet tammonta għal €2,052 u offrew biss kumpens ex gratia ta' €500.

Spjegaw li fit-28 t'April 2025 suppost kellhom jiġu lura Malta minn Lisbona iżda l-vjaġġ gie mħassar għax inqata' l-kurrent elettriku (kien każ partikolari fejn kien hemm kriżi ta' interruzzjoni fil-provvista tal-elettriku fil-pajjiżi Iberiċi u fin-nofsinhar ta' Franza[2]) u spiċċaw lampa stampa bla għajnuna ta' ħadd.

"*Ryanair informed us that the flight was cancelled and gave us an option to change the flight or get a refund. It was very difficult to try to change the flight as we had no internet access. Mobile data was extremely slow, and impossible to go on-site. At about midnight, we managed to go to the Ryanair site. The next*

[1] Pagni (p.) 1 - 8 u dokumenti mehmuża p. 9 - 114

[2] https://beirabuzz.pt/articles/april-2025-portugal-spain-blackout-explained#:~:text=On%2028%20April%202025%2C%20a%20sudden%20and%20massive,metro%20lines%2C%20shut%20down%20ATMs%2C%20and%20disrupted%20telecommunications.

*flight to Malta from Lisbon on the 30th April which was sold out, and the next flight to Malta was Saturday, 3rd May. Therefore, we had to take the option to get a refund due to our work we needed to be in Malta asap. The first availability to get to Malta was to fly via Marseilles on 30th April and get another flight that night to Malta. We booked those flights, and since these where last-minute bookings were extremely expensive. We had no other choice!*

*The hotel did not help at all, and we had nowhere to stay. I went round walking by to nearby hotels and they all said that since they had no electricity, they did not accept any bookings as they did not know which rooms were available. Very unprofessional. The only hotel that helped us was a 5-star hotel, which gave us a room at a special offer rate of 400 euros per night with no electricity and water supply for the 1st night. For which we thank them for being helpful, they also gave us a cold meal, otherwise we would have had to stay in the main hotel's lounge in the dark. We were exhausted, we just wanted somewhere to rest. Even though we did not manage to sleep as we kept trying to book our flight home. Mobile batteries were getting flat, so we just waited until all was back to normal in the middle of the night.*

*Adding to the above issues, the flight from Marseilles to Malta was delayed by 3 hours!! Again, no help from anyone, no drinks or food offered. For MIB insurance, we were told we are not eligible to any compensation.*

*Once back, we have submitted the claim to our insurance, which is the insurance offered by HSBC when you have a Premier account, MIB insurance (a broker of Atlas insurance). I am a single person and have no one to stay with me. When I opened the HSBC Advance account, I was allowed to add one person, whom I added, TH, my niece. For this, she has a supplementary card for my same account and the free offer of travel insurance.*

*Mr Josef Galea of MIB informed us that we were not eligible for a refund, and if for whatever reason, our complaint is not resolved, to write: The Customer Care Manager Atlas Insurance PCC Limited I emailed Atlas, and Mr Terry Callus replied to my email. After several emails, we were informed that we were not eligible, as our policy covers only for cancelled flight if the Airline was overbooked. After several emails, Mr Callus informed me that my niece, TH, was not covered by insurance since she did not live at the same address. The last email we had from*

*Mr Callus said that they were giving us an ex-gratia of 500 euro instead of the 2052 euro."*[3]

Spjegaw li l-*claim* kienet tkopri spejjeż ta' tnejn min-nies:

| | |
|---|---|
| Vjaġġ Lisbona sa Marseilles | €827.07 |
| Vjaġġ Marseilles sa Malta | €356.79 |
| Akkomodazzjoni fil-lukanda | €800.00 |

U b'kollox talbet rifużjoni ta' €2,052.00

**Ir-Risposta tal-Fornitur tas-Servizz**

Ra r-risposta[4] tal-Fornitur tas-Servizz datata 12 ta' Lulju 2025, fejn iġġustifika r-rifjut tal-claim għax il-polza teskludi l-kawża tal-kanċellament tal-flight u spjegaw:

1. *"Cancellation of flight from Lisbon due to power outage on 28 April:*
    a. *Section A – Cancellation or Abandonment charges: the policy covers cancellation of the entire trip for specified events (please refer to page 17 of the policy document), and unfortunately none of these covered the power outage*
    b. *Section H – Delayed Departure. This was a cancellation and therefore not covered under this section.*
    c. *Section I – Missed Departure. This section provides cover for specific circumstances when the insured fails to arrive at the departure point in time to board a flight, which also is not the case here.*

2. *Delayed departure from Marseilles*
    a. *Section H – Delayed Departure. 'If the* ***Public Transport*** *on which* ***You*** *are booked to travel is delayed on a* ***Direct Journey*** *to or from* ***Your Country of Residence*** *resulting in* ***You*** *arriving at* ***Your*** *final destination*

[3] P. 4 - 5
[4] P. 119 - 121 u dokumenti annessi p. 122 - 189

> *at least 12 hours after **Your** original scheduled arrival time.' The delay was not longer than 12 hours."*[5]

Qalu li meta ħadu ċ-ċirkostanzi tal-każ offrew pagament ex gratia ta' €250, li wara żdied għal €500, meta rriżulta li fil-vjaġġ kien hemm it-tieni persuna li kienet 'supplementary cardholder' taħt l-iskema tal-HSBC. Fil-fatt, din kienet neputija li ma kinetx tgħix maz-zija li kienet tgħix għal rasha waħeda.

**Seduta**

Fis-seduta li nżammet fit-30 ta' Settembru 2025, il-partijiet bażikament irrepetew il-pożizzjoni tagħhom kif spjegat fl-ilment u fir-risposta.

Tqajjem il-punt jekk it-tieni Ilmentatriċi kinetx koperta bil-polza li kienet tgħid li *supplementary cardholder* ikun kopert biss jekk ikun jgħix fl-istess *household* mal-*cardholder* prinċipali (f'dan il-każ ma jirriżultax li tieni Ilmentatriċi kienet tgħix mal-ewwel Ilmentatriċi u cardholder prinċipali), iżda l-Arbitru ser jiskarta dawn l-argumenti għax il-*claim* kienet rifjutata fuq jekk il-kanċellament kienx kopert jew le u mhux fuq jekk it-tieni Ilmentatriċi kinetx jew ma kinetx koperta.

Terry Callus, għan-nom ta' Atlas qal:

"*Dak li stqarr l-Arbitru fil-bidu naqblu miegħu kollu.*

*Il-punt prinċipali li kien hemm dan il-power outage l-airport, xi ħaġa straordinarja. Però, l-policy hija bbażata fuq numru ta' riskji li huma msemmijin. Imma sfortunatament il-power outage mhix waħda mir-riskji li huma koperti.*

*Aħna dehrilna li dan hu l-punt prinċipali.*

*Kif qal ukoll l-Arbitru, l-airline offriet żewġ options lil Ms RD ta' refund jew ta' flight lura.*

*It-tielet punt hija l-issue jekk TH hix inkluża f'din il-polza tal-HSBC. Dan huwa punt sekondarju fl-opinjoni tagħna għaliex anke jekk hija inkluża f'din il-polza, il-kawża tal-cancellation kienet power outage u m'hemmx kopertura fil-polza."*[6]

[5] P. 119
[6] P. 192

## Sottomissjonijiet Finali

Fis-sottomissjonijiet finali, il-partijiet reġgħu sostnew il-pożizzjoni tagħhom u aktar ikkonċentraw fuq il-kwistjoni jekk it-tieni Ilmentatriċi kinetx koperta bħala supplementary cardholder jew le li, kif ġie spjegat qabel, hija kwistjoni sekondarja għar-raġuni prinċipali ta' jekk il-kanċellament kienx kopert jew le bil-kundizzjonijiet tal-polza.

## Analizi u konsiderazzjonijiet

L-Arbitru, wara li eżamina d-dokumenti sottomessi, wara li sema' x-xhieda u xtarr l-intriċċi kollha ta' dan l-ilment, jgħaddi biex jagħmel analiżi u konsiderazzjonijiet li jwasslu għad-deċiżjoni skont Artiklu 19(3)(b) ta' KAP. 555 li jistipula li d-deċiżjoni tal-Arbitru tkun b'referenza għal dak li, fil-fehma tiegħu, ikun ġust, ekwu u raġonevoli fiċ-ċirkostanzi partikolari u merti sostantivi tal-każ.

L-Arbitru huwa tal-fehma li l-kanċellament tal-*flight* minn Lisbona għal Malta nhar it-28 April 2025 ma sarx għal xi raġuni li għalihom il-polza toffri kopertura u, b'hekk, Atlas għandhom obbligu jħallsu għax, kif spjegaw Atlas fir-risposta tagħhom, dan l-inċident ma kienx kopert bil-polza.

Probabbli li l-Ilmentaturi għamlu għażla ażżardata meta aċċettaw ir-rifużjoni tar-Ryanair flok stennew li jieħdu soluzzjoni li Ryanair bil-liġi tal-EU huma obbligati li jagħtu meta jikkanċellaw flight.[7]

Meta għamlu din l-għażla, irrinunzjaw għal ċertu drittijiet li issa qed jippruvaw jirkupraw mill-assikurazzjoni fuq assunzjoni ħażina li kull kanċellament kien kopert.

[7] EC 261 is a European regulation that safeguards air passengers' rights, ensuring compensation in case of flight cancellations. This includes options for refund or re-routing, along with additional compensation depending on circumstances

**Deċiżjoni**

L-Arbitru ma jħossx li hemm bażi legali biex jordna xi kumpens obbligatorju skont Artiklu 26(3)(c)(iv) tal-KAP. 555 tal-Liġijiet ta' Malta li jikkodifika l-operat tal-Uffiċċju tal-Arbitru.

Iżda meta jikkunsidra kollox, partikolarment:

1. li dawn kienu ċirkostanzi eċċezzjonali, għal kollox barra mill-kontroll tal-Ilmentaturi, li kellhom l-istess effett fuq l-assikurati daqslikieku l-kanċellament sar għar-raġuni koperta bil-polza;

2. li Atlas qed ikunu stretti wisq li jsostnu li t-tieni Ilmentatriċi ma kinetx koperta għax ma kinetx tgħix ma' zijitha li kienet tgħix waħeda u, b'hekk, ma kellhiex 'household' kif wieħed jifhem b'mod ordinarju. Ir-rabta stretta bejn l-Ilmentaturi hija ovvja mill-fatt li n-neputija kienet cardholder fuq il-kont ta' zijitha.

L-Arbitru jħoss li Atlas għandhom ikunu aktar ġenerużi fl-offerta ex gratia u jirrakkomanda li jirduppjaw l-offerta għal elf ewro, biex b'hekk l-Ilmentaturi (li diġà ħadu rifużjoni tal-flight mir-Ryanair), iġorru madwar nofs il-piż, riflessjoni għall-għaġġla biex ħelsu lil-linja tal-ajru mill-obbligazzjonijiet li kellha bla konsultazzjoni mal-assigurazzjoni.

Jiġi ċċarat li din hija biss rakkomandazzjoni qawwija li Atlas jistgħu jagħżlu li jwarrbu iżda li jagħmlu sew jekk jikkunsidrawha fl-interess li jżommu l-aħjar relazzjonijiet mal-klijenti.

Kull parti għandha ġġorr l-ispejjeż tagħha.

**Alfred Mifsud**
**Arbitru għas-Servizzi Finanzjarji**

**<u>Nota ta’ Informazzjoni relatata mad-Deċiżjoni tal-Arbitru</u>**

*Dritt ta’ Appell*

Id-Deċiżjoni tal-Arbitru legalment torbot lill-partijiet, salv id-dritt ta’ appell regolat bl-artikolu 27 tal-Att dwar l-Arbitru għas-Servizzi Finanzjarji (Kap. 555) (‘l-Att’), magħmul quddiem il-Qorti tal-Appell (Kompetenza Inferjuri) fi żmien għoxrin (20) ġurnata mid-data tan-notifika tad-Deċiżjoni jew, fil-każ li ssir talba għal kjarifika jew korrezzjoni tad-Deċiżjoni skont l-artikolu 26(4) tal-Att, mid-data tan-notifika ta’ dik l-interpretazzjoni jew il-kjarifika jew il-korrezzjoni hekk kif provdut taħt l-artikolu 27(3) tal-Att.

Kull talba għal kjarifika tal-kumpens jew talba għall-korrezzjoni ta’ xi żbalji fil-komputazzjoni jew klerikali jew żbalji tipografiċi jew żbalji simili mitluba skont l-artikolu 26(4) tal-Att, għandhom isiru lill-Arbitru, b’notifika lill-parti l-oħra, fi żmien ħmistax (15)-il ġurnata min-notifika tad-Deċiżjoni skont l-artikolu msemmi.

Skont il-prattika stabbilita, id-Deċiżjoni tal-Arbitru tkun tidher fis-sit elettroniku tal-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji wara li jiskadi l-perjodu tal-appell. Dettalji personali tal-ilmentatur/i jkunu anonimizzati skont l-artikolu 11(1)(f) tal-Att.