



TOPE ADEBAYO LP



## DEPARTURES

TIME	DESTINATION	GATE	STATUS
09:30	ABUJA	C53	CANCELLED
10:40	BENIN	C53	DELAYED
11:50	LAGOS	C53	CANCELLED
12:45	KANO	C53	DELAYED
13:10	ENUGU	C53	CANCELLED



# COMPENSATION/REMEDIES FOR **FLIGHT DELAYS** AND CANCELLATIONS IN NIGERIA

# COMPENSATION/REMEDIES FOR FLIGHT DELAYS AND CANCELLATIONS IN NIGERIA.



## Introduction

It is commonplace to witness the rage of disgruntled customers at any local Nigerian airport expressing their disappointment for the cancellation or delays in their flight to their respective destinations. This unilateral act on the part of airlines, however justifiable in the circumstances comes with significant and sometimes dire levels of inconvenience to customers whose plans may suffer as a result. The far-reaching implications of this kind of development may affect the business and economic interests of customers, amongst other consequences.

In this light, one of the many laws regulating the Nigerian aviation sector provides an avenue for customers to obtain some form of redress by compensation in these situations. It is a fundamental principle of legality that where an act or course of conduct fails to meet the requirements prescribed by law, such that the non-compliance renders the act or course of conduct devoid of legal effect, no legal consequences flow from such acts or course of conduct.<sup>1</sup> Thus, causing a scene as most customers are inclined to do when they are notified of a mishap with their flight arrangement is not the way to seek appropriate remedies from the airline service provider in question.

This article examines the law in this regard and provides some insights into the available remedies for customers in this category and the potential for enforcement of their legal rights where the relevant airline operator does not comply with the law.



<sup>1</sup>Nwokoro V. Onuma (1990) 3 NWLR (Pt.136) 22 at 32.

## COMPENSATION/REMEDIES FOR FLIGHT DELAYS AND CANCELLATIONS IN NIGERIA.



### Relevant laws & Regulations.

The extant law in the Nigerian aviation industry is Civil Aviation Act 2006 (the Act) and the Nigerian Civil Aviation Regulation 2015 (the Regulations). The aim of which is to regulate air service, and airline operators, with the principal governing body being the Nigerian Civil Aviation Authority (the Authority).<sup>2</sup> Nigeria has also ratified the Convention for the Unification of certain Rules relating to International Carriage by Air signed at Montreal on 28<sup>th</sup> May 1999 also known as the “Montreal Convention”<sup>3</sup> and Convention for the Unification of certain rules relating to international carriage by Air 12<sup>th</sup> October 1929, commonly known as the Warsaw Convention.<sup>4</sup>

The provisions of the above-stated conventions are the gravamen of the liabilities of air carriers in Nigeria having been ratified and incorporated into the Act which currently enjoys the force of law in Nigeria. These conventions have been recognized and applied in the cases of **HARKA AIR SERVICES (NIGERIA) LTD v. KAEZAR, (2011) LPELR -1353(SC)** and **MEKWUNYE v. EMIRATES AIRLINES (2019) LPELR-46553(SC)** in the determination of liabilities of airline operators in Nigeria.

In this regard, to ensure that Nigeria has in place a relevant regulatory framework for the aviation industry, the Authority under its powers contained in section 71 of the Act enacted the Regulations. The provisions of the Regulations regarding delays and cancellation of flights and available remedies in Nigeria will now be considered below.

<sup>2</sup>Established by section 2 of the Nigerian Civil Aviation Act 2006.

<sup>3</sup>See section 48 (1) of the Civil Aviation Act 2006 and as contained in Second Schedule II.

<sup>4</sup>Amended at the Hague in 1955 and applicable in Nigeria by virtue of the Carriage by Air (Colonies, Protectorates and Trust Territories) Order 1953 operative from 1st January 1954.

## COMPENSATION/REMEDIES FOR FLIGHT DELAYS AND CANCELLATIONS IN NIGERIA.



### Delays.

The Regulations stipulate that a delay is occasioned concerning domestic flights when an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure, it shall inform the passengers of the reasons for delay no later than 30 minutes after the scheduled departure time and shall be on hand to provide specific assistance within certain timeframes.<sup>5</sup>

The nature of assistance to be rendered is obligatory on the part of the airline operators and they are required to provide refreshments and accommodation for the passengers after two hours, after three hours the passengers are entitled to some level of reimbursement, and where it is between the hours of 10:00 pm and 4:00 am there must be provisions for phone calls, messages, hotel accommodation and transportation from and to the airport.<sup>6</sup>

Concerning international flights, an airline operator is expected to cater to the incidental needs of the passengers which may arise from a delay in the flight between a period of two to four hours.<sup>7</sup>

### Cancellation.

Concerning cancellation of flights, where an international flight is cancelled, the airline operator is expected to inform the passengers of such cancellation and assist them with their needs as if it were a delay<sup>8</sup> and

explore the possibility of reimbursement or re-routing of the flight no later than 24 hours from the cancelled flight. In the case of re-routing all necessary assistance must be provided to the passengers.<sup>9</sup>

Concerning domestic flights, any passenger affected by a flight cancellation is entitled to compensation unless such notification is given 24 hours before the flight is expected to depart.<sup>10</sup> In respect of international flights, a passenger has the right to compensation by the operating air carrier under the provisions of the Regulation unless:

- (a) they are informed of the cancellation at least seven days before the scheduled time of departure;
- (b) they are informed of the cancellation between three and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart not more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or
- (c) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart not more than one hour before the scheduled time of departure and to reach their destination less than two hours after the scheduled time of arrival.

<sup>5</sup>Section 19.6.1.1. NCARs 2015.

<sup>6</sup>Section 19.6.1.1. (i) – (iv) NCARs 2015.

<sup>7</sup>Section 19.6.2. NCARs 2015.

<sup>8</sup>Section 19.7.1. (i) NCARs 2015.

<sup>9</sup>Section 19.7.1. (ii) NCARs 2015.

<sup>10</sup>Section 19.7.1. (iii) NCARs 2015.

## COMPENSATION/REMEDIES FOR FLIGHT DELAYS AND CANCELLATIONS IN NIGERIA.



### Available Compensations Under the Nigerian Civil Aviation Regulations.

The Regulations provide various remedies for various aviation rights attributable to customers or passengers. Broadly speaking, passengers are entitled to the following compensations: Right to care, right to reimbursement and re-routing, and right to compensation.

#### ***Right to Compensation.***

The right to compensation provisions in the Regulations make passengers entitled to receive at least 25% of the fares or passenger ticket price for all flights within Nigeria and 30% of the passenger ticket price for all international flights.<sup>11</sup>

When passengers are offered re-routing to their destination on an alternative flight under the Regulation, the arrival time of which does not exceed the scheduled arrival time of the flight originally booked: (i) by one hour, in respect of all domestic flights; (ii) by

three hours, in respect of all international flights, the operating airline may reduce the compensation provided for by 50%.<sup>12</sup>

The compensation under this provision<sup>13</sup> shall be paid in cash, by electronic bank transfer, bank orders, or bank cheques or, with the signed agreement of the passenger, in travel vouchers or other services.

#### ***Right to Reimbursement or Re-routing.***

Concerning reimbursement or re-routing, passengers are to be reimbursed immediately and in cash for domestic flights and within fourteen days for international flights.<sup>14</sup> The reimbursement must be for the total flight cost or part of the journey not made in the case of connecting flights.<sup>15</sup> Passengers must be re-routed under comparable transport conditions to their destinations at the earliest opportunity or at a later date at the passenger's convenience, subject to the availability of seats.<sup>16</sup>

If a passenger's flight forms part of a package, the right to reimbursement is not automatic but may be agreed on between the passenger and the package provider.<sup>17</sup> If an airline operator offers a passenger a flight to an airport alternative to that for which the booking was made, the operator shall bear the cost of transferring the passenger from that alternative airport either to the airport for which the booking was made, or to another close-by destination agreed with the passenger.<sup>18</sup>

<sup>11</sup>Section 19.8.1. NCARs 2015.

<sup>12</sup>Section 19.8.2. NCARs 2015.

<sup>13</sup>Section 19.8.3. NCARs 2015.

<sup>14</sup>Section 19.9.1. NCARs 2015.

<sup>15</sup>Section 19.9.1. (i) NCARs 2015.

<sup>16</sup>Section 19.9.1. (ii) & (iii) NCARs 2015.

<sup>17</sup>Section 19.9.2 NCARs 2015.

<sup>18</sup>Section 19.9.3 NCARs 2015.

## COMPENSATION/REMEDIES FOR FLIGHT DELAYS AND CANCELLATIONS IN NIGERIA.



### Right to Care.

Where applicable the Regulations require airline operators to in the event of cancellation or delay of flights, provide care to the needs of the passengers in this situation which must be offered free of charge. They are to provide the passengers with refreshments such as water, soft drinks, confectioneries/snacks, meal, hotel accommodation, and transport between the airport and the place of accommodation (hotel or other accommodation).<sup>19</sup>

In addition, passengers are also entitled to two telephone calls, SMS, or emails.<sup>20</sup> The airline operator is also expected to prioritize the needs of vulnerable persons and any persons accompanying them, as well as the needs of unaccompanied minors.<sup>21</sup>

### Enforcement for non-compliance.

Where an airline operator does not comply with the above procedure and provides the above remedies to their passengers for cancellation and delays of their flights, the Regulations stipulate the process for the enforcement of the rights of such passengers.

Firstly, the passenger has a right to lodge a complaint to the Authority against the airline operator where the airline operator has defaulted in any of its obligations to the passenger under the Regulations.<sup>22</sup> However, as a precursor to complaining to the Authority via the available online platform for this

purpose, the passenger is expected to have notified the airline of the breach and afforded the airline some time to remedy the breach.<sup>23</sup>

The passenger may make the complaint in writing or by electronic mail<sup>24</sup> and the passenger is expected to provide the following information to the Authority:

- (i) a copy of the airline ticket (where applicable);
- (ii) A copy of the letter to the air carrier stating a claim for breach of air passenger rights;
- (iii) any response or responses or correspondence thereto;
- (iv) Any other relevant document(s).<sup>25</sup>

A complaint may also be made to the authority in a representative capacity or as a person designated to be the representative of a class of persons to make the complaint.<sup>26</sup> Once the complaint is received, the Authority has the power to assess the complaint and to determine its merits by hearing from the complainant(s) (the passengers) and the airline operator.<sup>27</sup>

The Authority has the power in line with its administrative hearing procedure<sup>28</sup> to conduct a formal hearing with the sole aim of ensuring that the complaint is resolved., The Authority has summary jurisdiction to hear and determine any complaint made to it and

<sup>19</sup>Section 19.10.1 (i) – (iv) NCARs 2015.

<sup>20</sup>Section 19.10.2 NCARs 2015.

<sup>21</sup>Section 19.10.3 NCARs 2015.

<sup>22</sup>Section 19.20. NCARs 2015.

<sup>23</sup>Section 19.22.3 NCARs 2015.

<sup>24</sup>Section 19.22.4 NCARs 2015.

<sup>25</sup>Section 19.22.5 NCARs 2015.

<sup>26</sup>Section 19.22.6 & 7 NCARs 2015.

<sup>27</sup>Section 19.23. NCARs 2015.

<sup>28</sup>Section 19.25. NCARs 2015.

## COMPENSATION/REMEDIES FOR FLIGHT DELAYS AND CANCELLATIONS IN NIGERIA.



it may also direct that the parties explore mediation as a way of resolving the complaint.<sup>29</sup>

### **Conclusion.**

In the final analysis, passengers who patronize air transportation services in Nigeria have an enforceable right in the event of cancellation or delays of flights to various destinations. The Regulations make provisions setting out the rights of the passengers and the obligations of any airline in those situations.

If there is non-compliance with the relevant obligations of the airline as contained in the regulations, a passenger is entitled to escalate the matter by way of complaint to the Authority which has summary jurisdiction to resolve such complaint.

If the provision of this Regulation is successfully implemented, it may aid in reducing the workload of the regular courts concerning claims in this category. However, this does not prevent a passenger from taking steps to protect and enforce his/her legal right against an airline in court particularly the Federal High Court bearing in mind its exclusive jurisdiction as contained in section 251 of the 1999 Constitution (as amended).

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<sup>29</sup>Section 19.24.2 (ii) NCARs 2015.

PLEASE NOTE THAT THIS ARTICLE IS FOR INFORMATION PURPOSES ONLY AND DOES NOT CONSTITUTE LEGAL ADVICE

## MEET THE AUTHOR



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