

Rechtspraak**Bijzonderheden van de zaak****Nationaal ID:** Court of Appeal, Amsterdam, 1 May 2018**Lidstaat:** Nederland**Gangbare benaming:** N/A**Soort beslissing:** Rechterlijke beslissing in beroep**Datum beslissing:** 01/05/2018**Gerecht:** Court of Appeal, Amsterdam**Onderwerp:****Eiser:****Verweerder:****Trefwoorden:** Scope of directive, transparency, unfair terms, cancellation**Richtlijnartikelen**Unfair Contract Terms Directive, [Article 2](#), (c) Unfair Contract Terms Directive, [Article 5](#) Unfair Contract Terms Directive, [Article 5](#)**Koptekst****ECLI:NL:GHAMS:2018:1509**

It cannot be inferred from the wording of the sales contracts that the buyer does not have to fear HD when raising two parents without HD. The idea that a pedigree guarantees that the dog in question is healthy is a misconception. The Court of Appeal is of the opinion that no lack of conformity can be presumed in this case.

Feiten

A consumer books non-refundable airline tickets and later cancels the booking.

Juridische kwestie

Do the airline's fair conditions fall within the scope of the UCTD? Was it made sufficiently clear to the consumer that when cancelling the contract of carriage, the amount paid would not be refunded? Is the relevant term unfair?

Uitspraak

The fare conditions invoked by the airline fall within the scope of Directive 93/13/EEC as the airline is a "seller" within the meaning of article 2(c) and the appellant is a consumer with regard to a service to be provided by the airline within the meaning of the Directive, because it has undertaken to carry one or more persons (travellers) on board an aircraft and to transport their baggage by air or otherwise.

The fact that the consumer could choose between two sets of conditions for the applicable cancellation policy does not imply that terms of the contract are negotiated and, therefore, not subject to the unfairness test.

The "Summary of fare conditions" does not explain in clear terms that in the event of cancellation of the booked ticket there will be no refund whatsoever of the price paid for it. Therefore, the Court of Appeal observes, the consumer is dependent on the (grammatically incorrect) single sentence "Cancellations ticket is non-refundable" to establish that if he decides to cancel the booked trip, he will not receive a refund of his ticket price. Moreover, the sentences in the "Summary" that follow call into question whether this is correct, as these seem to keep open the possibility that a "refund" can still take place on the ticket purchased as "lowest price", especially if certain "fares" are combined. It is also explicitly mentioned that restitution of unused taxes fees and charges made to third parties is possible ("permitted"). The Court, therefore, finds the term to be unclear. Whether or not this has any legal consequences need not be answered in this procedure.

URL: <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHAMS:2018:1509>

Integrale tekst: [Integrale tekst](#)

Verwante zaken

Geen resultaten

Rechtsleer

Geen resultaten

Resultaat

The Court holds that whether the term is unfair, must be determined on the basis of a comparison with the otherwise applicable law. Under Dutch law, the consumer would be obliged to compensate the damage suffered by the airline as a result of his termination, which includes, in particular, the loss of profit and saved costs. As regards the latter, the airline must provide insight into the possibilities and chances (in general) of reselling seats that became available as a result of cancellation of booked flights.