

The complaint

Mr R complains about how American Express Services Europe Limited (AESEL) handled a dispute over a payment.

What happened

The parties are familiar with the background details of this complaint – so I will simply summarise them.

Mr R says that in early December 2022 he tried using his AESEL credit card to make a booking for flights (which I will refer to as 'Booking A') but this was declined so he made another booking a few days later using another bank card (which I will refer to as 'Booking B').

Mr R says that when he got to the airport on 28 December 2022 to depart there was a problem with locating Booking B and the airline made some changes. He says that it wasn't until January 2023 when checking his AESEL statement that he realised he had been charged for Booking A.

Mr R thinks that when he was at the airport AESEL allowed the airline to collect the payment for Booking A that it originally declined. He says it should not have allowed the airline to do this as he had already paid for the trip through Booking B.

AESEL did not agree that it had made an error and refused to refund the transaction – it also attempted a chargeback but this did not succeed. Mr R brought his complaint about the claim outcome to this service. Our investigator did not uphold this complaint.

Mr R has asked for the matter to be escalated to an ombudsman.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally. Where things are not entirely clear I make my decision on the balance of probabilities.

It is important to note here that I am looking at what AESEL has done for Mr R in respect of the transaction it charged him for (Booking A) and whether it was incorrect in not refunding him for this as he requested. I am not looking at any dispute against it in respect of Booking B – which is something that Mr R can raise with the third party bank (or the airline) if he wishes.

Charged wrongly for a declined transaction

I note that the central aspect of Mr R's complaint is that AESEL later allowed the airline to collect a transaction which Mr R says was declined some weeks before and which he ultimately says he had not authorised. Which effectively meant Mr R had paid for twice for the booking. However, the evidence I have does not support that allegation.

From what I can see from the AESEL credit card statement Mr R was charged for Booking A on the 6 December 2022 and not at a later date as he claims. This appears to be the day he attempted to make Booking A. There is no persuasive evidence that this was on hold and then authorised retrospectively by AESEL on 28 December 2022 while he was at the airport.

I can see that Mr R made several attempts to book with the airline at the start of December 2022 and he has provided emails with different references (including Booking A) which show that the airline was unable to take payment on more than one occasion.

However, it appears that Booking A went through on the 6 December 2022. Not only is there a transaction on Mr R's AESEL credit card statement showing this but I can see that following this transaction the airline wrote to Mr R more than once to confirm the flight and to offer him baggage and seat purchases/upgrades. So it seems Booking A was confirmed well in advance of Mr R arriving at the airport on 28 December 2022.

In summary, from the evidence I have seen I am not persuaded that AESEL retrospectively authorised the transaction for Booking A without Mr R's permission as he has set out in his complaint.

I note that AESEL did send Mr R a security alert in respect of at least one of his attempts to pay the airline on 6 December. This is for a slightly different amount to Booking A and appears to follow another attempt at make a booking under a different reference. The alert asked Mr R to confirm it was him trying to make such a transaction. I then see an email that says Mr R confirmed the transaction was valid and invites him to re-attempt the charge if it had not gone through. I don't see that he did re-attempt this particular transaction, but it shows that at the time Mr R was receiving security alerts from AESEL, and that in order for a transaction to complete he needed to confirm he was requesting a particular transaction, and re-attempt that transaction as necessary.

While I can appreciate Mr R attempting and having several transactions declined in succession would have been confusing (and that some correspondence from the airline indicates certain attempts at payment were unsuccessful) I don't see persuasive evidence that AESEL did anything wrong in ultimately authorising Booking A at the time or that it misled Mr R into thinking the transaction did not go through.

Furthermore, even if I were to accept that it was not clear if the transaction for Booking A had gone through on or around the 6 December 2022:

- Mr R could have reasonably checked with AESEL to make sure of this before he made other bookings using his other bank card;
- there is persuasive evidence from the airline that Mr R used Booking A. So I don't think it would be fair to refund him for this transaction in any event.

Chargeback

Chargeback is a way that payments can be disputed. It is not guaranteed to succeed and is governed by particular card scheme rules (in this case AMEX) but is often good practice to raise one.

I can see AESEL raised a chargeback for Mr R with the airline – because essentially he was claiming that it had taken money for Booking A when it shouldn't have.

The airline came back to defend the charge by stating that Mr R had booked Booking A and that he had also made use of it. It included a system screenshot to show the flights for Booking A had all been boarded.

Based on the defence to the chargeback AESEL discontinued it – I don't think that was unreasonable here as on the face of it there was not a reasonable prospect of it succeeding on the grounds of a service not being received (the reason code it was raised under) or even an alternative such as the transaction not being authorised by Mr R.

I note that AESEL did not consider a claim under Section 75 of the Consumer Credit Act 1974 ('Section 75') because it said Mr R did not ask for this to be raised. I don't think Mr R needed to specifically ask for AESEL to consider Section 75 if it was relevant to the dispute. However, based on the information Mr R presented to AESEL and the nature of his claim (focused on his belief it had retrospectively allowed the airline to collect monies without permission) I don't think it was unreasonable not to go into Section 75 at the time.

If Mr R considers there has been a breach of contract or misrepresentation by the airline in respect of Booking A that has caused him a financial loss then AESEL has said it would look into a Section 75 claim for him. So he is able to decide if that is a route he wishes to pursue with it.

Furthermore I note Mr R is able to explore if he has any claims against the third party bank or the airline in respect of Booking B. However, as I have already said that isn't something I am considering in respect of the transaction made on the AESEL card.

In summary, for the reasons I have given I don't consider there to be persuasive evidence that AESEL should have fairly refunded Mr R for Booking A when he requested this. So I don't uphold this complaint.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 10 June 2024.

Mark Lancod
Ombudsman