

Halifax, NS
lukacs@AirPassengerRights.ca



December 3, 2015

VIA EMAIL

The Secretary
Canadian Transportation Agency
Ottawa, ON K1A 0N9

Dear Madam Secretary:

**Re: Mr. Christopher C. Johnson and Dr. Gábor Lukács v. Air Canada
Application concerning failure to apply the tariff and application of terms and conditions not set out in the tariff and with respect to delayed passengers**

Please accept the following application pursuant to ss. 26, 27, and 37 of the *Canada Transportation Act* (“CTA”), S.C. 1996, c. 10, ss. 110 and 113.1 of the *Air Transportation Regulations*, S.O.R./88-58 (“ATR”), and Rule 19 of the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, S.O.R./2014-104.

OVERVIEW

The Applicants challenge Air Canada’s policy purporting to limit its liability with respect to delay of passengers to \$100.00 of hotel costs per night, \$7 for breakfast, \$10 for lunch, and \$15 for dinner (the “Impugned Policy”). The Applicants allege that:

- (i) the Impugned Policy is not set out in Air Canada’s International Tariff, contrary to s. 122 of the *ATR*;
- (ii) the Impugned Policy is unreasonable within the meaning of s. 111 of the *ATR*, because it purports to fix a lower limit of liability than what is set out in the *Montreal Convention*; and
- (iii) since 2013 or earlier, Air Canada has failed to apply the terms and conditions set out in its tariff by applying the Impugned Policy and/or other unofficial policies instead of the provisions of the *Montreal Convention*, contrary to s. 110(4) of the *ATR*.

In addition, Mr. Johnson alleges that:

- (iv) he was adversely affected by and incurred expenses as a result of Air Canada’s failure to apply the terms and conditions set out in its tariff.

The Applicants are seeking an Order, pursuant to s. 113.1(a) of the *ATR*, for corrective measures, and an Order, pursuant to s. 113.1(b) of the *ATR*, directing Air Canada to compensate Mr. Johnson.

TABLE OF CONTENTS

I.	The Facts	3
	(a) Mr. Johnson was delayed and incurred expenses.	3
	(b) Air Canada’s refusal to reimburse Mr. Johnson based on the Impugned Policy	4
	(c) Not an isolated incident but a systemic issue.	5
	(d) Air Canada’s International Tariff Rules	5
II.	Issues	6
III.	Submissions	6
	(a) Air Canada contravened s. 122 of the <i>ATR</i> by not setting out the Impugned Policy in its International Tariff.	6
	(b) The Impugned Policy is inconsistent with the <i>Montreal Convention</i>	7
	(c) The Impugned Policy is not “just and reasonable” within the meaning of s. 111 of the <i>ATR</i>	8
	(d) Air Canada has failed to apply the terms and conditions set out in its International Tariff, contrary to s. 110(4) of the <i>ATR</i>	9
	(e) Remedies	10
IV.	Relief Sought	12

SUPPORTING DOCUMENTS

1.	Witnessed Statement of Mr. Christopher C. Johnson	13
2.	Email of Air Canada to Mr. Leatherman, dated February 6, 2014	14
3.	Email of Air Canada to Ms. Allen, dated November 12, 2014	16
4.	Air Canada’s International Tariff Rule 55(B)(5)	19
5.	Air Canada’s International Tariff Rule 80	20

I. THE FACTS

(a) Mr. Johnson was delayed and incurred expenses

1. Mr. Johnson held a confirmed Ottawa-London (LHR)-Ottawa itinerary, with return on Flight AC 889 on December 10, 2013.

Mr. Johnson's Statement, Exhibit "A"

2. On December 10, 2013, Flight AC 889 from London (LHR) to Ottawa was cancelled, for what Air Canada claims to be "mechanical requirements." Mr. Johnson has no personal knowledge of the cause of cancellation.

Mr. Johnson's Statement, paras. 3-4 and Exhibits "B" and "E"

3. Based on the assurance that Air Canada would provide him with accommodation and meals for the night, Mr. Johnson volunteered at Air Canada's request to stay in London for the night and to be transported the next day.

Mr. Johnson's Statement, para. 5

4. Mr. Johnson followed the instructions of Air Canada's agents, collected his checked baggage at the Arrival Area, and waited outside to be transported to a hotel by and/or on behalf of Air Canada. After 30 minutes of waiting in vain, he returned to the terminal and sought assistance from an attendant in reaching Air Canada's representatives. The attendant, however, was unable to reach any Air Canada representative in spite of attempting various methods.

Mr. Johnson's Statement, paras. 6-8

5. Mr. Johnson then contacted Air Canada's Reservations in Montreal and spoke to an agent by the name of Louise M. The agent was also unable to contact any Air Canada representative at Terminal 3, and thus advised Mr. Johnson to arrange for accommodation and meals on his own, and then seek reimbursement from Air Canada.

Mr. Johnson's Statement, para. 9

6. Mr. Johnson incurred out-of-pocket expenses totalling CAD\$531.56 for accommodation and meals. He arranged to stay at the Holiday Inn at the airport through the British Hotel Reservation Centre, which was cheaper than booking at the hotel directly. The cost of the accommodation, GBP 257.96, which also included transportation to and from the hotel and a breakfast, was charged to his credit card as CAD\$461.77. The cost of dinner at the Holiday Inn, GBP 38.99, was billed to his credit card as CAD\$69.79.

Mr. Johnson's Statement, paras. 10-11 and Exhibits "C" and "D"

(b) Air Canada's refusal to reimburse Mr. Johnson based on the Impugned Policy

7. On December 17, 2013, Mr. Johnson requested that Air Canada reimburse him for the aforementioned out-of-pocket expenses.

Mr. Johnson's Statement, para. 12 and Exhibit "E" (pp. 2-3)

8. On December 22, 2013, Air Canada refused Mr. Johnson's request for full reimbursement for his out-of-pocket expenses on the basis that:

In an delay or cancel situation such as the one you encountered, our hotel accommodation policy allows up to \$100 reimbursement towards your claim. For meals we allow \$7 for breakfast, \$10 lunch and \$15 for dinner.

[Emphasis added.]

Mr. Johnson's Statement, paras. 10-11 and Exhibit "E"

9. Mr. Johnson made numerous further attempts to persuade Air Canada to reimburse him for the expenses he incurred, and brought the issue to the attention of several Air Canada executives, including Mr. Calin Rovinescu.

Mr. Johnson's Statement, Exhibit "F"

10. Yet, Air Canada maintained its view that reimbursing passengers for their out-of-pocket expenses incurred as a result of delay is a form of assistance or goodwill gesture rather than an obligation, and confirmed that the refusal to fully reimburse Mr. Johnson is based on a policy of the airline:

In the event a customers travel plans are disrupted, Air Canada does provide assistance towards the cost of hotel and meals. To be consistent, we follow a guideline so that all customers are treated equally. We realize you have requested an exception to this policy, however, to allow this can be seen as discriminatory to those customers who received the normal assistance.

[Emphasis added.]

Mr. Johnson's Statement, Exhibit "K"

11. In February 2014, Air Canada paid Mr. Johnson the amount of CAD\$222.00, leaving Mr. Johnson out of pocket for CAD\$309.56 (= \$531.56 - \$222.00).

Mr. Johnson's Statement, para. 22 and Exhibit "M"

(c) Not an isolated incident but a systemic issue

12. Air Canada's refusal to fully reimburse Mr. Johnson was not an isolated incident. On February 6, 2014, Air Canada quoted the Impugned Policy in an email to another delayed passenger who is unrelated to Mr. Johnson:

The maximum amount we cover for hotel is \$100.00 CAD, breakfast \$10.00 CAD and dinner \$15.00 CAD.

Email of Air Canada (February 6, 2014), Document No. 2

13. In yet another unrelated incident, on November 12, 2014, Air Canada wrote to a delayed passenger that:

[...] in accordance with our policy, passengers not provided meal vouchers at the airport may claim up to \$15.00 CAD for dinner, \$10.00 CAD for lunch and \$7.00 CAD for breakfast. If you could kindly forward your original meal receipts, we would be happy to reimburse you up to the maximum allowable amount.

[Emphasis added.]

Email of Air Canada (November 12, 2014), Document No. 3

(d) Air Canada's International Tariff Rules

14. Air Canada's International Tariff Rule 55(B)(5)(a) provides that:

For the purpose of international carriage governed by the Montreal Convention, the liability rules set out in the Montreal Convention are fully incorporated herein and shall supersede and prevail over any provisions of this tariff which may be inconsistent with those rules.

Air Canada's International Tariff Rule 55(B)(5)(a), Document No. 4

15. Air Canada's International Tariff Rule 80(C)(3) states that Air Canada must provide accommodation and meal vouchers to passengers who are stranded due to a schedule irregularity within Air Canada's control.

Air Canada's International Tariff Rule 80(C)(3), Document No. 5

16. To Applicants have been unable to locate the Impugned Policy in Air Canada's International Tariff, and submit that it is not to be found there.

II. ISSUES

17. The following issues need to be determined:
- (a) whether Air Canada contravened s. 122 of the *ATR* by not setting out the Impugned Policy in its International Tariff;
 - (b) whether the Impugned Policy is inconsistent with the *Montreal Convention*;
 - (c) whether the Impugned Policy is “just and reasonable” within the meaning of s. 111 of the *ATR*;
 - (d) whether Air Canada has failed to apply the terms and conditions set out in its International Tariff; and
 - (e) the appropriate remedies.

III. SUBMISSIONS

(a) **Air Canada contravened s. 122 of the *ATR* by not setting out the Impugned Policy in its International Tariff**

18. Section 110 of the *ATR* requires air carriers operating international service in Canada to create and file with the Agency a tariff setting out the terms and conditions of carriage. The tariff is a contract between the carrier and its passengers.

Air Transportation Regulations, s. 110

19. Subsection 122(c) of the *ATR* stipulates that carriers are required to include in their tariff terms and conditions relating to schedule irregularities and liability limits:

122. Every tariff shall contain

⋮

- (c) the terms and conditions of carriage, clearly stating the air carrier’s policy in respect of at least the following matters, namely,

⋮

- (v) failure to operate the service or failure to operate on schedule,

⋮

- (x) limits of liability respecting passengers and goods,

⋮

Air Transportation Regulations, s. 122(c)

20. The Impugned Policy purports to govern the rights of passengers affected by Air Canada's failure to operate the service or failure to operate on schedule, and it purports to limit Air Canada's liability for the accommodation and meal expenses incurred by such passengers.
21. Therefore, Air Canada contravened s. 122 of the *ATR* by failing to set out the Impugned Policy in its International Tariff.

(b) The Impugned Policy is inconsistent with the *Montreal Convention*

22. The *Montreal Convention* is an international treaty that is marked as Schedule VI to the *Carriage by Air Act*, and has the force of law pursuant to s. 2(2.1) of the Act.

Carriage by Air Act, R.S.C. 1985, c. C-26, s. 2(2.1) and Schedule VI

23. Article 19 of the *Montreal Convention* imposes strict (but not absolute) liability on carriers for damages incurred as a result of delay in the transportation of passengers, baggage or cargo. Under Article 19, the carrier is presumed to be liable, but it may rebut that presumption by establishing an affirmative defence:

Article 19 - Delay

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Montreal Convention, Article 19

24. Article 22 of the *Montreal Convention* limits the carrier's liability for delay in the carriage of passengers to 4,694 SDR, which is CAD\$8,612.67, unless the airline or its agents acted recklessly or engaged in wilful misconduct. (This cap was established in 2009 as a result of a review pursuant to Article 24.)

Montreal Convention, Article 22

25. A crucial feature of the *Montreal Convention* is that its liability regime and liability limits cannot be contracted out or lowered by the carrier to the detriment of passengers:

Article 26 - Invalidity of contractual provisions

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

Montreal Convention, Article 26

26. The Agency has consistently held that carriers cannot limit their liability under Article 19 of the *Montreal Convention* based on the duration of the delay, and that per-day liability caps are inconsistent with the Convention.

Dandoy v. Corsair, Decision No. 107-C-A-2007, paras. 22-23
Balakrishnan v. Aeroflot, Decision No. 328-C-A-2007, para. 28
Lukács v. Porter Airlines, Decision No. 16-C-A-2013, paras. 151-158

27. The Impugned Policy purports to limit Air Canada's liability for expenses incurred as a result of delay to CAD\$100.00 per night for accommodation and a total of CAD\$32.00 per day for meals. These limits are a fraction of the cap of CAD\$8,612.67 set out in Article 22(1) of the *Montreal Convention*.

28. Thus, the Impugned Policy is tending to fix a lower limit of liability than what is laid down in the *Montreal Convention*, and as such it is inconsistent with the Convention. Therefore, the Impugned Policy is null and void, pursuant to Article 26 of the Convention.

Lukács v. WestJet, Decision No. 477-C-A-2010, paras 39-41
 (leave to appeal refused, Federal Court of Appeal File No.: 10-A-41)

(c) The Impugned Policy is not “just and reasonable” within the meaning of the ATR

29. Section 111 of the *ATR* sets out the requirements by which carriers must abide when setting terms and conditions of carriage:

111. (1) All tolls and terms and conditions of carriage, including free and reduced rate transportation, that are established by an air carrier shall be just and reasonable and shall, under substantially similar circumstances and conditions and with respect to all traffic of the same description, be applied equally to all that traffic.

⋮

[Emphasis added.]

Air Transportation Regulations, s. 111(1)

30. It is settled law that tariff provisions that are inconsistent with the *Montreal Convention* cannot be just and reasonable within the meaning of s. 111 of the *ATR*.

McCabe v. Air Canada, Decision No. 227-C-A-2008, paras. 26-29
Maslov v. Aeroflot, Decision No. 134-C-A-2009, paras. 19-20
Lukács v. Air Canada, Decision No. 208-C-A-2009, paras. 37-39
Lukács v. WestJet, Decision No. 477-C-A-2010, paras 41-44
 (leave to appeal refused, Federal Court of Appeal File No.: 10-A-41)
Lukács v. Porter Airlines, Decision No. 31-C-A-2014, para. 29

31. Hence, the Impugned Policy fails to be just and reasonable, because it is inconsistent with the *Montreal Convention*, and is null and void pursuant to Article 26.

(d) Air Canada has failed to apply the terms and conditions set out in its International Tariff, contrary to s. 110(4) of the ATR

32. Subsection 110(4) of the *ATR* imposes a statutory obligation on carriers to apply the terms and conditions set out in their tariffs:

110. (4) Where a tariff is filed containing the date of publication and the effective date and is consistent with these Regulations and any orders of the Agency, the tolls and terms and conditions of carriage in the tariff shall, unless they are rejected, disallowed or suspended by the Agency or unless they are replaced by a new tariff, take effect on the date stated in the tariff, and the air carrier shall on and after that date charge the tolls and apply the terms and conditions of carriage specified in the tariff.

[Emphasis added.]

Air Transportation Regulations, s. 110(4)

33. Air Canada's International Tariff Rule 55(B)(5)(a) incorporates the *Montreal Convention* into the tariff by reference, and provides that the Convention shall supersede and prevail over any other provision of the tariff that may be inconsistent with the Convention.

Air Canada's International Tariff Rule 55(B)(5)(a), Document No. 4

34. Instead of applying the provisions of the *Montreal Convention*, Air Canada applies the Impugned Policy with respect to the compensation of passengers who are affected by delay in transportation.
35. While the *Montreal Convention* requires Air Canada to reimburse the passenger for damages incurred as a result of delay up to CAD\$8,612.67, Air Canada compensates passengers only up to CAD\$100.00 per night (or, in the case of Mr. Johnson, CAD\$150.00) for accommodation, and up to CAD\$32.00 per day for meals.
36. Therefore, Air Canada has failed to apply Air Canada's International Tariff Rule 55(B)(5)(a).
37. In the case of Mr. Johnson, Air Canada also failed to apply International Tariff Rule 80(C)(3), by failing to provide Mr. Johnson with accommodation for the night and meal vouchers.

Air Canada's International Tariff Rule 80(C)(3), Document No. 5

(e) **Remedies**

38. Sections 113 and 113.1 of the *ATR* confer broad powers upon the Agency to provide remedies with respect to unreasonable terms and conditions as well as failure of a carrier to apply the terms and conditions set out in its tariff:

113. The Agency may

- (a) suspend any tariff or portion of a tariff that appears not to conform with subsections 110(3) to (5) or section 111 or 112, or disallow any tariff or portion of a tariff that does not conform with any of those provisions; and
- (b) establish and substitute another tariff or portion thereof for any tariff or portion thereof disallowed under paragraph (a).

113.1 If an air carrier that offers an international service fails to apply the fares, rates, charges or terms and conditions of carriage set out in the tariff that applies to that service, the Agency may direct it to

- (a) take the corrective measures that the Agency considers appropriate; and
- (b) pay compensation for any expense incurred by a person adversely affected by its failure to apply the fares, rates, charges or terms and conditions set out in the tariff.

Air Transportation Regulations, ss. 113 and 113.1

39. Mr. Johnson has incurred reasonable expenses, totalling CAD\$531.56, for accommodation, ground transportation, and meals as a result of the delay in his transportation and Air Canada's failure to provide him with accommodation and meal vouchers. Although Air Canada reimbursed him for CAD\$222.00, he remains out of pocket for CAD\$309.56 as a result of Air Canada's failure to apply the provisions of the *Montreal Convention*. Thus, it is submitted that the Agency should order Air Canada to reimburse Mr. Johnson for the amount of CAD\$309.56, pursuant to s. 113.1(b) of the *ATR*.
40. Mr. Johnson's case is not an isolated incident, but rather an instance of a systemic issue. Air Canada has repeated in numerous communications, both to Mr. Johnson and to other passengers, that it was acting based on a policy. Consequently, a substantial number of passengers have been affected by Air Canada's failure to apply the provisions of the *Montreal Convention*, and applying the Impugned Policy instead.

Email of Air Canada (February 6, 2014), Document No. 2
Email of Air Canada (November 12, 2014), Document No. 3
Mr. Johnson's Statement, Exhibits "E" and "K"

41. In order to provide a systemic remedy to a systemic problem, it is submitted that the Agency should direct Air Canada, pursuant to s. 113.1(a) of the *ATR*, to take the following corrective measures:
 - (a) cease and desist applying the Impugned Policy;
 - (b) issue and circulate a bulletin to its agents, including the agents at Air Canada's Customer Service, retracting the Impugned Policy and setting out Air Canada's obligations to compensate passengers for delay in transportation pursuant to Articles 19 and 22 of the *Montreal Convention*;
 - (c) publish on its website and in the mainstream media an invitation for passengers who were delayed since January 1, 2013 to submit their claims for compensation in accordance with Articles 19 and 22 of the *Montreal Convention*; and
 - (d) process the aforementioned claims and compensate the claimants in accordance with Articles 19 and 22 of the *Montreal Convention*.

42. Finally, in the unlikely event that the Agency finds that the Impugned Policy or portions thereof are included in Air Canada's International Tariff, it is submitted that such provisions should be disallowed pursuant to s. 113 of the *ATR*.

IV. RELIEF SOUGHT

43. The Applicants are asking the Agency that:

- (a) the Agency order Air Canada to compensate Mr. Johnson for CAD\$309.56 of reasonable out-of-pocket expenses he incurred;
- (b) the Agency direct Air Canada to take the following corrective measures:
 - i. cease and desist applying the Impugned Policy;
 - ii. issue and circulate a bulletin to its agents, including the agents at Air Canada's Customer Service, retracting the Impugned Policy and setting out Air Canada's obligations to compensate passengers for delay in transportation pursuant to Articles 19 and 22 of the *Montreal Convention*;
 - iii. publish on its website and in the mainstream media an invitation for passengers who were delayed since January 1, 2013 to submit their claims for compensation in accordance with Articles 19 and 22 of the *Montreal Convention*; and
 - iv. process the aforementioned claims and compensate the claimants in accordance with Articles 19 and 22 of the *Montreal Convention*;
- (c) should the Agency find that the Impugned Policy or portions thereof are included in Air Canada's International Tariff, then disallow these provisions.

All of which is most respectfully submitted.

Dr. Gábor Lukács
Co-applicant and
representative for Mr. Johnson

Cc: Ms. Louise-Hélène Sénécal, Assistant General Counsel - Litigation, Air Canada
(louise-helene.senecal@aircanada.ca)

Witnessed Statement of
Mr. Christopher C. Johnson
attached under a separate cover



Bert Leatherman <bertleatherman@gmail.com>

Issue#:ABDA-TT7ACJ:01/28/2014 15:09:27:Compensation for Delay

support@help-aircanada.com <support@help-aircanada.com>
Reply-To: support@help-aircanada.com
To: aleather@wso.williams.edu

Thu, Feb 6, 2014 at 7:04 PM

=====
Please do not change the Subject Line - Veuillez ne pas modifier le Sujet de ce courriel
=====

Dear Mr. Leatherman,

Thank you for your email. We appreciate the time you have taken to contact us and are pleased to address your concerns.

We sincerely regret your disappointment that you missed your connecting flight due to the delay of Air Canada flight AC7935 on January 27th.

We recognize on-time performance as one of the key drivers of a successful airline and strive to meet our published schedule. While we make every effort to operate our flights as scheduled, regretfully, delays sometimes occur. In these circumstances, it is very important to ensure that the needs of all affected customers are being met. When handled with courtesy and professionalism, most passengers will accept the inconvenience and understand that their safe travel must always be our first priority. We realize how important on-time departures are for our customers, and certainly regret the inconvenience you experienced.

As there are instances where avoiding a flight delay is impossible, times shown on tickets are not guaranteed, and do not form part of the contract for carriage on any airline.

During flight disruptions, our mandate is to transport the passengers on the next available flight. We do not consider consequential expenses or intangibles such as loss of time or enjoyment.

Air Canada provides accommodation and meals to our passengers when they are forced to overnight. The maximum amount we cover for hotel is \$100.00 CAD, breakfast \$10.00 CAD and dinner \$15.00 CAD.

The amount of the meal voucher may be more than some customers use for their meal and, in some cases, not enough. However, the voucher amount is averaged and intended to contribute toward a meal. The allowance is reasonable and we do not offer a refund of costs exceeding the voucher amount.

As a gesture of goodwill, we are pleased to offer you a one time saving of 25% off of the base fare on your next booking at aircanada.com.

To receive your discount, enter the one time use Promotion Code KZM2ECN1 in the Promo Code box at www.aircanada.com when you make your booking. This offer is valid for one year from today.

This means the booking and travel must be completed within the year. It is available on a new booking only and applies to a maximum of two passengers, provided both passengers are booked at the same time.

The discount applies exclusively on published fares for Air Canada, Air Canada Express and Air Canada rouge designated flights. Flight pass purchases are not eligible for the discount and promo codes cannot be combined with other discount codes.

Please note the fare displayed on the Select Flights screen will reflect the discount rounded to the nearest dollar.

In addition, a copy of your ticket has been forwarded to United Airlines for any fare consideration between the Executive Class fare paid for this part of the itinerary and the full Economy fare. They will contact you shortly under

separate cover.

Please be assured it is our earnest desire to make flying with Air Canada as pleasant as possible and we remain focused on providing an enjoyable travel experience. We hope we may have another opportunity to demonstrate this and thank you again for taking the time to contact our office.

Sincerely,

Kim
Customer Relations

----- Original Message -----

From: aleather@wso.williams.edu
Sent: 28/01/2014 01:09 PM
Subject: Compensation for Delay

Hi, my trip from YYZ to GRU has been delayed by 24 hours due to problems with crew availability on my flight from BWI to YYZ. Both the desk/gate agent at BWI and the connections agent at YYZ confirmed that the delay was due not to weather but to crew availability, a factor within the airline's control. In effect, I was denied boarding on my originally scheduled flight because of reasons within the airline's control (crew availability) and had to wait for the next flight 24 hours later. As a result, I lost between \$500 and \$1,000 of work opportunities in Brazil due to canceled client engagements.

The BWI agent and the YYZ connections agent both told me I should apply for compensation through this website. After examining Canadian law, I believe I am entitled to \$800 compensation per Decision No. 204-C-A-2013 of the Canadian Transportation Agency dated May 27, 2013. This Decision provides in Paragraph 74 that compensation should be "based on the length of time by which a passenger is delayed" and in Paragraph 65 sets the level of compensation at \$800 for delays exceeding six hours.

In addition, I would like to note that Air Canada provided me with a hotel meal voucher worth only \$32. This amount only covered one meal at the hotel where Air Canada sent me, not the four meals (Jan. 27 dinner and Jan. 28 breakfast, lunch, and dinner) to which I should have been entitled during my 24-hour delay. Therefore, I would like to request an extra \$100 for the value of the meals that should have been covered. I also would like to point out that, at least as of now, I have been bumped from first class to economy class on my YYZ-GRU flight later tonight, so I would like to request compensation, in an amount Air Canada deems reasonable, for this downgrade.

Lastly, I would appreciate compensation in the U.S. dollar equivalent amount, since as an American citizen I cannot readily use Canadian dollars.

It is my hope to resolve this matter quickly and amicably directly with Air Canada rather than by filing a court case in Brazil, my final destination. In Brazil, where I am a permanent resident and once worked for a law firm, the courts are significantly more favorable to passengers and therefore I believe it is in Air Canada's interest to resolve this issue expeditiously under Canadian regulations rather than Brazilian law. I appreciate your understanding and cooperation.

Sincerely,
Albert Leatherman
1425 Anna Marie Court
Annapolis, MD 21409
Confirmation number AFWBW2
Ticket number 0162394084814

From: <support@help-aircanada.com>
Date: Wed, Nov 12, 2014 at 1:16 PM
Subject: Issue#:ABDA-10CUBG2:10/14/2014 11:26:25:Reimbursement for Air Canada incidents
To: michelefiona@gmail.com

=====
Please do not change the Subject Line - Veuillez ne pas modifier le Sujet de ce courriel
=====

Dear Ms. Allen,

Thank you for taking the time to contact our office regarding your and Mr. York's travel with Air Canada to Athens.

We were genuinely sorry to learn of the inconvenience you experienced due to flight cancellations. While every effort is made to operate our flights as scheduled Ms. Allen, regrettably, delays and cancellations sometimes occur. In these circumstances, it is very important to ensure that the needs of all affected customers are being met. When handled with courtesy and professionalism, most passengers will accept the inconvenience and understand that their safe travel must always be our first priority. We realize how important on-time departures are for our customers, and sincerely apologize for the inconvenience you both experienced.

Regarding your travel on September 01, 2014, in accordance with our policy, passengers not provided meal vouchers at the airport may claim up to \$15.00 CAD for dinner, \$10.00 CAD for lunch and \$7.00 CAD for breakfast. If you could kindly forward your original meal receipts, we would be happy to reimburse you up to the maximum allowable amount. Our mailing address is:

Air Canada Customer Relations
PO Box 64239
RPO Thorncliffe
Calgary, AB T2K 6J7

Respectfully, regarding your hotel expense in Athens, as our schedules are not guaranteed, we would be unable to comply with your refund request. Of necessity, a transportation company's liability for expenses incurred as a result of a schedule disruption is limited. While a ticket holds a guarantee of transportation, the schedule itself is never guaranteed. Consequently, airlines do not consider consequential expenses such as hotel expenses at destination or intangible such as loss of vacation/work time or enjoyment.

We also regret it appears you did not receive the letter of apology and proactive compensation provided for the disruption of flight ZX1902. We have entered your information and you should receive the emails shortly with your promotion codes.

Ms. Allen, concerning your and Mr. York's travel on September 13, 2014, in this instance, on a without prejudice basis you are each entitled to the Right to Compensation as outlined in Article 7 of the Regulation(EC)261/2004. Specifically, you shall each receive the compensation equivalent to EUR600.00 (\$745.00 USD) based on the distance of the flight and the re-routing to your final destination which exceeded the scheduled arrival time of the flight originally booked by four hours.

The compensation shall be paid by bank draft. Alternatively, with your signed agreement to the Passenger Receipt at the bottom of this email, we would offer each of an Air Canada Gift Card for future travel on Air Canada equivalent to

EUR900.00 (\$1312.00 CAD) instead of the bank draft.

Please reply at your earliest convenience with your preference. For bank draft, please include your mailing address.

=====

PASSENGER RECEIPT

The undersigned hereby confirm my acceptance of an Air Canada Gift card in the sum equivalent to EUR900.00 (\$1312.00 CAD) for the cancellation of flight number ZX1903 on September 13, 2014, instead of a draft equivalent to EUR600.00.

As per applicable Air Canada rules which have been duly brought to my knowledge understood and accepted.

Name _____
AND

Signature _____

Name _____
AND

Signature _____

PLEASE PRINT AND RETURN TO:

Air Canada
PO Box 64239
RPO Thorncliffe
Calgary, AB T2K 6J7
Canada

With respect to your taxi and meal expense in Athens Ms. Allen, if you could please send your original receipts as well to the address noted above, we would be pleased to reimburse you.

Once again, please accept our sincere apologies for the inconvenience you and Mr. York experienced. We look forward to being of service to you again soon under less eventful conditions.

Sincerely,
Helen

ABOUT AIR CANADA GIFT CARDS

Simply provide your gift card number at time of payment on www.aircanada.com (Canadian and U.S. editions only) or through the Air Canada Call Centre at 1-888-247-2262.

To pay for the flight, you can use:

One (1) Air Canada Gift Card plus another form of payment if the card's value is less than your grand total; or

Up to two (2) Air Canada Gift Cards if the combined value covers the grand total of your purchase

Additional Terms and Conditions are as follows:

Terms & Conditions

Air Canada Gift Card is redeemable at designated locations. Only for purchase of air travel and ancillary services offered by Air Canada, Air Canada Express and Air Canada rouge operated flights. Maximum two forms of payment combinable on single purchase. Treat card like cash. Stored value not refundable/redeemable for cash, except where required by law. Card may be replaced under certain conditions for a \$25.00 fee, subject to applicable law. Use of card constitutes acceptance of all Terms and Conditions. Air Canada reserves the right to change Terms and Conditions without notice.

Frequently Asked Questions can be found at:

<http://www.aircanada.com/en/giftcard/faq.html>

----- Original Message -----

From: michelefiona@gmail.com
Sent: 14/10/2014 09:26 AM
Subject: Reimbursement for Air Canada incidents

Hello,

I am writing to you, on behalf on my husband and myself, to seek compensation for three incidents that occurred on the same round trip San Francisco-Athens itinerary.

Please see the attached Cover Letter document for detailed information regarding our experience.

Also attached are one of our two completed EU Complaint Forms. I have copies of all receipts available to send as well.

Sincerely,
Michele Fiona Allen

NTA(A) No. 458 T.C.A.B. No. 696

Airline Tariff Publishing Company, Agent
INTERNATIONAL PASSENGER RULES AND FARES TARIFF
NO. AC-2

6th Revised Page AC-15
Cancels 5th Revised Page AC-15

AIR CANADA
SECTION I - GENERAL RULES

55 **LIABILITY OF CARRIERS**

(A) **SUCCESSIVE CARRIERS**
Carriage to be performed under one ticket or under a ticket and any conjunction ticket issued in connection therewith by several successive carriers is regarded as a single operation.

(B) **LAWS AND PROVISIONS APPLICABLE**
(1) The Carrier agrees in accordance with Article 22(1) of the Convention for the Unification of Certain Rules relating to International Transportation by Air signed at Warsaw, October 12, 1929 or, where applicable, that Convention as amended by the Protocol signed at the Hague on September 28, 1955 (the "Convention") that, as to all international carriage or transportation hereunder as defined in the Convention:

- (a) The Carrier shall not invoke the limitation of liability in Article 22(1) of the Convention as to any claim for recoverable compensatory damages arising under Article 17 of the Convention.
- (b) The Carrier shall not avail itself of any defense under Article 20(1) of the Convention with respect to that portion of such claim which does not exceed \$100,000 Special Drawing Rights ("SDR").
- (c) Except as otherwise provided in paragraphs (i) and (ii) hereof, the Carrier reserves all defenses available under the Convention to any such claim. With respect to third parties, the Carrier reserves all rights of recourse against any other person, including without limitation, rights of contribution and indemnity.
- (d) (Not applicable to social agencies in the United States) Neither the waiver of limits nor the waiver of defenses shall be applicable in respect of claims made by public social insurance or similar bodies however asserted. Such claims shall be subject to the limit in Article (22)(1) and to the defenses under Article (20)(1) of the Convention.

NOTE 1: (Applicable only for transportation to and from the United States) Paragraph (B)(1)(e) shall expire upon any final action of the Department of Transportation of the United States in proceedings in Docket OST-95-232 which does not make provisions for identical tariffs or in accordance with any order of the Department entered in the said proceedings.

NOTE 2: Rules stating any limitation on, or condition relating to, the liability of carriers for personal injury or death are not permitted to be included in tariffs filed pursuant to the laws of the United States, except to the extent provided in paragraph (B)(1) above with respect to Tariff C.A.B. No. 696. Insofar as this rule states any such limitation or condition it is included herein, except to the extent provided in paragraph (B)(1) above with respect to Tariff C.A.B. No. 696, as part of the tariff filed with governments other than the United States and not as part of tariff C.A.B. No. 696 filed with the Civil Aeronautics Board of the United States.

(2) Carrier's name may be abbreviated in the ticket, the full name and its abbreviation being set forth in carrier's tariffs, and carrier's address shall be the airport of departure shown opposite the first abbreviation of carrier's name in the ticket, and for the purpose of the Convention the agreed stopping places (which may be altered by carrier in case of necessity) are those places, except the place of departure and the place of destination set forth in the ticket and any conjunction ticket issued therewith, or shown in carrier's timetable as scheduled stopping places on the passenger's route. A list giving the full name and abbreviation of each carrier in this tariff is provided at the front of this tariff.

(3) All carriage hereunder and other services performed by each carrier are subject to:
(a) applicable laws (including national laws implementing the Convention or extending the rules of the Convention to carriage which is not "international carriage" as defined in the Convention), government regulations, orders, and requirements;
(b) provisions set forth in the passenger's ticket;

(c) applicable tariffs;
(d) except in transportation between a place in the United States and any place outside thereof and also between a place in Canada and any place outside thereof, conditions of carriage, regulations and timetables (but not the times of departure and arrival therein specified) of carrier, which may be inspected at any of its offices and at airports from which it operates regular services.

(4) (a) Normal carrier limit of liability will be waived for substantiated claims involving loss damage or delay in delivery to mobility aids such as wheelchairs, walkers, crutches etc. when such items have been accepted into the care of the carrier as checked baggage or otherwise.
(b) In case of damaged or delayed mobility aids e.g. wheelchairs and walkers, a temporary replacement will be obtained without undue delay while the passenger's mobility aid is being repaired or returned.

(5) (a) For the purpose of international carriage governed by the Montreal Convention, the liability rules set out in the Montreal Convention are fully incorporated herein and shall supersede and prevail over any provisions of this tariff which may be inconsistent with those rules.

(Continued on next page)

For unexplained abbreviations, reference marks and symbols see IPGT-1, C.A.B. NO. 581, NTA(A) NO. 373.

ISSUED: February 19, 2010

EFFECTIVE: April 5, 2010

(Except as Noted)

+ - Effective February 20, 2010 and issued on not less than one (1) day's notice under NTA(A) Special Permission No. 54594.

NTA(A) No. 458 T.C.A.B. No. 696

Airline Tariff Publishing Company, Agent
INTERNATIONAL PASSENGER RULES AND FARES TARIFF
NO. AC-2

3rd Revised Page AC-22
Cancels 2nd Revised Page AC-22

RULE **AIR CANADA**
SECTION I - GENERAL RULES

80 **REVISED ROUTINGS, FAILURE TO CARRY AND MISSED CONNECTIONS**

(A) **DEFINITIONS.** For the purpose of this rule, the following terms have the meaning indicated below.

- (1) **Comparable air transportation** means transportation provided by air carriers or foreign air carriers holding certificates of public convenience and necessity or foreign permits issued by the Civil Aeronautics Board.
- (2) **Connecting point** means a point to which a passenger holds or held confirmed space on a flight of one carrier and out of which the passenger holds or held confirmed space on a flight of the same or another carrier. All airports through which a city is served by any carrier shall be deemed to be a single connecting point when the receiving carrier has confirmed reservations to the delivering carrier;
- (3) **Delivering carrier** means a carrier on whose flight a passenger holds or held confirmed space to a connecting point;
- (4) **Misconnection** occurs at a connecting point when a passenger holding confirmed space on an original receiving carrier is unable to use such confirmed space because the delivering carrier was unable to deliver him to the connecting point in time to connect with such receiving carrier's flight.
NOTE: The same rules regarding delivering and receiving carriers responsibility apply at the subsequent point(s) of misconnection as would apply at the point of original misconnection.
- (5) **New receiving carrier(s)** means a carrier or combination of connecting carriers, other than the original receiving carrier(s), operating between the point of misconnection and the destination or next point of stopover or connecting point shown on the passenger's ticket, on whose flight a passenger is transported from the connecting point;
- (6) **Original receiving carrier(s)** means a carrier or combination of connecting carriers on whose flight(s) a passenger originally held or holds confirmed space from a connecting point to a destination, next stopover or connecting point;
- (7) **Outbound flight** means the flight on which a passenger originally held confirmed space beyond the point where the schedule irregularity or failure to carry occurs;
- (8) **Schedule irregularity** means any of the following irregularities:
 - (a) Delay in scheduled departure or arrival of a carrier's flight resulting in a misconnection, or
 - (b) Flight cancellation, omission of a scheduled stop, or any other delay or interruption in the scheduled operation of a carrier's flight, or
 - (c) Substitution of equipment †(C) or of a different class of service, or
 - (d) Schedule changes which require rerouting of passenger at departure time of the original flight.

(B) **CHANGES REQUESTED BY PASSENGER**

- (1) **When Change can be Made**
At the passenger's request, carrier will effect a change in the routing (other than the point of origin); destination carrier(s); class of service; or validity specified in an unused ticket, flight coupon(s), or Miscellaneous Charges Order provided that:
 - (a) such carrier issued the ticket; or Miscellaneous Charges Order;
 - (b) such carrier is designated in the "via carrier" box, or no carrier is designated in the "via carrier" box, of the unused flight coupon or exchange order for the first onward carriage from the point on the route at which the passenger desires the change to commence; however, where the carrier that issued the ticket is designated as carrier for any subsequent section and has an office or general agent at the point on the route where the change is to commence or where the passenger makes his request for such change, the reissuing carrier shall obtain such issuing carrier's endorsement; or
 - (c) such carrier has received written or telegraphic authority to do so from the carrier entitled, under (a) and (b) above, to effect the change.
- (2) **Method of Effecting Change**
The change requested by the passenger shall be effected by:
 - (a) endorsement of such unused ticket, flight coupon(s), or exchange order to the new receiving carrier or
 - (b) reticketing of the passenger.
- (3) **Applicable Fare**
 - (a) The fare and charges applicable as a result of any such change in routing, destination, or carrier shall be the fare and charges that would have been applicable if transportation had been purchased as of the date of commencement of carriage; provided that,
 - (i) additional passage at the through fare shall not be permitted unless request has been made prior to arrival at the destination named on the original ticket or Miscellaneous Charges Order, and
 - (ii) after the carriage has commenced, a one way ticket shall not be converted into a round trip or circle trip ticket at the round trip or circle trip discount for any portion already flown; and
 - (iii) after carriage has commenced a round trip ticket can be converted into a circle trip ticket, or vice versa provided that request is made prior to the passenger's arrival at the destination named on the original ticket or Miscellaneous Charges Order.

(Continued on next page)

† - Effective August 16 per CTA decision 250 - C - A - 2012.

For unexplained abbreviations, reference marks and symbols see IPGT-1, C.A.B. NO. 581, NTA(A) NO. 373.

ISSUED: August 15, 2012 **EFFECTIVE:** September 29, 2012 (Except as Noted)

NTA(A) No. 458 T.C.A.B. No. 696

Airline Tariff Publishing Company, Agent
INTERNATIONAL PASSENGER RULES AND FARES TARIFF
NO. AC-2

10th Revised Page AC-22-A
Cancels 9th Revised Page AC-22-A

RULE	AIR CANADA SECTION I - GENERAL RULES
80	<u>REVISED ROUTINGS, FAILURE TO CARRY AND MISSED CONNECTIONS</u> (Continued)
	(B) <u>CHANGES REQUESTED BY PASSENGER</u> (Continued)
	(3) <u>Applicable Fare</u> (Continued)
	(b) Any difference between the fare and charges applicable under subparagraph (A) above, and the fare and charges paid by the passenger will be collected from the passenger by the carrier accomplishing the rerouting, who will also pay to the original form of payment any amounts due on account of refunds or arrange for the applicable refund by the carrier that issued the original ticket. (See also Rule 60.)
	(4) <u>Expiration Date</u>
	The expiration date of any new ticket issued for a change in routing, destination, carrier(s), class of service or validity will be limited to the expiration date that would have been applicable if the new ticket had been issued on the date of sale of the original ticket or Miscellaneous Charges Order.
	(C) <u>SCHEDULE IRREGULARITY</u>
C	†[C](1) Given that passengers have a right to information on flight times and schedule changes, Air Canada will make reasonable efforts to inform passengers of delays, cancellations and scheduled changes and to the extent possible, the reason for the delay or change.
C	†[C](2) In the event of a scheduled irregularity, Carrier will either:
C	(a) carry the passenger on another of its passenger aircraft †[N]or class of service on which space is available without additional charge regardless of the class of service; or, at carrier's option;
	(b) endorse to another air carrier with which Air Canada has an agreement for such transportation, the unused portion of the ticket for purposes of rerouting; or at carrier's option;
	(c) reroute the passenger to the destination named on the ticket or applicable portion thereof by its own or other transportation services; and if the fare for the revised routing or class of service is higher than the refund value of the ticket or applicable portion thereof as determined from Rule 90(D), carrier will require no additional payment from the passenger but will refund the difference if it is lower or.
C	†[C](d) If the passenger chooses to no longer travel or if Carrier is unable to perform the option stated in (a) above within a reasonable amount time, make involuntary refund in accordance with Rule 90(D) or,
C	†[C](e) upon request, for cancellations within Air Canada's control, return passenger to point of origin and refund in accordance with rule 90(D) (2)(a), as if no portion of the trip had been made (irrespective of applicable fare rules), or subject to passenger's agreement, offer a travel voucher for future travel in the same amount; or, upon passenger request.
	†[C](f) For cancellations within Air Canada's control, if passenger provides credible verbal assurance to Air Canada of certain circumstances that require his/her arrival at destination earlier than options set out in subparagraph (a) above, Air Canada will, if it is reasonable to do so, taking all circumstances known to it into account, and subject to availability, buy passenger a seat on another carrier whose flight is schedule to arrive appreciably earlier than the options proposed in (a) above. Nothing in the above shall limit or reduce the passenger's right, if any, to claim damages, if any, under the applicable Convention, or under the law when neither Convention applies.
	(3) Except as otherwise provided in applicable local law, in addition to the provisions of this rule, in case of scheduled irregularity within its control Air Canada will offer:
	(a) For a schedule irregularity lasting longer than 4 hours, a meal voucher for use, where available, at an airport restaurant or our on board cafe, of an amount dependant on the time of day.
C	(b) for a schedule irregularity lasting overnight †[N]or over 8 hours, hotel accommodation subject to availability and ground transportation between the airport and the hotel. This service is only available for out of town passengers.
	(c) If passengers are already on the aircraft when a delay occurs, Air Canada will offer drinks and snacks if it is safe, practical and timely to do so. If the delay exceeds 90 minutes and circumstances permit, Air Canada will offer passengers the option of disembarking from the aircraft until it is time to depart.

(Continued on next page)

† - Effective August 16 per CTA decision 250 - C - A - 2012

For unexplained abbreviations, reference marks and symbols see IPGT-1, C.A.B. NO. 581, NTA(A) NO. 373.

ISSUED: August 15, 2012

EFFECTIVE: September 29, 2012

(Except as Noted)