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**VIA E-MAIL:** secretariat@otc-cta.gc.ca

April 6, 2016

**The Secretary**

CANADIAN TRANSPORTATION AGENCY  
Secretary  
15 Eddy Street  
17<sup>th</sup> Floor Mailroom  
Gatineau QC J8X 4B3

**SUBJECT: Mr. Christopher C. Johnson and Dr. Gábor Lukács  
v. Air Canada  
Case No.: 15-05627  
Our File No.: LIT-2015-000544  
Air Canada's Response to the Applicants' March 18, 2016  
Notice of Written Questions and Production of Documents**

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Dear Madam Secretary:

Please find Air Canada's Response to the Applicants' March 18, 2016 Notice of Written Questions and Production of Documents.

1. **Answer Q9:** In completing the Applicants' description of facts surrounding the communication of Exhibit A-2, Air Canada maintains that it indicated in its Response of January 20, 2016 that "Another section of annex A-2 has not been disclosed as it does not relate to Irregular operations or schedule changes and related expenses therefrom". Air Canada further refers to the Agency's Record, denying anything not in conformity therewith.

2. Air Canada also refers to its e-mail dated March 17, 2016 on the question of relevance of its Internal Recommendations based on Denied Boarding. Air Canada reiterates that the Application is based on Mr. Johnson's Expense Refund Request within the context of an uncontrollable flight cancellation. The information sought by the Applicants is irrelevant to the Application. The Applicants seek to extend relevance to Air Canada's Internal Recommendations for any circumstance which may lead to a delay, as confirmed in their comments in support of Question Q9.
3. Air Canada respectfully submits that the Applicants' extension of relevance, in combination with the remedies sought in the Application for any delayed passenger is excessive, unnecessary and disproportionate, as well as being outside of the Agency's mandate and jurisdiction. The discoveries sought by the Applicants, after the original Application is filed, have to be related to the issues at stake<sup>1</sup>, and remain within reasonable and efficient bounds<sup>2</sup>.
4. The Applicants have circumscribed their Application to the following delay circumstances: "rights of passengers affected by Air Canada's failure to operate the service or failure to operate on schedule"<sup>3</sup>, in relation to an "Impugned Policy" as an alleged limitation of liability to \$100.00 of hotel costs per night, \$7.00 for breakfast, \$10.00 for lunch and \$15.00 for dinner (the "Impugned Policy").<sup>4</sup>
5. The Air Transportation Regulations (hereinafter the "ATR") at section 122 lists various matters which an Airline must include in its terms and conditions. These notably include:
  - i. Compensation for denial of boarding as a result of overbooking (...)
  - v. failure to operate the service or failure to operate on schedule
  - x. limits of liability respecting passengers and goods
6. The Applicants have circumscribed Air Canada's "Impugned Policy" in relation to a specific set of circumstances and have not referred to denial of boarding as a result of overbooking in invoking section 122 of the ATR. Otherwise, the Applicants have not made any allegation or reference to denied boarding in their Application. While Air Canada recognizes that many listed matters under section 122 of the ATR, comprising their own set of terms and conditions of carriage, may lead to a situation of delay, their relevance is not automatically extended to the determination of the issue at stake, circumscribed to the "Impugned Policy". The Application does not concern any and all sources of delays, but a specific "Impugned Policy".

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<sup>1</sup> Anil Janmohamed v. Air Transat, 95-C-A-2016, at para. 5;

<sup>2</sup> See for example On v. Rothmans Inc. 2011 ONSC 2504 at para 129 and following;

<sup>3</sup> Application by Christopher Johnson and Gabor Lukacs dated December 3, 2015, at para. 20.

<sup>4</sup> Application by Christopher Johnson and Gabor Lukacs dated December 3, 2015, see notably review section and para. 27.

7. Air Canada has filed a Response on January 20, 2016, based on the allegations contained in the Application. The Applicants' extension of the Application's scope, after Air Canada filed its Response would deprive Air Canada of its right to respond to the Application. Furthermore, it would alter the Agency's complaint driven mechanism, based on principles of Natural Justice, to an inquisitorial process, where its scope would further be dictated by the Applicants, outside of the Agency's control.
8. The Applicants' request for different internal recommendations for situations of Denied Boarding are irrelevant, and Air Canada objects to their disclosure.
9. **Answer Q10:** As Air Canada has already provided Exhibits A-1 and A-2, it objects to the preparation of a list of differences between the mentioned documents. The Applicants have all the relevant factual information they need to review said documents and formulate their position, if they wish so. It is respectfully submitted that the Applicants cannot force Air Canada to make pleadings or provide its opinion on evidence. As a rule of Natural Justice, parties have the liberty to respond to allegations and to orient their pleadings.
10. **Answer Q11:** Air Canada provides explanations on the difference between "Schedule Change" and "Irregular Operations" for the Applicants' understanding in relation to the Internal Recommendation they have labelled as the "Impugned Policy". Air Canada reiterates that the Application is based on Mr. Johnson's Expense Refund Request within the context of an uncontrollable flight cancellation.
11. The Applicants have circumscribed their Application to the following delay circumstances: "rights of passengers affected by Air Canada's failure to operate the service or failure to operate on schedule<sup>5</sup>", in relation to an "Impugned Policy" as an alleged limitation of liability to \$100.00 of hotel costs per night, \$7.00 for breakfast, \$10.00 for lunch and \$15.00 for dinner (the "Impugned Policy").<sup>6</sup>
12. Air Canada has filed a Response on January 20, 2016, based on the allegations contained in the Application. The Applicants' extension of the Application's scope after Air Canada filed its Response would deprive Air Canada of its right to respond to the Application. Furthermore, it would alter the Agency's complaint driven mechanism, based on principles of Natural Justice, to an inquisitorial process, where its scope would be dictated by the Applicants, outside of the Agency's control.
13. In relation to Air Canada's Internal Recommendations, Exhibits A-1 and A-2, a Schedule Change encompasses events that occur beyond 48 hours prior to a passenger's original scheduled departure flight time.

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<sup>5</sup> Application by Christopher Johnson and Gabor Lukacs dated December 3, 2015, at para. 20.

<sup>6</sup> Application by Christopher Johnson and Gabor Lukacs dated December 3, 2015, see notably review section and para. 27.

14. An Irregular Operation concerns events that occur within 48 hours of the original scheduled departure time.
15. **Answer Q12:** The Applicants' Question No 12 as formulated is irrelevant to the matter at issue, which concerns an alleged limitation of liability to \$100.00 of hotel costs per night, \$7.00 for breakfast, \$10.00 for lunch and \$15.00 for dinner (the "Impugned Policy"). The fact that the Exhibit A-1, containing the Internal Recommendations labelled as the "Impugned Policy" contains other different recommendations pertaining to Schedule Changes beyond the Recommendations labelled by the Applicants as the "Impugned Policy" does not extend the Application scope to all other recommendations related therefrom.
16. The Applicants have circumscribed their Application to the following delay circumstances: "rights of passengers affected by Air Canada's failure to operate the service or failure to operate on schedule",<sup>7</sup> in relation to an "Impugned Policy" as an alleged limitation of liability to \$100.00 of hotel costs per night, \$7.00 for breakfast, \$10.00 for lunch and \$15.00 for dinner (the "Impugned Policy")<sup>8</sup>.
17. Air Canada has presented a Response on January 20, 2016, based on the allegations contained in the Application. The Applicants' extension of the Application's scope after Air Canada filed its Response would deprive Air Canada of its right to respond to the Application. Furthermore, it would alter the Agency's complaint driven mechanism, based on principles of Natural Justice, to an inquisitorial process, where its scope would be dictated by the Applicants, outside of the Agency's control.
18. **Answer Q13:** Air Canada refers to its previous answer to Question no 4, where it provided a definition of the terms "controllable" and "uncontrollable" and adds the following:
19. In light of the above, Air Canada makes a case by case determination of the situation and determines whether a situation is controllable or uncontrollable. Air Canada objects to disclosing who makes this decision as this is irrelevant to the Application, as this strictly pertains to its internal organization.
20. The relevant elements to the Application are the factual circumstances related to Flight AC 889's of December 10, 2013 cancellation and that Air Canada determined that these said circumstances were uncontrollable.
21. The Applicants do not need to know the identity of the persons involved in concluding that the factual circumstances were uncontrollable.
22. There is no obligation for an airline to publish how to organize its resources, in handling passenger refund requests and while respecting the Montreal

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<sup>7</sup> Application by Christopher Johnson and Gabor Lukacs dated December 3, 2015, at para. 20.

<sup>8</sup> Application by Christopher Johnson and Gabor Lukacs dated December 3, 2015, see notably review section and para. 27.

Convention, the *Canada Transportation Act* and its Regulations and its Tariff. Air Canada has the right to privately organize the handling of its obligations.

23. The discoveries sought by the Applicants, after the original Application is filed, have to be conducted within the issues at stake<sup>9</sup>, and remain within reasonable and efficient bounds<sup>10</sup>.
24. **Answer Q14:** Air Canada pleads that it respects the Montreal Convention (1999), the *Canada Transportation Act* and its Regulations and its Tariff, in assessing its liability for damages occasioned by delay of passengers. In respect of the legislation above, Air Canada is not bound to provide compensation for delays and for cancellations that are uncontrollable.
25. **Answer Q15:** Mechanical problems are assessed on a case by case basis, in respect of the Montreal Convention (1999), the *Canada Transportation Act* and its Regulations and Air Canada's Tariff. Mechanical situations may be controllable or uncontrollable, depending on the facts.
26. Air Canada has stated in its Response filed on January 20, 2016 that the cancellation of Flight AC 889 was due to a mechanical situation that was uncontrollable. It did not state that it is not liable for any delay caused by mechanical problems.
27. The Applicants suggested in their Question no 15 that Air Canada has viewed all mechanical issues to be controllable in document AQ2-1. Air Canada reiterates its comments provided in its e-mail dated January 20, 2016 that document AQ2-1 is irrelevant to the present Application. Nevertheless, the use of a controllable mechanical situation as an example referred to by the Applicants in their Question No 15 does not exclude the existence of an uncontrollable mechanical situations.
28. **Answer Q16:** Please find Air Canada's Production Permit for the repair of the malfunction in relation to Paragraph 5 of Mr. Liepins' Statement, filed under Annex **AQ3-1**.
29. **Answer Q17:** Please find Air Canada's Log Book abstract in relation to Mr. Liepins' statement at paragraph 6, filed under Annex **AQ3-2**. There are no other relevant Log Book abstracts considering Mr. Liepins' statement that:  
  
"The hydraulic system is checked prior to every flight and the Designated Aircraft's hydraulic system had no history of a defect, nor was a defect detected on the inbound flight, also operated by the Designated Aircraft".
30. **Answer Q18:** Air Canada objects to Applicants' request for the production of an analysis of all of Air Canada's Passenger Refund Request as it does not exist. Furthermore, the magnitude of information sought by the Applicants is excessive

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<sup>9</sup> Anil Janmohamed v. Air Transat, 95-C-A-2016, at para. 5;

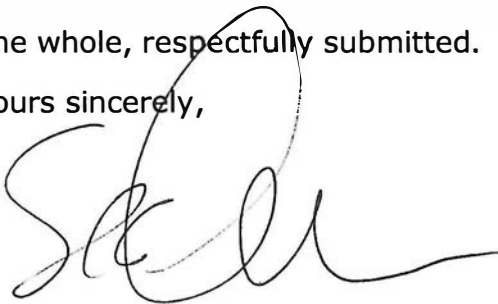
<sup>10</sup> See for example On v. Rothmans Inc. 2011 ONSC 2504 at para 129 and following;

with regards to the Statement by Ms. Robinson that "In the case of a delay which is within Air Canada's control, the recommended limit is often exceeded".

31. Air Canada has stated in its Response filed on January 20, 2016 that it compensated passengers for delays within its control in compliance with the Montreal Convention. The amounts in its internal recommendations are often exceeded.
32. Air Canada carries around 35,000,000,000 passengers yearly, and a request to review, analyze and compile each of previously processed passenger refund requests between 2013 and 2015 is excessive and impossible. The excessively large sample period requested by the Applicants will not be more useful in relation to the statement that the recommendations "are often" exceeded, and goes beyond a request to obtain the factual grounds in support of this statement. The discoveries sought by the Applicants, after the original Application is filed, have to be conducted within the issues at stake<sup>11</sup>, and remain within reasonable and efficient bounds.<sup>12</sup>
33. Furthermore, Air Canada does not keep a register of previously processed passenger refund requests which contains the itemized list of the compensation heads it paid to passengers, and does not keep a record of whether these payments were made pursuant to controllable or uncontrollable Delays. The Applicants cannot force Air Canada to create a register that does not exist.

The whole, respectfully submitted.

Yours sincerely,



**Jean-François Bisson-Ross**

Counsel – Litigation

JFBR/sa

c.c. Dr. Gábor Lukács, Co-applicant and representative for Mr. Johnson  
([lukacs@AirPassengerRights.ca](mailto:lukacs@AirPassengerRights.ca))

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<sup>11</sup> Anil Janmohamed v. Air Transat, 95-C-A-2016, at para. 5;

<sup>12</sup> See for example On v. Rothmans Inc. 2011 ONSC 2504 at para 129 and following;

**CANADIAN TRANSPORTATION AGENCY**

**Case No.: 15-05627**

**Mr. Christopher C. Johnson and  
Dr. Gábor Lukács**

**Applicants**

**Vs.**

**Air Canada**

**Respondent**

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**LIST OF DOCUMENTS**

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**Annexe AQ3-1 :** Air Canada's Production Permit

**Annexe AQ3-2 :** Air Canada's Log Book

Montreal, April 6, 2016



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**Me Jean-François Bisson-Ross  
Council for the Respondent**

**AQ3-1**






# Production Permit

P.P. No.  
B767-29-52269

1. Applicability	Part Name	Qty of Units	MDDR #	Aircraft (Tail #)	Engine (Serial #)
	L Hyd sys LOW PRESS ind wiring	2		642	N/A
	Part Number	Part Serial #		RMS Decision #	Defect #
					L5004333
Description of Discrepancy (attach sketch as required) Damage found on two wires in LH pylon from chaffing, temporary repair carried out on wire W398-006-18 from connector D52 S25 elec hyd pump L press SW, temporary repair carried out on wire from connector pin 3 L elec hyd pum located fwd bulkhead area O/B of pylon					

2. Disposition	Instructions for disposition of discrepancy (highlight any deviation from standard, attach sketch as required) Caution: A PP can not be used to deviate or defer an AD (or MAR), CMR, or MEL item without Engineering and TC Approval
	<p>TEMPORARY DISPOSITION</p> <p>CARRY OUT TEMP REPAIR TO INSULATION WITH 602-1 SELF FUSING SILICONE RUBBER TAPE ON WIRE W398-006-18 FROM CONNECTOR D52</p> <p>CARRY OUT TEMP REPAIR TO INSULATION WITH 602-1 SELF FUSING SILICONE RUBBER TAPE ON WIRE FROM CONNECTOR D916 PIN 3</p> <p>SECURE WITH WAX STRING BMS13-540.</p> <p>ON ARRIVAL AT YYZ FROM LHR ON INITIAL FLIGHT THE REPAIR TO BE STRIPPED BACK, RE-INSPECTED AND ASSESSED FOR SERVICABILITY BY CAT 38 ENGINEER</p> <p>RAISE MONITOR FOR REPEAT INSPECTION EVERY 100HR FOR INTEGRITY OF REPAIR</p> <p>FINAL DISPOSITION MAKE PERMANENT REPAIR BY FEBRUARY 11, 2014.</p>

3. Limitations	<input checked="" type="checkbox"/> Temporary (deferred maintenance item)	Initial deferral interval: Hours _____ Cycles _____ Check _____ Date _____ Repeat deferral interval: Hours <u>100</u> Cycles _____ Check _____ Days _____ Current: Total Hours <u>91384</u> Total Cycles <u>17208</u> Check _____
		Details of each selection described in Section 2: <input type="checkbox"/> C of A not in-force <input checked="" type="checkbox"/> Monitor required (see Repeat deferral limit) <input checked="" type="checkbox"/> Material required for fix <input type="checkbox"/> Flight Ops Affected <input type="checkbox"/> Mandatory limit pending DTA <input checked="" type="checkbox"/> Labour required for fix Terminating action required by: Hours _____ Cycles _____ Check _____ Date (yyyy-mm-dd) <u>2014-02-11</u> <input type="checkbox"/> End of MEL repair interval
	<input type="checkbox"/> Permanent (closed maintenance item)	<input type="checkbox"/> Spec. Change Summary (ACF 1002) attached or <input type="checkbox"/> No effect upon Ops, Config, or Mtcce Program

4. Compliance	I declare this data meets the requirements of AIMM 571.06.		
	 Delegated Engineer/Candidate    Delegated Engineer/Engineering Specialist		
	Requested by LHR LM	Prepared by LHR LM	DE/CDE/ES # <u>123</u> AEO 93-Q-03    Date (yyyy-mm-dd) 2013-12-12



AIR CANADA

# Justification Checklist

## Action Document

Type: PP

No: B767-29-52269

### 1. Does the Action Documentation involve a modification or repair to an Aeronautical Product?

- No (i.e. Inspection, PMA Part, Equivalent Maintenance, etc.) Go to Block 4
- Yes (i.e. AWM 571.06 is Applicable)

### 2. Is the Action Document based upon "Approved" or "Specified" data?

- No (i.e. There is no Source Document that meets this requirement.) Go to Block 4
- Yes Provide the Source Document number and paragraph below as applicable. Attach copies of all non-published data such as correspondence or SOC.

Comment:

### 3. Does the Action Document authorize a deviation from the above Source Document?

- No Go to Block 5
- Yes Describe the deviation below:

Comment:

### 4. Does this authorization have negligible or nil effect on (conformance with) the applicable standards of airworthiness? (as listed in the aeronautical product TCDS, including operational requirements, and noise/emissions)

- No Advise MOC that Aircraft C of A is "Not In-Force" until Approved or Specified data is obtained.
- Yes Describe your rationale for this decision and refer to relevant "Acceptable" Data. Refer to any standards which may be applicable but the effect was considered negligible.

Comment: Performed Temporary repair to protect and insulate the wire. This authorization have negligible effect on the applicable standards of airworthiness

### 5. Authorization

Authorized by

  
Candidate Delegated Engineer

Prepared by  
Jamal Boughalem

Date  
2013-12-12

Source Doc. Attached?  Yes  No

DE/CDE No.  
123

(AEO 93-Q-03)

**AQ3-2**

**Defect Type** Defect **Item** **A/C** **Chap** **Sec** **Par** **ASC** **Flight** **Gate** **Ref Seg Num** **CADOR**

5004333 1 642 29 11 Warranty

**Status** **IFSD** **MIS** **Position**  **Damage**

**Phase** **Defect CAT** **Reported By** **Reported Date Time** **Station** **Authorization**  **Internal Capability**

**Defect Description** **FRM**

DURING BEFORE START WHEN LH DEMAND PUMP LACED TO AUTO. SYS PRESS LIGHT AND L DEMAND PRESS LIGHT REMAINED ILLUMINATED. NORMAL 300PSI PRESS ON EICAS. UPPER L SYS EICAS MSG ILLUMINATED

**RI**  **Yes**  **No** **Estimated TAT:** 00 00 **Ground Time RQR:** .00  **Paper Copy Required**  **Reliability**

**Dispatch System Control NO:** **Task Card Template**

Double Click on the Text you would like to add to Defect Description