



Letter Decision No. LET-A-47-2017

August 2, 2017

Air Transat A.T. Inc. carrying on business as Air Transat (Air Transat) – Tarmac Delay

Case number: 17-03788

The Canadian Transportation Agency (Agency) notes that, on Monday, July 31, 2017, it was widely reported by numerous media outlets that hundreds of passengers aboard two Air Transat flights (Flight No. 157 from Brussels and Flight No. 507 from Rome) experienced a tarmac delay after their flights heading to Montreal were diverted to Ottawa due to severe weather.

Initial media reports suggest each tarmac delay lasted for between four to six hours, during which time:

- passengers were not able to disembark the aircraft;
- air conditioning on-board the aircraft was unavailable;
- drinking water and food supplies were depleted; and,
- external temperatures ranged up to 28°C.

Several passengers resorted to calling 911 to alert emergency responders to their situation. Upon arrival, paramedics distributed water to passengers.

MANDATE OF THE AGENCY

The Agency is responsible for ensuring that air carriers abide by the terms and conditions of their respective tariffs, as required by *Air Transportation Regulations*, SOR/88-58, as amended ([ATR \(Air Transportation Regulations\)](#)):

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.

...

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.

Furthermore, section 26 of the *Canada Transportation Act*, S.C., 1996, c. 10, as amended provides as follows:

The Agency may require a person to do or refrain from doing any thing that the person is or may be required to do or is prohibited from doing under any Act of Parliament that is administered in whole or in part by the Agency.

Given the seriousness of the situation, the Agency, of its own motion, has decided to examine whether Air Transat properly applied the terms and conditions of carriage set out in its Tariff Containing Rules Applicable to Scheduled Services for the Transportation of Passengers and Baggage or Goods Between Points in Canada on the One Hand and Points Outside Canada (Except the United States) on the Other Hand, CTA(A) No. 4 (Tariff), pursuant to section 113.1 of the ATR (Air Transportation Regulations).

ISSUE

Did Air Transat properly apply the terms and conditions set out in its international tariff as required by subsection 110(4) of the ATR (Air Transportation Regulations)?

ANALYSIS AND FINDINGS

The terms and conditions of carriage of the Air Transat's tariff on file with the Agency and applicable to this situation are set out in the Appendix to this Decision.

Numerous media outlets have reported that Air Transat may not have complied with its tariff, which requires the following:

...If the delay occurs while onboard, the Carrier will offer drinks and snacks, where it is safe to do so. If the delay exceeds 90 minutes and if the aircraft commander permits, the Carrier will offer passengers the option of disembarking until it is time to depart.

Given that the delays were reported to have greatly exceeded 90 minutes, Air Transat should have, according to its tariff, offered passengers the option of disembarking until it was time to depart.

Air Transat appears not to have made that option available according to media reports. This is particularly concerning given the reports that Air Transat did not have sufficient drinking water nor air conditioning available for passengers, despite the heat. In addition, the Ottawa Macdonald–Cartier

International Airport is reported to have claimed that it had stairs available to permit passengers to disembark, and it had water, snacks, and other essentials available for emergencies like this one, but Air Transat allegedly failed to request any assistance.

In light of the above, the Agency is of the preliminary opinion that Air Transat has contravened subsection 110(4) of the ATR (Air Transportation Regulations) in failing to properly apply the terms and conditions set out in its international tariff, as required by subsection 110(4) of the ATR (Air Transportation Regulations).

DIRECTION TO SHOW CAUSE

The Agency provides Air Transat with the opportunity to show cause why the Agency should not find that Air Transat did not properly apply the terms and conditions set out in its international tariff, as required by subsection 110(4) of the ATR (Air Transportation Regulations).

Air Transat will have until 5 p.m. Gatineau time on Friday, August 4, 2017 to provide its response to this Show Cause.

Air Transat is reminded that a failure to respond to this Show Cause will result in the Agency finalizing its preliminary finding that Air Transat did not properly apply the terms and conditions set out in its international tariff, as required by subsection 110(4) of the ATR (Air Transportation Regulations). This may, in turn, result in the Agency issuing an order for appropriate corrective measures, including compensation for any expenses incurred by passengers as a result of Air Transat's failure to properly apply the terms and conditions set out in its international tariff.

Any questions or other correspondence in regards to this matter should refer to Case No. 17-03788 and be filed through the Agency's Secretariat e-mail address secretariat@otc-cta.gc.ca.

APPENDIX

Air Transat A.T. Inc. CTA(A) No. 4

TARIFF CONTAINING RULES APPLICABLE TO SCHEDULED SERVICES FOR THE TRANSPORTATION OF PASSENGERS AND BAGGAGE OR GOODS BETWEEN POINTS IN CANADA ON THE ONE HAND AND POINTS OUTSIDE CANADA (EXCEPT THE UNITED STATES) ON THE OTHER HAND

Note: General Rules applicable to Scheduled Services between Canada and the United States are published by Airline Tariff Publishing Company in Tariff number NTA (National Transportation Agency)(A) No. 241.

(C) RULE 5. CONDITIONS OF CARRIAGE

5.1 Substitution of Aircraft or Air Carrier:

The Carrier may without notice, and subject to any necessary approval of the CTA or government authority, substitute an aircraft of the same or any other appropriate type for the aircraft agreed upon for a flight. The Carrier may also substitute another Air Carrier to operate flights on its behalf. The Carrier will inform passengers of the identity of the operating Air Carrier.

5.2 Responsibility for schedules and operations (Subject to Rule 21):

- a. The Carrier will endeavor to transport passengers and baggage with reasonable dispatch. Times shown in schedules, scheduled contracts, tickets, air waybills or elsewhere are not guaranteed. Flight schedules are subject to change without notice. Notwithstanding, the Carrier will make reasonable efforts to inform passengers of delays and schedule changes and, to the extent possible, the reason for the delay or change.
- b. Where a routing modification subsequent to the purchase of travel results in a change from a direct service to a connecting service, the Carrier will, upon request by the passenger, provide a full refund of the unused portion of the fare paid.
- c. Without limiting the generality of the foregoing, the Carrier cannot guarantee that a passenger's baggage will be carried on the flight if sufficient space is not available as determined by the Carrier. Notwithstanding, if the baggage does not arrive on the same flight, the Carrier will take steps to deliver the baggage to the passenger's residence/hotel as soon as possible. The Carrier will take steps to inform the passenger on the status of delivery and will provide the passenger with an overnight kit, as required.
- d. If a flight is delayed for/advanced by more than four (4) hours in comparison to the originally scheduled departure time, the Carrier will provide the passenger with a meal voucher. If the flight is delayed for/advanced by more than eight (8) hours and requires an overnight stay, the Carrier will pay for an overnight hotel stay and airport transfers for passengers who did not originate their travel at that airport. If the delay occurs while onboard, the Carrier will offer drinks and snacks, where it is safe to do so. If the delay exceeds 90 minutes and if the aircraft commander permits, the Carrier will offer passengers the option of disembarking until it is time to depart.

Member(s)

Scott Streiner
Sam Barone

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