May 2, 2014

File No. M4120-3/14-00909

BY E-MAIL: lukacs@AirPassengerRights.ca

Gábor Lukács

Halifax, Nova Scotia

Dear Sir,

Re: Motion regarding Decision No. LET-C-A-25-2014

This refers to your motion dated April 23, 2014, filed pursuant to section 32 of the *Canadian Transportation Agency General Rules*, requesting certain relief respecting Decision No. LET-C-A-25-2014 dated April 16, 2014.

In Decision No. LET-C-A-25-2014, the Canadian Transportation Agency (Agency) ordered you, in part, to refile your reply dated March 26, 2014, relating to the answer dated March 17, 2014 filed by British Airways Plc carrying on business as British Airways (British Airways) respecting Decision No. 10-C-A-2014 dated January 17, 2014, "with all submissions that are unrelated to the specific matter of the denied boarding compensation regime proposed by Air Canada during the proceedings related to Decision No. 442-C-A-2013 deleted." In your motion, you request the Agency to reconsider Decision No. LET-C-A-25-2014, and rescind the order to delete portions of your reply, or alternatively, to clarify the Decision by confirming that you are required to delete only section IV of that reply.

Submissions

In support of your motion, you submit that the process relating to Decision No. LET-C-A-25-2014, in failing to provide you with the opportunity to make submissions regarding the portions of your reply that ought to be deleted, deprived you of your right to be heard. You maintain that you were entitled to file comments respecting British Airways' answer to Decision No. LET-C-A-25-2014 in accordance with the principle of *audi alteram partem* and Decision No. 10-C-A-2014. You submit that your reply "falls squarely" within the scope of comments on British Airways' answer, and responds directly to that answer, with the possible exception of section IV, in the following manner:

1. You were entitled to comment on British Airways' choice of a denied boarding compensation regime, and properly exercised this right by making the submission that such choice was unreasonable for the reasons specified in your reply;

2. You were entitled to comment on the specific tariff wording proposed in British Airways' answer, and did so by objecting to that wording for the reasons specified in your reply;
3. Because you found both British Airways' choice of regime and proposed tariff wording to be unreasonable, you proceeded to propose an alternative denied boarding compensation regime as a means of also providing constructive comments.

You also submit that Decision No. LET-C-A-25-2014 is unclear and vague in that it does not explicitly identify the portions of your reply that the Agency ordered to be deleted.

Analysis

With respect to your submission that, as a right, you should have been provided with the opportunity to comment before the Agency issued Decision No. LET-C-A-25-2104, the Agency notes that the principle of *audi alteram partem* does not provide a party, who already has had the opportunity to make submissions on what is at issue, with the right to preview a decision that a decision-maker is about to make. In that sense, as is the case with any other decision-maker, the Agency is not obligated, once a party has had the opportunity to make submissions, to provide prior notice to a party before rendering a decision.

With regard to your right to make submissions on British Airways' answer to Decision No. LET-C-A-25-2014, and your assertion that your reply responds directly to that answer, British Airways proposed to adopt the denied boarding compensation regime proposed by Air Canada during the proceedings relating to Decision No. 442-C-A-2013. Air Canada's proposal provided for compensation of CAD$400 for a delay of less than four hours, and CAD$800, for delays in excess of four hours, for carriage from Canada to the European Union. Your reply should have been confined to that answer, yet as noted in Decision No. LET-C-A-25-2014, you elected to make submissions regarding carriage from the European Union to Canada, the denied boarding compensation regimes applied by Deutsche Lufthansa Aktiengesellschaft and Société Air France carrying on business as Air France, the U.S. regime, and a regime that you proposed that features higher levels of compensation prompted by a change in Canadian dollar – euro exchange rate since Air Canada advanced the aforementioned proposal. Your reply, therefore, exceeded the scope of British Airways' proposed adoption of the regime proposed by Air Canada's proposal during the proceedings respecting Decision No. 442-C-A-2013, and effectively, represented reargumentsof determinations previously made by the Agency.

With respect to your submission that the Agency's order in Decision No. LET-C-A-25-2014 to delete certain text is unclear and vague, the Agency clearly stated in that Decision that you must delete all of the submissions in your reply that are "unrelated to the specific matter of the denied boarding compensation regime proposed by Air Canada during the course of proceedings related to Decision No. 442-C-A-2013." As noted above, Air Canada's proposal sets out specific amounts of compensation, and applied to carriage from Canada to the European Union.

The Agency finds that the only portion of your reply that is relevant to British Airways' answer is that respecting British Airways not establishing conditions for denied boarding compensation for flights from Canada beyond the United Kingdom (on page 3 of your reply, under Argument 1. Failure to establish conditions governing denied boarding compensation for flights to Canada and flights from Canada to points beyond the United Kingdom), and that the remainder of the reply should be deleted.

Your revised reply, with the appropriate deletions, must be filed with the Agency by no later than May 9, 2014.

BY THE AGENCY:

(signed)

Sam Barone
Member

(signed)

Geoffrey C. Hare
Member

c.c. British Airways
c/o Carol E. McCall
E-mail: cmccall@pmlaw.com