

Halifax, NS  
lukacs@AirPassengerRights.ca



April 14, 2014

**VIA EMAIL**

Ms. Karen Plourde, Director  
International Agreements and Tariffs Directorate  
Canadian Transportation Agency  
Ottawa, Ontario, K1A 0N9

Dear Ms. Plourde:

**Re: Air Transportation Baggage Rules – Consultation**

Please accept the following submissions on behalf of Air Passenger Rights in response to the Agency's questions in relation to air transportation baggage rules.

**I. Disclosure and application of baggage rules and fees**

Most travellers do not travel only with a briefcase or small hand luggage. This is particularly true for transatlantic and transpacific itineraries. Thus, baggage fees are almost as inevitable as airport taxes and security fees: virtually every traveller must pay them. This underscores the importance of adequate and full disclosure of the rules governing baggage allowance and baggage fees.

From the perspective of passengers, there is no difference between the fare paid to the carrier, various taxes, and baggage fees. They all add up to the total cost of the travel, regardless of how one labels them. This was recognized, in part, by the Agency in enacting Part V.1 of the *Air Transportation Regulations*, requiring carriers to publish the "total price" of their tickets.

It is submitted that it is not enough to include the rules governing baggage allowance and fees in the carrier's tariffs or display them on the carrier's website, but rather it is the responsibility of the carrier to proactively inform passengers at the time of the purchase of the itinerary about all fees and charges that passengers may be required to pay during their travel.

**(a) Disclosure**

It is submitted that regulations developed as a result of the present consultation ought to recognize that baggage allowance and fees form an important part of the contract of carriage between the passenger and the carrier(s), which is as important as the fare payable by passengers.

Consequently, it is submitted that every receipt and itinerary and ticket and e-ticket ought to display in a visible manner (with reasonably large fonts) the baggage allowance and fees applicable to the travel in a clear and transparent way.

In anticipation of airlines attempting to ignore the Agency's regulations in this respect, it is submitted that the regulations ought to provide for a "presumed" free baggage allowance of 2 pieces, 32 kg each, which will apply to those carriers that fail to display their baggage rules in a visible manner on their receipts, itineraries, tickets, or e-tickets. Such a statutory provision will provide substantial incentive for carriers to comply with their obligation to proactively inform passengers about the applicable baggage allowance and fees.

**(b) Place of collection of baggage fees: purchase of ticket or check-in only**

I fully endorse the position of Mr. Sokolov that carriers ought to be allowed to charge baggage fees only at the point of departure (or, more precisely, where the baggage is checked in), and charging baggage fees at a connecting point ought to be strictly forbidden.

Indeed, in the same way that a carrier cannot demand additional payment from passengers to transport the passengers at a connecting point, it is entirely unreasonable and unacceptable to make such demands with respect to baggage. As Mr. Sokolov correctly pointed out, while at the point of departure passengers may have the liberty to safely leave some baggage behind (with a friend, a family member, or in a locker), no such option is available at connecting points. This circumstance deprives passengers of making free and informed decisions about whether they wish to pay the fee sought by the carrier; at connecting airports, passengers have no choice but to pay, lest they risk their baggage being left behind.

I would add, however, that passengers should also be entitled to prepay their baggage fees in advance, at the time of purchasing their tickets. This will increase transparency of the price paid by passengers, and will relieve passengers from concerns about having to pay at the airport (as long as their baggage is within the parameters that they prepaid for).

**(c) Currency of payment and taxes**

Certain airlines insist on charging their baggage fees in a currency other than the local currency at the point of check-in, and at the same time charge sales taxes. For example, a passenger checking in for a flight in Toronto may be charged in USD. Or a passenger checking in for a flight from the US to Toronto charged in USD, but also may be charged Canadian GST on top of that.

It is submitted that these practices are unreasonable. As a general rule, all fees ought to be set out in the same currency in which the itinerary was purchased. Furthermore, passengers ought to be offered the choice between paying baggage fees in the local currency and the currency in which the itinerary was purchased.

Finally, since local taxes may vary among countries, all baggage fees displayed and charged by airlines ought to include any and all applicable taxes. (It is the undersigned's understanding that international passenger services are zero-rated in Canada,<sup>1</sup> although some carriers appear to be unaware of this.)

**(d) Requirement to refund baggage fees**

Baggage fees are paid for the transportation of passengers' baggage. It is submitted that airlines ought to be required to refund such fees: (i) if the baggage is delayed, damaged, destroyed, or lost; or, (ii) if the passenger does not travel for any reason.

**(e) Enforcement – awarding of costs and punitive damages**

The most significant challenge with any kind of regulation that involves relatively small amounts, such as baggage fees, is the difficulty to enforce them. Unfortunately, airlines do regularly ignore and/or circumvent their obligations, and the Agency can intervene only if passengers take the time and effort to file a complaint with the Agency. This substantially limits the Agency's ability to efficiently enforce its regulations.

Indeed, most passengers will not spend the time and effort required for filing a complaint with the Agency about a \$10-20 dispute with an airline, because their time is more valuable than the possible gain. The problem is that this results in airlines getting away with shortchanging many passengers for a relatively small amount. However, once these small amounts are multiplied by the number of passengers shortchanged, one can see that the damage to the travelling public is of the order of magnitude of millions of dollar.

Thus, it is submitted that the Agency ought to remove every possible obstacle that passengers may face in filing complaints over systemic problems that involve a small dollar value. One of these obstacles is the Agency's general practice of not awarding costs to passengers who are successful with their complaints before the Agency, while the other is the inability of the Agency, under the current regulations, to award punitive damages against carriers who deliberately ignore their obligations, and thus cause substantial costs and inconvenience to passengers.

Section 25.1 of the *Canada Transportation Act* allows the Agency to award costs in the same way the Federal Court does, and the Agency may establish its own tariff for costs. Thus, the Agency is fully equipped to address at least the first of these concerns.

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<sup>1</sup>See <http://www.cra-arc.gc.ca/E/pub/gm/28-3/28-3-e.pdf> on page 4, paragraph 12

It is submitted that awarding costs to successful complainants is essential to ensure that passengers are not discouraged from complaining to the Agency due to the time and cost commitment that it may require, and that the Agency is adequately informed of misconduct of airlines.

## **II. Uniform rules are desirable**

It is submitted that the most important requirement is that passengers will be proactively informed of the baggage rules applicable to their itinerary by the (marketing) carrier, that passengers will have an opportunity to consider these fees *prior* to purchasing their tickets, and that the information provided to passengers at the time of booking their travels will be binding upon all carriers participating in the carriage. (In other words, passengers will not suffer the consequences of mistakes of the marketing carrier.)

Passengers can reasonably expect the same baggage allowance and fees payable on the outbound portion of their itinerary as on the return portion. Indeed, it would be absurd to have a free baggage allowance of 23kg on the outbound portion, but only an allowance of 20kg on the return portion, because it would either deprive passengers of benefiting from the free allowance on the outbound portion, or it would require them to pay overweight fees on the return portion.

It would certainly make the rules much easier for passengers to understand if a single set of rules applied to their entire itinerary, and it would be consistent with the intentions of the *Montreal Convention*: in the same way that airlines find it desirable and necessary to have a single regime of liability across countries, passengers find it desirable and necessary to have a single regime of baggage allowance and fees applicable to a given itinerary.

Therefore, it is submitted that one set of baggage rules applied consistently throughout the passenger's entire itinerary would be far more transparent and favourable to passengers.

All of which is most respectfully submitted.

Dr. Gábor Lukács