

April 26, 2013

File No. M 4120-3/13-01289

**BY FACSIMILE: 416- 620-4433**

By e-mail [lukacs@AirPassengerRights.ca](mailto:lukacs@AirPassengerRights.ca)

Sunwing Airlines Inc.  
27 Fasken Drive  
Etobicoke, Ontario  
M9W 1K6

Gábor Lukács  
Halifax, Nova Scotia

Attention: Mark Williams, President

Dear Sirs:

Re: Complaint by Gábor Lukács against Sunwing Airlines Inc. concerning the carrier's domestic baggage liability policy (Rule10).

This letter is further to the above-noted complaint which was filed with the Canadian Transportation Agency (Agency) on February 28, 2013.

By letter dated March 13, 2013, pleadings were opened respecting this matter. On April 3, 2013, Sunwing Airlines Inc. (Sunwing) filed its answer to the complaint and on April 10, 2013, Mr. Lukács filed his reply.

By letter dated April 18, 2013, Sunwing filed a motion alleging that Mr. Lukács had raised three new issues in his reply. Sunwing submits that Mr. Lukács is now objecting to language contained in Tariff Rules 10.(iv) and 10.(a) of Sunwing's current domestic tariff which was not the subject of his complaint. Sunwing is requesting that the Agency disallow the addition of the new issues from the current proceeding or, if the Agency determines that the new issues shall be added to the proceeding, allow Sunwing 20 days to file a submission to address the new issues.

On April 20, 2013, Mr. Lukács filed his answer to the motion. Mr. Lukács submits that Sunwing is the party who raised new issues by proposing tariff amendments and that he was within his right to address these new issues in his reply.

Mr. Lukács states that, in his complaint, he was challenging the whole of Tariff Rule 10.(iv) on the basis that it is inconsistent with the principles of the Montreal Convention and that the Rule fails to strike the balance between the rights of passengers to be subject to reasonable terms and conditions of carriage, and Sunwing's statutory, commercial and operational obligations. With respect to Rule 10.(a), Mr. Lukács submits that his initial complaint provided Sunwing with the legal principles applicable to the present case and to which the tariff must conform. Mr. Lukács adds that Sunwing's proposed Tariff Rule failed to comply with these principles. Mr. Lukács recognizes that Sunwing may perceive this as raising new issues.

Mr. Lukács asserts that, should the Agency find that any new issues were raised in his reply, the Agency should clearly identify them and direct both parties to confine their submissions to these issues exclusively.

By letter dated April 24, 2013, Sunwing filed its reply, in which it maintains its position that Mr. Lukács is seeing to introduce new issues into the current proceeding and obtain a ruling on those issues without Sunwing having had an opportunity to make submissions on those new issues. Sunwing submits that this is contrary to the principles of natural justice, as was previously stated in Sunwing's motion. Sunwing requests the Agency to deny the addition of new issues to the current proceeding.

The Agency has considered this matter and finds that Mr. Lukács did introduce new issues in his reply dated April 10, 2013. These new issues relate to submissions by Mr. Lukács with respect to the reasonableness of the following wording in the proposed Tariff Rules 10.(iv) and 10.(a):

- i) ...any amounts payable under this paragraph shall not be payable to a passenger whose baggage is delayed upon arrival to his or place of residence.
- ii) ... costs incurred by making only necessary purchases, in accordance with the above.
- iii) ...whether caused directly or indirectly by the act, neglect, or default of the Carrier or not, is limited...

As pointed out by Sunwing, the above wording was already in Sunwing's current tariff and should have been contested in the complaint.

Mr. Lukács has been advised in previous Agency decisions that no new issues can be introduced in a reply. For example, in Decision No. LET-C-A-18-2010 (Lukács v. Air Canada) the Agency stated that:

Parties will note that a reply constitutes an opportunity for the complainant to address additional information or arguments that may have been raised in another party's answer. It should not include arguments contained in previous correspondence with the Agency or new arguments unrelated to those raised in another party's answer.

Accordingly, the above-noted new issues will not be considered in this proceeding. The Agency directs Mr. Lukács, by the close of business on April 30, 2013 to refile his submission dated April 10, 2013 with all reference to the new issues, deleted. Mr. Lukács' original reply dated April 10, 2013, and the submissions subsequent thereto will not form part of the record.

Should you have any questions, you may contact Judy O’Heare by telephone at 819-997-0677, by facsimile at 819-953-7910, or by e-mail at [judy.oheare@otc-cta.gc.ca](mailto:judy.oheare@otc-cta.gc.ca).

Sincerely,

(signed)

Cathy Murphy  
Secretary

**BY THE AGENCY:**

(signed)

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J. Mark MacKeigan  
Member

(signed)

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Sam Barone  
Member