

CANADIAN TRANSPORTATION AGENCY

**IN THE MATTER OF A COMPLAINT BY DR. GÁBOR LUKÁCS
AGAINST SUNWING AIRLINES INC. CONCERNING TARIFF
RULES 3.4, 15, 18(c), 18(e) AND 18(f) OF ITS INTERNATIONAL
TARIFF CTA(A) NO. 2**

ANSWER

OF

SUNWING AIRLINES INC.

Introduction

1. On April 22, 2013, Dr. Gábor Lukács (the “Applicant”) filed a Complaint with the Canadian Transportation Agency (the “Agency”) concerning Tariff Rules 3.4, 15, 18(c), 18(c), 18(e) and 18(f) of the Sunwing Airlines Inc. (“Sunwing Airlines”) tariff CTA(A) No. 2 (the “Tariff”) (the “Complaint”).

In the Complaint, the Applicant posed seven questions to Sunwing Airlines pursuant to the provisions of Rule 19 of the Agency General Rules (the “General Rules”) and requested the Agency to direct Sunwing Airlines to answer the questions pursuant to Rule 20(1) of the Rules (the “Questions”).

2. Pursuant to the Agency Letter of May 2, 2013 (the “Agency Letter”) and Rules 20(1) and 42, Sunwing Airlines hereby files this Answer to the Complaint and responds to the appropriateness of the Questions.
3. In summary, Sunwing Airlines proposes:
 - to delete its existing Rule 3.4 of the Tariff in its entirety;
 - to delete its existing Rule 15 of the Tariff in its entirety and replace it with new Rules 15 and 15A;

- to delete its existing Rule 18 of the Tariff in its entirety.

Furthermore, Sunwing Airlines submits that having regard to the above, there is no need to respond to the Questions.

Finally, Sunwing requests that the Applicant reconsider his rejection of the Agency offer of Mediation.

Each of these matters is discussed in detail below.

Rule 3.4

4. Existing Rule 3.4 is repetitive with existing Rule 15. Sunwing Airlines therefore proposes to amend its Tariff by deleting Rule 3.4 in its entirety.

Rule 15

5. Sunwing Airlines recognizes that existing Rule 15 requires substantial amendments as a result of several Agency Decisions, the latest of which being Decision No. 16-C-A-2013 dated January 13 of this year.
6. Sunwing Airlines proposes to amend the Tariff by replacing its existing Rule 15 with proposed new Rules 15 and 15A, copies of which are attached to this Answer.
7. In its Complaint, the Applicant submitted that existing Tariff Rule 15, along with existing Tariff Rules 3.4, 18(c), 18(e) and 18(f) were unclear, contrary to s. 122(c) of the *Air Transportation Regulations* (the "ATR"), along with being unreasonable with the meaning of s. 111 of the ATR because:
 - they are inconsistent with the *Code of Conduct of Canada's Airlines*;
 - they deprive passengers of the right to be provided with notice of schedule changes;
 - they contain blanket exclusions that exonerate Sunwing Airlines from liability for failure to operate, failure to operate on schedule, and sudden changes in its flight schedule; and

- they are inconsistent with the legal principles of the *Montreal Convention* (and the *Warsaw Convention*);

Code of Conduct of Canada's Airlines

8. Paragraph 1 of *Code of Conduct of Canada's Airlines* (the "Code of Conduct") provides that passengers have a right to information on flight times and schedule changes and airlines must make reasonable efforts to inform passengers of delays and schedule changes and to the extent possible, the reasons for the delay or change.

Proposed Rule 15(1)(c) complies with the above requirement.

9. Paragraph 2 of the Code of Conduct provides that passengers have a right to take the flight they paid for and if the plane is over-booked or cancelled the airline must find the passenger a seat on another flight operated by that airline; buy the passenger a seat on another carrier with whom it has a mutual interline traffic agreement; or refund the unused portion of the passenger's ticket.

Existing Rule 20 of the Tariff complies with the above provision.

10. Paragraph 3 of the Code of Conduct provides that passengers have a right to punctuality and then outlines air carrier obligations depending upon the duration of a delay.

Proposed new Rule 15A complies with the above provision.

11. Paragraph 4 of the Code of Conduct provides that a passenger has the right to retrieve his/her luggage quickly and goes on to set out certain obligations relating to this matter.

Proposed Rule 15(d) complies with the above obligations.

Right of Passengers to be Provided with Notice about Schedule Changes

12. The issue of notice to passengers with respect to schedule changes is covered in proposed new Rule 15(1)(c).

Blanket Exclusions

13. The blanket exclusions contained in existing Rules 3.4, 15, 18(c) and 18(f) will be deleted.

Inconsistency with Legal Principles of the Montreal Convention and the Warsaw Convention

14. All of the provisions in existing Rules 3.4, 15, 18(c), 18(e) and 18(f) which may be inconsistent with the above Conventions will be deleted and replaced with provisions which are consistent with the Conventions.

Rule 18

15. The overall subject matter of existing Rule 18 of the Tariff will be covered in its proposed new Rule 15 referred to above. As such, Sunwing Airlines proposes to amend the Tariff by deleting existing Rule 18 in its entirety.

Applicant's Questions

16. Pursuant to the provisions of paragraphs 4 through 15 above, Sunwing Airlines has fully addressed the concerns of the Applicant relating to Sunwing Airlines existing Rules 3.4, 15, 18(c), 18(e) and 18(f). As such, the Questions while possibly relevant initially, are no longer relevant.
17. Sunwing Airlines submits that it has fully complied with General Rule 20.

Mediation

18. In the Agency Letter, the Agency confirmed that the Applicant had declined mediation and had requested the Agency to proceed with the adjudication process. However, as noted by the Agency Letter, the parties can opt for mediation at any point during the adjudication process and while mediation is taking place, the formal adjudication process will be on hold.

19. Sunwing Airlines submits that having fully responded to the Applicant's concern as opposed to objecting to the concerns, the mediation process would be a more appropriate process at this stage and thus Sunwing Airlines requests that the Applicant reconsider its initial decision to decline mediation.

Conclusion

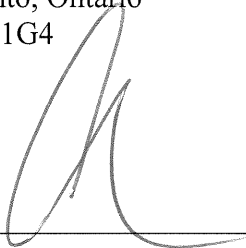
20. Upon Sunwing Airlines amending the Tariff as described in this Answer, Rules 15 and 15A will:
- comply with the *Montreal Convention* (and where applicable the *Warsaw Convention*);
 - comply with the Code of Conduct of Canada's Airlines;
 - comply with Transport Canada's *Flight Rights* provisions; and
 - reflect the jurisprudence of the Agency in Decisions 248-C-A-2012, 249-C-A-2012, 250-C-A-2012 and 16-C-A-2013.
21. There is no requirement to answer the Questions.

DATED at Toronto, this 23rd day of May, 2013.

SUNWING AIRLINES INC.

By its solicitor

EDWIN T. NOBBS, Q.C.
PROFESSIONAL CORPORATION
33 Yonge Street, Suite 201
Toronto, Ontario
M5E 1G4



RULE 15 – RESPONSIBILITY FOR SCHEDULES AND OPERATIONS

(1) General

- (a) The Carrier will endeavor to transport the passenger and baggage with reasonable dispatch, but times shown in timetables or elsewhere are not guaranteed.
- (b) The agreed stopping places are those places shown in the carrier's timetable as scheduled stopping places on the route. The Carrier may, without notice, substitute alternative carriers or aircraft and, if necessary, may alter or omit stopping places shown in the timetable.
- (c) Passengers have a right to information on flight times and schedule changes. In the event of a delay, an advanced flight departure or schedule change the carrier will make reasonable efforts to inform the passengers of delays, proposed advanced flight departures and schedule changes, and, to the extent possible, the reasons for them.
- (d) Passengers have a right to retrieve their luggage quickly. If the luggage does not arrive on the same flight as the passenger, the airline will take steps to deliver the luggage to the passenger's residence/hotel as soon as possible. The airline will take steps to inform the passenger on the status of the luggage and will provide the passenger with an over-night kit as required. Compensation will be provided as set out herein.
- (e) The Carrier assumes no responsibility for making connections whether such connections are by air, rail, sea or another mode of transportation.
- (f) Under no circumstances shall the Carrier be liable for any special, incidental or consequential damages arising directly or indirectly from the foregoing (including the carriage of baggage) whether or not the Carrier had knowledge that such damages might be incurred.
- (g) The rights of a passenger against the Carrier are, in most cases of international carriage, governed by an international convention known as the Montreal Convention, 1999. Article 19 of that Convention provides that an air carrier is liable for damage caused by delay in the carriage of passengers and goods unless it proves that it did everything it could be reasonably expected to do to avoid the damage. There are some exceptional cases of international carriage in which the rights of the passengers are not governed by an international convention. In such cases only, a court of competent jurisdiction can determine which system of laws must be consulted to determine what those rights are.

(2) Passenger Expenses Resulting from Flight Delays or Advanced Flight Departures

Passengers will be entitled to reimbursement from the Carrier for reasonable expenses incurred as a result of a flight delay or an advanced flight departure, subject to the following conditions:

- (a) The Carrier shall not be liable for any damages, costs, losses or expenses occasioned by delays or advance flight departures if it, and its employees and agents, took all measures that could reasonably be required to avoid the damage or if it was impossible for the Carrier and its employees or agents to take such measures;
- (b) Any passenger seeking reimbursement for expenses resulting from delays must provide the Carrier with (a) written notice of his or her claim, (b) particulars of the expenses for which reimbursement is sought and (c) receipts or other documents establishing to the reasonable satisfaction of the Carrier that the expenses were incurred; and
- (c) The Carrier may refuse or decline any claim, in whole or in part, if:
 - i. the passenger has failed or declined to provide proof or particulars establishing, to the reasonable satisfaction of the Carrier, that the expenses claimed were incurred by the passenger and resulted from a delay or advanced flight departure for which compensation is available under this Rule 15; or
 - ii. the expenses for which reimbursement is claimed, or any portion thereof, are not reasonable or did not result from the delay or advanced flight departure as determined by the Carrier, acting reasonably.

Without affecting any obligation to reimburse a passenger as provided for in this tariff, the Carrier may, in its sole discretion, issue meal, hotel and/or ground transportation vouchers to passengers affected by a delay or advanced flight departure.

(3) **Rerouting**

In the event of a re-routing of a flight, the Carrier will ensure that the passenger is routed or transported to his/her ultimate destination, as per the contract of carriage. If no reasonable transportation can be arranged, the Carrier will offer the passenger a cash payment or travel credit. When determining the amount of the offered cash payment or travel credit, the Carrier will consider all circumstances of the case, including any expenses which the passenger, acting reasonably, may have incurred as a result of the rerouting as for example, costs incurred for accommodation, meals or additional transportation. The Carrier will set the amount of compensation offered with a view to reimbursing the passenger for all such reasonable expenses. The option of choosing between a cash payment or travel credit will be at the passenger's discretion.

(4) **Baggage Delays**

- (a) The carrier cannot guarantee that the passenger's baggage will be carried on the flight if sufficient space is not available as determined by the Carrier.
- (b) Notwithstanding the foregoing, passengers whose baggage does not arrive on the same flight as the passenger will be entitled to reimbursement from the Carrier for reasonable expenses incurred as a result of the baggage delay, subject to the following conditions:
 - i. The Carrier shall not be liable for any damages, costs, losses or expenses occasioned by delays in the delivery of baggage if the Carrier, and its employees and agents, took all measures that could reasonably be required to avoid the damage or it was impossible for the Carrier and its employees or agents to take such measures;
 - ii. In order to assist the Carrier in commencing the tracing of the baggage in question, the passenger is encouraged to report the delayed baggage to the Carrier as soon as reasonably practicable following the completion of the flight;
 - iii. The passenger must provide the Carrier with (a) written notice of any claim for reimbursement within 21 days of the date on which the baggage was placed at the passenger's disposal, or in the case of loss within 21 days of the date on which the baggage should have been placed at the passenger's disposal; (b) particulars of the expenses for which reimbursement is sought; and (c) original receipts or other documents establishing to the reasonable satisfaction of the Carrier that the expenses were incurred;
 - iv. The liability of the Carrier in the case of lost or delayed baggage shall not exceed 1,131 Special Drawing Rights (the "basic carrier liability" which is the approximate Canada dollar equivalent of CAD\$1,800 for each passenger, unless the passenger has declared a higher value and paid the supplementary sum in accordance with Rule 11(c) of this tariff, in which case the Carrier's liability will be limited to the lesser of the value of the delayed baggage or the declared value, up to a maximum of CAD\$3,000.
- (c) After a 21 day delay, the Carrier will provide a settlement in accordance with the following rules:
 - i. if no value is declared per Rule 11(b), the settlement will be for the value of the delayed baggage or 1131 SDR (the "basic carrier liability" which is the approximate Canadian dollar equivalent of CAD\$1,800), whichever is the lesser;

- ii. if value is declared per Rule 11(b), the settlement will be for the value of the delayed baggage or the declared sum (per Rule 11(c)) up to a maximum of \$3,000, whichever is the lesser, and
 - iii. In connection with any settlement under the subsection (c), the passenger shall be required to furnish proof of the value of the delayed baggage which establishes such value to the satisfaction of the Carrier, acting reasonably.
- (d) The Carrier may refuse or decline any claim relating to delayed baggage, in whole or in part, if:
- i. the conditions set out in subsection 15.3(b) above have not been met;
 - ii. the passenger has failed or declined to provide proof or particulars establishing, to the reasonable satisfaction of the Carrier, that the expenses claimed were incurred by the passenger and resulted from a delay for which compensation is available under this Rule 15; or
 - iii. the expenses for which reimbursement is claimed, or any portion thereof, are not reasonable or did not result from the delay, as determined by the Carrier, acting reasonably.

RULE 15A. TRAVELLER'S RIGHTS

- (a) If a flight is delayed and the delay between the scheduled departure of the flight and the actual departure of the flight exceeds 4 hours, the Carrier will provide the passenger with a meal voucher.
- (b) If a flight is delayed by more than 8 hours and the delay involves an overnight stay, the Carrier will pay for overnight hotel stay and airport transfers for passengers who did not start their travel at that airport.
- (c) If the passenger is already on the aircraft when a delay occurs, the Carrier will offer drinks and snacks if it is safe, practical and timely to do so. If the delay exceeds 90 minutes and circumstances permit, the Carrier will offer passengers the option of disembarking from the aircraft until it is time to depart if safe and practical to do so.
- (d) The Carrier will endeavor to transport the passenger and baggage with reasonable dispatch, but times shown in timetables or elsewhere are not guaranteed and form no part of this contract.
- (e) The agreed stopping places are those places shown in the Carrier's timetable as scheduled stopping places on the route. The Carrier may, without notice, substitute alternative carriers or aircraft and, if necessary, may alter or omit stopping places shown in the timetable.
- (f) The rights do not exclude additional rights a passenger may have under this tariff or legal rights that international and trans-border passengers have pursuant to international conventions (e.g., the *Warsaw Convention*) and related treaties.