

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

AMENDED ANSWER

OF

SUNWING AIRLINES INC.

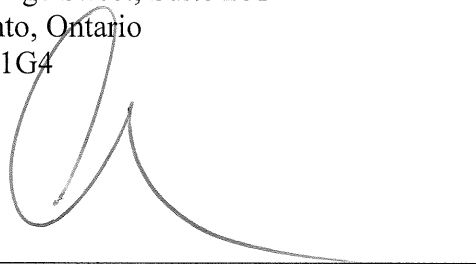
1. Pursuant to the request of Dr. Gábor Lukács (the "Applicant") and Sunwing Airlines Inc. ("Sunwing Airlines") to permit Sunwing Airlines to file an Amended Answer by May 31, 2013 and the granting of that request by the Canadian Transportation Agency (the "Agency"), Sunwing Airlines hereby:
 - replaces its existing proposed Rules 15 and 15A with the copies of the proposed Rules 15 and 15A attached to this Amended Answer;
 - amends paragraph 8 with respect to the reference to proposed Rule 15(1)(c) to 15(1)(e);
 - amends paragraph 9 with respect to the reference to Rule 20 to proposed Rule 15(1)(f).
 - amends paragraph 11 with respect to the reference to proposed Rule 15(1)(d) to 15(1)(g); and
 - amends paragraph 12 with respect to the reference to proposed Rule 15(1)(c) to 15(1)(e)
2. All of the other submissions in the Answer remain the same.

DATED at Toronto, this 31st day of May, 2013.

SUNWING AIRLINES INC.

By its solicitor

EDWIN T. NOBBS, Q.C.
PROFESSIONAL CORPORATION
33 Yonge Street, Suite 201
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RULE 15 – RESPONSIBILITY FOR SCHEDULES AND OPERATIONS**(1) General**

- (a) For the purposes of this Rule, the term “*Advance Flight Departure*” shall mean an advancement of the scheduled flight departure by more than the minimum period established in the Carrier’s tariff for the passenger to check-in in accordance with this Rule 15(2).
- (b) The provisions of this Rule are not intended to make Carrier responsible for the acts of third parties that are not deemed employees and/or agents of the Carrier under applicable law or international conventions and all the rights herein described are subject to the following exception, namely, that Carrier shall not be liable for damage occasioned by overbooking or cancellation if the Carrier proves that 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.
- (c) The Carrier will endeavor to transport the passenger and baggage with reasonable dispatch, but times shown in timetables or elsewhere are not guaranteed.
- (d) 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.
- (e) 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.
- (f) (i) If the passenger’s journey is interrupted by an Advance Flight Departure, a flight cancellation or overbooking, the Carrier will take into account all the circumstances of the case as known to it and will provide the passenger with the option of accepting one or more of the following remedial choices:
 - a) reimbursement of the total price of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part or parts already made if they no longer serve any purpose in relation to the passengers original travel plan, together with, when relevant, transportation to the passengers point of origin, at the earliest opportunity, at no additional cost;

b) transportation to the passenger's intended destination at the earliest opportunity, at no additional cost;

(ii) When determining the transportation service to be offered, the Carrier will consider:

a) available transportation services, including services offered by interline, code sharing and other affiliated partners and, if necessary, other non-affiliated carriers;

b) the circumstances of the passenger, as known to it, including any factors which impact upon the importance of timely arrival at destination.

(iii) having taken all the known circumstances into consideration, the Carrier will take all measures that can reasonably be required to avoid or mitigate the damages caused by the Advance Flight Departure, overbooking or cancellation. Where a passenger nevertheless incurs expense as a result of the overbooking or cancellation, the Carrier will in addition offer a cash payment or travel credit, the choice of which will be at the passenger's discretion.

(iv) 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 Advance Flight Departure, overbooking or cancellation, 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.

(g) 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 delivery 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.

(h) 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) **Cut-off Times**

Check-in counters are open 3 hours prior to the scheduled departure, and will close 60 minutes before scheduled departure. Passenger(s) arriving for check-in after 60 minutes prior to the scheduled departure will not be accepted for travel.

After passenger(s) have checked in for their flight, they should be available at the gate not later than 30 minutes prior to the scheduled departure for boarding the aircraft. Passengers who arrive at the boarding gate after the gate has closed will not be accepted for travel.

Passenger(s) who arrive later than the times referred to above for check-in or at the boarding gate will not be eligible for any denied boarding compensation or refund.

(3) **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 Advance 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 the Carrier proves 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 or advance flight departures 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.

(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 proves it, 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(b)) 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.
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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 *Montreal Convention*) and related treaties.
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