

Halifax, NS

lukacs@AirPassengerRights.ca



July 18, 2014

VIA EMAIL

The Secretary
Canadian Transportation Agency
Ottawa, Ontario, K1A 0N9

Attention: Mr. Mike Redmond, Chief, Tariff Investigations

Dear Madam Secretary:

**Re: Dr. Gábor Lukács v. WestJet
Complaint concerning WestJet's policies and practices relating to claims for delay,
damage, and loss of baggage
File No.: M 4120-3/14-02973
Notice to Admit Authenticity / Interrogatories and Production of Documents
Motion for an Extension**

On June 3, 2014, the Applicant filed a complaint concerning WestJet's policies and practices relating to claims for delay, damage, and loss of baggage. The Applicant's complaint alleges that:

[...] WestJet has been systematically refusing to process and settle baggage-related claims in cases where WestJet is the first carrier; instead, WestJet's policy and practice has been to insist that passengers communicate with the last carrier. WestJet has been citing IATA Resolution 780 in support of its position.

In support of this allegation, the Applicant submitted correspondence sent by WestJet to the Applicant and another passenger, Ms. Jones.

The Applicant's complaint also alleges that:

- I. WestJet's policies and practices are inconsistent with the *Montreal Convention*;
- II. WestJet failed to apply terms and conditions of carriage set out in its International Tariff; and
- III. WestJet's policies and practices fail to be just and reasonable, because they are inconsistent with the *Montreal Convention*.

In its answer dated July 11, 2014, WestJet alleged that:

- (a) British Airways allegedly paid the Applicant the amount of CAD\$25.70 to settle his claim;
- (b) WestJet "will not rely on IATA Resolution 780."

WestJet has provided no documents in support of its allegations with respect to the payment of the Applicant's claim, and has failed to make any submissions concerning the Applicant's allegation of systemic refusal to settle claims; nor did WestJet address in any way the claim of Ms. Jones. In particular, WestJet neither admitted nor denied the authenticity of the correspondence submitted by the Applicant as Exhibits to the complaint.

The present letter consists of a Notice to Admit Authenticity of Documents (Rule 17), questions directed to WestJet (Rules 19 and 20) and Notice to Produce Documents (Rule 16), and a motion for an extension to file the Applicant's final reply until after WestJet has responded to the Notice to Admit Authenticity and the questions directed to WestJet. The Applicant is also asking the Agency to set a deadline for WestJet to respond to the questions directed to it.

I. Notice to Admit Authenticity of Documents (Rule 17)

WestJet is hereby provided notice pursuant to Rule 17(1) of the *Canadian Transportation Agency General Rules*, SOR/2005-35 to admit, within seven days after the receipt of this notice, the authenticity of the following documents:

- A. Email of WestJet to Dr. Lukács, dated May 13, 2014, a copy of which is attached and marked as Exhibit "A".
- B. Email of WestJet to Ms. Jones, dated May 13, 2014, a copy of which is attached and marked as Exhibit "B".
- C. Email of WestJet to Ms. Jones, dated June 3, 2014, a copy of which is attached and marked as Exhibit "C".
- D. Email of WestJet to Ms. Jones, dated June 25, 2014, a copy of which is attached and marked as Exhibit "D".

II. Questions directed to WestJet (Rules 19 and 20) and Notice to Produce Documents (Rule 16)

The Applicant directs the following questions to WestJet pursuant to Rules 19 and 20 of the *Canadian Transportation Agency General Rules*, SOR/2005-35. The Applicant is asking the Agency to set a deadline for WestJet to answer these questions.

(a) Payment allegedly made by British Airways to the Applicant

In response to the Applicant's allegation that WestJet has refused to process his claim (Exhibit "A"), WestJet alleges in its April 11, 2014 submissions that:

British Airways settled the claim for the applicant's delayed baggage and they paid him CAD25.70 on May 9, 2014, three days after the irregularity report was filed.

- Q1. What method was used for making the aforementioned alleged payment (wire, money order, Interac, cheque, etc.)?
- Q2. What method was used to confirm that the alleged payment has been received by the Applicant?
- Q3. Please produce all records (such as, but not limited to, account statements, transaction confirmations, etc.) regarding the making of the alleged payment.

Relevance: The Applicant received no payment from British Airways, and intends to vehemently dispute WestJet's allegation in this regard. The failure of WestJet to settle this claim is capable of showing that WestJet's past and current policies and practices result in non-payment of claims.

(b) Systemic refusal to process and settle claims

The Applicant's complaint alleges that:

[...] WestJet has been systematically refusing to process and settle baggage-related claims in cases where WestJet is the first carrier; instead, WestJet's policy and practice has been to insist that passengers communicate with the last carrier. WestJet has been citing IATA Resolution 780 in support of its position.

[Emphasis added.]

WestJet has neither admitted nor denied this allegation. The following questions and requests for productions are aimed at ascertaining the facts pertaining to this allegation.

- Q4. Please produce WestJet's internal policies, manuals, guidelines or any other documents that were used by Ms. Susie Felker of WestJet in deciding to decline to process the claims of the Applicant and Ms. Jones (Exhibits "A" and "B").
- Q5. In the past 12 months, in how many baggage-related claims did WestJet refuse to process in situations where WestJet was not the last carrier?
- Q6. In the past 12 months, in how many communications with passengers did WestJet refer to IATA Resolution 780?
- Q7. Please produce all communications from the past 12 months between passengers and WestJet that meet at least one of the following criteria:
- i. making reference to IATA Resolution 780;
 - ii. relating to WestJet's refusal to process baggage-related claims in situations where WestJet was not the last carrier.

In order to protect the privacy of the passengers, the Applicant will not oppose the confidential treatment of the names and other personal information of the passengers that may be contained in such communications.

(c) WestJet's claim that it "will not rely on IATA Resolution 780"

On page 2 of WestJet's July 11, 2014 answer to the complaint, WestJet stated that it "will not rely on IATA Resolution 780."

On June 10, 2014, Ms. Jones advised WestJet that her claim remains outstanding, and reiterated her request that WestJet compensate her for the loss of her bicycle in accordance with the *Montreal Convention* (bottom part of Exhibit "D")

- Q8. Did WestJet send Ms. Jones any correspondence after its June 25, 2014 email (top part of Exhibit "D")?
- Q9. Did WestJet advise Ms. Jones that WestJet would no longer rely on IATA Resolution 780?
- Q10. Has WestJet begun the processing the claim of Ms. Jones?
- Q11. Has WestJet settled the claim of Ms. Jones?

Relevance: The answers to these questions are capable of demonstrating the need for the Agency to order corrective measures notwithstanding the submission of WestJet that it would no longer rely on IATA Resolution 780.

III. Motion for an extension until the notices and questions are answered

The Applicant has directed a Notice to Admit Authenticity of Documents, certain questions, and a Notice to Produce Documents to WestJet. The response of WestJet is essential for the Applicant's final reply (pursuant to Rule 44) in the proceeding.

Thus, the Applicant is respectfully asking the Agency to allow him 5 business days after the receipt of all responses from WestJet to prepare and file his final reply, pursuant to Rule 44, in the proceeding.

All of which is most respectfully submitted.

Dr. Gábor Lukács
Applicant

Cc: Jeff Landmann, Senior Legal Counsel for WestJet
Lorne Mackenzie, Director of Regulatory and Government Affairs for WestJet

From: sfelker@westjet.com Tue May 13 16:34:20 2014
Date: Tue, 13 May 2014 14:34:17 +0000
From: Susie Felker <sfelker@westjet.com>
To: "'dr.gabor.lukacs@gmail.com'" <dr.gabor.lukacs@gmail.com>
Subject: RE: Notice of claim pursuant to the Montreal Convention

Good morning Mr. Lukacs,

Thank you for contacting WestJet regarding delayed baggage file BUDBA51265. WestJet in accordance with our partner British Airways, will respectfully follow IATA Resolution 780, which states that the airline on which the passenger travelled to final destination shall be responsible for raising the Property Irregularity Report (PIR). In your case, the property irregularity report was created by British Airways in Budapest, Hungary (PENCZ12267) on April 29, 2014. The final carrier is responsible to settle the claim and reach final resolution with the passenger. Therefore, it remains the responsibility of British Airways to settle your claim and reach resolution.

Thank you,

Susie Felker
Manager - Central Baggage Services | Proration Officer
WestJet | 403-539-7503

-----Original Message-----

From: Gabor Lukacs [mailto:dr.gabor.lukacs@gmail.com] On Behalf Of Gabor Lukacs
Sent: Tuesday, May 06, 2014 4:47 PM
To: Carol McCall; jim.blaney@ba.com; Lorne Mackenzie
Subject: Notice of claim pursuant to the Montreal Convention

Dear Ms. McCall, Mr. Mackenzie, and Mr. Blaney:

I am writing to request that WestJet and British Airways compensate me, pursuant to Articles 19 and 36(3) of the Montreal Convention, for the delay of my checked baggage en route from Halifax (YHZ) to Budapest (BUD) on flights WS 279 / BA 92 / BA 866 on April 28-29, 2014.

A baggage irregularity report, under reference number BUDBA51265, has been completed upon my arrival in Budapest.

Due to the delay of my baggage, I had to go shopping on the day of my arrival, and I incurred out-of-pocket expense in the amount of CAD\$25.70 (5064 HUF charged to my credit card) for soap, toothbrush, toothpaste, shampoo and deodorant. A receipt of these purchases is available, and I will be happy to send you a photograph or scan should you request me to do so.

At this point, I am prepared to accept the amount of CAD\$25.70 in full and complete settlement of the matter; however, should WestJet and/or British Airways not settle the matter amicably, I reserve my right to seek further damages.

I look forward to hearing from you.

Best wishes,
Dr. Gabor Lukacs

Gmail - Fwd: Claim pursuant to Article 17 of the...

<https://mail.google.com/mail/u/0/?ui=2&ik=25da...>

From: Susie Felker <sfelker@westjet.com>
Date: May 13, 2014 at 8:31:13 CST
To: "'rhiannon.jones85@gmail.com'" <rhiannon.jones85@gmail.com>
Subject: RE: Claim pursuant to Article 17 of the Montreal Convention

Good Morning Ms. Jones,

Thank you for contacting WestJet and providing feedback regarding file PENCZ12267. The records provided state that your itinerary began with WestJet in Regina, Saskatchewan where you checked in and flew to Vancouver, British Columbia on WestJet flight 313 on 06DEC13. From there, you connected to China Southern flight 330 from Vancouver to Guangzhou, China and onto your final destination with China Southern flight 395 to Penang, Malaysia. WestJet in accordance with our partner China Southern, will respectfully follow IATA Resolution 780, which states that the airline on which the passenger travelled to final destination shall be responsible for raising the Property Irregularity Report (PIR). In your case, the property irregularity report was created in Penang Malaysia by China Southern (PENCZ12267). The resolution goes on to say that any carrier can begin the search for a delayed bag (or item such as a bike) from a system perspective. However, it is the final carrier who is responsible to settle the claim and reach final resolution with the guest. As indicated by Janice, WestJet Central Baggage Service Specialist on February 13, 2014, WestJet found a potential match to your delayed bike and provided China Southern and yourself with the information to match and track this file. Therefore, it remains the responsibility of China Southern to settle your claim and reach resolution.

Thank you,

Susie Felker
Manager - Central Baggage Services | Proration Officer
WestJet | 403-539-7503

From: Rhiannon Jones [<mailto:rhiannon.jones85@gmail.com>]
Sent: Monday, April 28, 2014 1:48 PM
To: Lorne Mackenzie
Subject: Claim pursuant to Article 17 of the Montreal Convention

Dear Mr. Mackenzie,

Please see the attached letter.

Sincerely yours,
Rhiannon Jones

Gmail - Fwd: Claim pursuant to Article 17 of the...

<https://mail.google.com/mail/u/0/?ui=2&ik=25da...>

Sincerely yours,

Rhiannon Jones

Gmail - Fwd: Claim pursuant to Article 17 of the...

<https://mail.google.com/mail/u/0/?ui=2&ik=25da...>

From: Susie Felker <sfelker@westjet.com>
Date: June 3, 2014 at 16:24:03 CST
To: 'Rhiannon Jones' <rhiannon.jones85@gmail.com>
Cc: Lorne Mackenzie <lmackenzie@westjet.com>
Subject: RE: Claim pursuant to Article 17 of the Montreal Convention

Good Afternoon Ms. Jones,

I have included a copy of IATA resolution 780 as an attachment to this email for your reference.

To clarify, WestJet has not stated that we are not liable under the Montreal Convention. IATA Resolution 780 does not override the Montreal Convention. However, China Southern is handling the claim, as indicated by file number PENCZ12267. As China Southern is party to the ticket, formed part of the successive carriage, and created the file in final destination they will be responsible for reaching final resolution. As such, WestJet will allow China Southern to settle the claim and if appropriate share the liability with WestJet as a participating carrier on the itinerary.

Kind regards,

Susie Felker
Manager - Central Baggage Services | Proration Officer
WestJet | 403-539-7503

From: Rhiannon Jones [<mailto:rhiannon.jones85@gmail.com>]
Sent: Friday, May 16, 2014 6:47 PM
To: Susie Felker
Cc: Lorne Mackenzie
Subject: RE: Claim pursuant to Article 17 of the Montreal Convention

Dear Ms. Felker,

Thank you for your message.

I am not familiar with IATA Resolution 780, and I would be grateful if you were so kind to provide me with a copy of same.

Nevertheless, I have ascertained that IATA resolutions do not supersede the Montreal Convention, which has the force of law in Canada due to the Carriage by Air Act. Consequently, WestJet's liability is governed by the Montreal Convention, and not by Resolution 780, which I understand, governs the relationship among airlines, and not vis-a-vis passengers.

I look forward to hearing from you.

Sincerely yours,
Rhiannon Jones

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relationship among airlines, and not vis a vis passengers.

I look forward to hearing from you.

Sincerely yours,
Rhiannon Jones

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From: Susie Felker <sfelker@westjet.com>
Date: June 25, 2014 at 13:45:34 CST
To: 'Rhiannon Jones' <rhiannon.jones85@gmail.com>
Cc: Lorne Mackenzie <lmackenzie@westjet.com>
Subject: RE: Claim pursuant to Article 17 of the Montreal Convention

Good Afternoon Ms. Jones,

In the case of the Montreal Convention air carriers who participate in successive carriage are jointly and severally liable for damages that have occurred in the case of lost, damaged or delayed baggage.

Article 36(3) states:

With regards to baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier which performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

IATA Res 780 coordinates the claims process. It allows for a single carrier to resolve the claim and reconcile the liability which has occurred amongst the carriers who participated in the successive carriage.

WestJet has not stated that we are not liable under the Montreal Convention or that Resolution 780 overrides the Montreal Convention. However, China Southern is handling the claim as indicated by file PENCZ12267. As China Southern is party to the ticket and formed part of the successive carriage, they are jointly liable for the cost incurred. IATA Resolution 780 allows China Southern to settle the claim, and if appropriate share the liability with any other participating carriers on the itinerary.

Kind regards,

Susie Felker
Manager - Central Baggage Services | Proration Officer
WestJet | [403-539-7503](tel:403-539-7503)

-----Original Message-----

From: Rhiannon Jones [<mailto:rhiannon.jones85@gmail.com>]
Sent: Tuesday, June 10, 2014 2:03 PM
To: Susie Felker
Subject: Claim pursuant to Article 17 of the Montreal Convention

Dear Ms. Felker,

Thank you for providing me with a copy of Resolution 780. Upon careful review, I have been unable to find any provision in it that would preclude WestJet from complying with its "joint and several liability" under the Montreal Convention (a notion not to be confused with "joint liability" or "several liability").

It appears that WestJet is confusing the tracing process (governed by Article 4 of Resolution 780) with the claims and indemnity (governed by Article 5 of Resolution 780).

Since my missing bicycle has not arrived within 21 days, Article 17(3) of the Montreal Convention provides that the present case is not one of tracing missing baggage, but rather a claim for loss of checked baggage.

The notion of "joint and several liability" contained in Article 36(3) means that I, as the passenger, have full discretion to decide which of the three types of airlines I request to compensate me.

I chose to seek compensation from WestJet, which was the first carrier, and thus it is the responsibility of WestJet to settle the claim. (After settling my claim, WestJet may wish to seek reimbursement from other airlines involved, or other third parties, but none of that is my business.)

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full discretion to decide which of the three types of airlines I request to compensate me.

I chose to seek compensation from WestJet, which was the first carrier, and thus it is the responsibility of WestJet to settle the claim. (After settling my claim, WestJet may wish to seek reimbursement from other airlines involved, or other third parties, but none of that is my business.)

Hence, given that my claim remains outstanding, I reiterate my request that WestJet compensate me for the loss of my bicycle in accordance with the Montreal Convention.

Sincerely yours,
Rhiannon Jones

Sent from my iPad