

Leslie and Nancy Jutasi

Ottawa, ON

March 10, 2014

**HAND DELIVERED**

Mr. Mark Williams, President  
Sunwing Airlines, Inc.

Dear Mr. Williams:

**Re: Request for compensation for damages occasioned by delay pursuant to Article 19 of the *Montreal Convention* and for breach of contract**

We are writing to request that Sunwing Airlines pay us compensation for damages occasioned by delay of Flight SWG 034 from Ottawa (YOW) to Orlando (ORL) on January 11, 2014, pursuant to Article 19 of the *Montreal Convention*, as well as for breach of the terms and conditions of carriage set out in Sunwing Airlines' International Tariff.

**THE FACTS**

1. We held a confirmed reservation for Flight SWG 034 departing Ottawa (YOW) to Orlando (ORL) on January 11, 2014 at 06:30 am. Our booking reference was: 65796741. The purpose of our trip was our annual vacation.
2. On January 11, 2014, prior to leaving to the Ottawa Airport, we checked Sunwing's website, and it indicated that Flight SWG 034 would depart on time, at 06:30 am.
3. Sunwing does not have its own agents at the Ottawa Airport. Instead, Firstair staff act as agents for Sunwing.

4. We arrived at the Ottawa Airport on January 11, 2014 at approximately 04:30. Upon our arrival, we were advised by Firstair staff that the departure of Flight SWG 034 was delayed until 21:15, that is, by 14 hours and 45 minutes.
5. Our request to be rebooked on another flight, possibly of another airline, was refused on the basis that Sunwing is not “affiliated” with any other airline. We were advised that we would need to book ourselves another flight, and then try to seek reimbursement from Sunwing.
6. We were provided with one taxi voucher to allow us to return home, but we were not provided with any means of ground transportation to return to the airport in the evening for our flight.
7. On January 11, 2014, we returned to the Ottawa Airport at approximately 18:30, and checked in for Flight SWG 034. Our boarding passes showed a departure time for 21:50.
8. On January 11, 2014, at approximately 21:45, it was posted at the departure gate of Flight SWG 034 that the flight was delayed without specifying a new time of departure.
9. We approached the counter staff to inquire about the reasons for the delay and the expected departure time, and we were told that:
  - a. they were “waiting for the captain to give clearance to board”; and
  - b. they were contacting US Customs in Orlando to see if they will stay open longer than usual to process the passengers when they arrive from this flight.
10. On January 11, 2014, at approximately 23:00, Flight SWG 034 was cancelled, and we were advised to return to the airport the next morning, on January 12, 2014, for a flight scheduled to depart at 05:15.
11. On January 11, 2014, at approximately 23:45 we were able to retrieve our checked baggage.
12. Since we were expected to return to the airport and check in again at 03:00 on January 12, 2014, we were unable to go home or to a hotel to rest.

13. On January 12, 2014, we finally departed from Ottawa to Orlando at approximately 05:15.
14. Although we paid an additional fee of \$40.00 per passenger per flight, totalling \$160.00, for Seat Selection in Row 16, which has extra legroom, we were moved by the flight attendant to different seats, with less legroom, on the outbound flight.

## **BREACH OF CONTRACT IN THE PRESENT CASE**

Sunwing's International Tariff is the contract of carriage between the passengers and Sunwing Airlines. It is our position that Sunwing breached its obligations under the Tariff in multiple ways.

### **(a) Failure to inform passengers about the delay and its reasons**

Sunwing's International Tariff Rule 15(1)(e) states that:

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.

Sunwing knew (or ought to have known) well in advance that Flight SWG 034 on January 11, 2014 would be delayed by more than 14 hours. Nevertheless, Sunwing failed to fulfil its contractual obligation to inform passengers of the delay. Sunwing did not contact us nor any of the other passengers on Flight SWG 034 about the delay, and no information was posted on Sunwing's website about the delay.

### **(b) Refusal to rebook passengers on flights of other airlines**

Sunwing's International Tariff Rule 15(1)(f)(i)(b) requires Sunwing to offer stranded passengers "transportation to the passenger's intended destination at the earliest opportunity at no additional cost." Sunwing's International Tariff Rule 15(1)(f)(ii)(a) states that:

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;

[Emphasis added.]

The refusal of Sunwing's agents at the Ottawa Airport to rebook us on flights of other airlines because Sunwing is not "affiliated" with them is a blatant breach of Sunwing's contractual obligations under International Tariff Rule 15(1)(f)(i)(b).

**(c) Providing false information to passengers**

As noted earlier, Sunwing's International Tariff Rule 15(1)(e) imposes upon Sunwing the duty to provide information about the reason of the delay to the extent it is possible. Thus, providing truthful information about the reasons for the delay is an implied contractual term.

In the present case, Sunwing's agents provided passengers with false information by suggesting that there were issues with US Customs remaining open in Orlando. We have confirmed that US Customs is open 24 hours a day in Orlando.

**(d) Failure to provide seats paid for**

Although we paid an additional fee totalling \$160.00 to secure seats with extra legroom in Row 16, on the outbound flight, we were moved to different seats, with less legroom.

**DAMAGES**

- A. The failure of Sunwing to fulfil its contractual obligation to inform passengers about delays caused us substantial inconvenience and waste of vacation time by making us come to the Ottawa Airport on January 11, 2014 early in the morning unnecessarily. The failure of Sunwing to rebook us on the flight of another carrier caused us to be delayed by 22 hours and 45 minutes, to arrive in Orlando sleep deprived, and resulted in us losing an entire day of our vacation.

We are seeking compensation in the amount of **\$500.00 per person** for the inconvenience and loss of enjoyment caused to us by Sunwing's breach of explicit contractual provisions in its Tariff.

- B. The one-day delay in our travel from Ottawa to Orlando also resulted in a waste of:
- (i) one day of paid vacation of Mr. Jutasi in the amount of **XXX.XX**; and
  - (ii) one day of paid vacation of Mrs. Jutasi in the amount of **XXX.XX**.

We are requesting that Sunwing compensate us for these amounts pursuant to Article 19 of the *Montreal Convention*.

- C. We are requesting that Sunwing reimburse us the amount of **\$80.00** paid for seats in Row 16, which were not provided to us on the outbound journey.

Yours very truly,  
Leslie and Nancy Jutasi