

Halifax, NS  
lukacs@AirPassengerRights.ca



September 12, 2013

**VIA EMAIL**

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

Attention: Ms. Shanda Frater, Analyst

Dear Madam Secretary:

**Re: Dr. Gábor Lukács v. British Airways**  
**Complaint about rules governing liability and denied boarding compensation**  
**File No.: M 4120/13-00661**  
**Reply – Motion to compel full and complete answer to question Q6**

Please accept the following submissions in relation to the above-noted matter as a reply pursuant to Rule 32(5) of the *Canadian Transportation Agency General Rules* in relation to the motion to compel a full and complete answer to question Q6.

**CHRONOLOGY OF THE CONTRADICTION DOCUMENTS TENDERED**

In order to fully appreciate the issue that the present motion is seeking to address, it is necessary to review the chronology of the various contradictory documents that British Airways submitted to the Agency concerning the amount of denied boarding compensation it paid to passengers departing from Canada to the United Kingdom.

1. On March 22, 2013, British Airways submitted Exhibit “B” that purports to be the list of amounts of denied boarding compensation paid by British Airways to individual passengers departing from Canada to the United Kingdom in 2010, 2011, and 2012.

We shall refer to this document as “Version No. 1”.

2. Version No. 1 indicates that British Airways paid individual passengers denied boarding compensation ranging from 375.00 to 4,563.00 GBP, which are substantially higher than what are set out in British Airways' Rule 87(B)(3)(B).

Consequently, on July 16, 2013, the Applicant directed a number of follow-up questions to British Airways, including the following one:

- Q6. Exhibit "B" lists amounts ranging from \$375.00 to \$4,563.00. These amounts are substantially higher than what is set out in British Airways' Rule 87(B)(3)(B).

What method did British Airways use to determine these amounts?

3. On August 9, 2013, the Agency directed British Airways to provide a complete response to certain questions, including question Q6, by August 23, 2013. On August 23, 2013, British Airways provided the following answer to question Q6:

For compensation for passengers rerouted to arrive at last destination not more than 4 hours after original STA, cash of GBP 125.00 is the amount. For compensation for passengers rerouted to arrive at last destination more than 4 hours after original STA, cash of GBP 250.00 is the amount.

4. On August 23, 2013, the Applicant brought the present motion, seeking to compel a full and complete answer to question Q6 on the basis that the answer provided does not explain the amounts listed in Version No. 1.
5. On August 26, 2013, British Airways submitted a new list purporting to represent the amounts of denied boarding compensation paid by British Airways to individual passengers departing from Canada to the United Kingdom in 2010, 2011, and 2012.

We shall refer to this document as "Version No. 2".

6. Serious concerns arose as to the veracity of Version No. 2, because the Applicant observed that the figures in the "Total No of Passengers" column were all divisible by 3, and it is unlikely that British Airways bumped passengers only in groups of three (3) passengers.
7. On September 5, 2013, British Airways conceded that Version No. 2 contained inaccurate information, namely, both the number of passengers and the amount of compensation paid was multiplied by three.

British Airways provided yet another list purporting to represent the amounts of denied boarding compensation paid by British Airways to individual passengers departing from Canada to the United Kingdom in 2010, 2011, and 2012.

We shall refer to this document as "Version No. 3".

British Airways explained that Version No. 2 and Version No. 3 were obtained by way of data extraction from its “Nirvana” system. British Airways further claims that Version No. 3 was produced by manually correcting Version No. 2.

## **ARGUMENT**

In what follows, the Applicant challenges British Airways’ answer to the motion, and the authenticity and reliability of Version No. 3, based on material omissions of data. The Applicant submits that since British Airways’ data extraction is clearly and obviously unreliable and flawed, British Airways ought to produce original data directly from its “Nirvana” system, and not various extracts.

### **I. Version No. 3 is also unreliable**

According to British Airways, Version No. 3 that was submitted on September 5, 2013 was produced by manually correcting the “factor ‘3’” error that appeared in Version No. 2. This statement, however, is clearly incorrect.

#### **(a) Version No. 3 omits information that appeared in Version No. 2**

A comparison between Versions Nos. 2 and 3 reveals that several rows of data that appeared in Version No. 2 were not simply “corrected” as British Airways claims, but rather were entirely omitted from Version No. 3.

The Case ID of these rows are as follows:

8372288, 8473429, 9183154, 9252141, 9285564, 9350841, 9391114, 9394381,  
9431469, 9445887, 9572901, 9747913, 9821656, 9837679, 10206273, 10209153,  
10256157.

Among these, the mysterious disappearance of several rows bearing Case ID 8372288 is of particular concern, as it seems to correspond in Version No. 2 to a payment of 4,563.00 GBP made to 9 passengers. Even if one divides these figures by 3, one obtains a payment of 1,521 GBP to 3 passengers, that is, 507 GBP per passenger, which is more than double the the amount of what British Airways claims to usually pay.

The Applicant submits that these inexplicable omissions cast serious doubt on the accuracy and reliability of Version No. 3.

**(b) Duplications in Version No. 3**

A careful review of Version No. 3 also reveals that the following Case IDs appear more than once in Version No. 3, in other words, it appears as if more than one compensation card was provided for the same incident:

8029919, 8117301, 9185840, 9186509, 9377973, 9394397, 9858132

It is difficult to understand the meaning of these duplicate entries, and their presence reinforces the serious doubts as to the reliability of Version No. 3.

**(c) Conclusion**

Although British Airways insists that the data in Versions Nos. 1-3 contains data recorded by British Airways in the ordinary course of business, this is clearly not the case. Indeed, as British Airways admitted on September 5, 2013, the data is recorded and held in “Nirvana,” a system used by British Airways Customer Service to record compensation paid to passengers.

The serious problems that British Airways has experienced in extracting the data from “Nirvana” and the inexplicable inconsistencies of Version No. 3 demonstrate that British Airways’ data extraction procedures are simply not reliable, and do not accurately reflect the data that was recorded in the ordinary course of business.

Therefore, the Applicant submits that Version No. 3 is unreliable, and cannot be used for determining British Airways’ denied boarding compensation practices with respect to passengers departing from Canada to the United Kingdom.

**II. British Airways ought to produce data recorded in “Nirvana” directly**

British Airways’ September 5, 2013 submissions confirm that the original data about compensation paid to passengers is recorded in the “Nirvana” system. Moreover, the printouts provided by British Airways confirm that this data is available for previous years.

The Applicant submits that in order to ascertain British Airways’ current denied boarding practices, British Airways ought to produce data recorded in “Nirvana” directly (for example, by way of providing screenshots of all records), without any intermediate data extraction process, which has been proven to be faulty and unreliable.

Therefore, the Applicant is asking the Agency to order British Airways to produce data directly from the “Nirvana” system concerning the amounts of denied boarding compensation British Airways paid to passengers departing from Canada to the United Kingdom.

### **III. Improper redaction and misleading reference to *PIPEDA***

On September 5, 2013, British Airways submitted two screenshots of information recorded in British Airways' "Nirvana" system. Some of the information on these screenshots was redacted, and British Airways claims that the redaction was necessary in order for British Airways to comply with *PIPEDA*.

The Applicant objects to these redactions for several reasons. First, subsection (3) of *PIPEDA* states that:

(3) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may disclose personal information without the knowledge or consent of the individual only if the disclosure is

⋮

(c) required to comply with a subpoena or warrant issued or an order made by a court, person or body with jurisdiction to compel the production of information, or to comply with rules of court relating to the production of records;

Second, Rule 23 of the *Canadian Transportation Agency General Rules* clearly sets out the proper avenue for seeking confidentiality and submitting documents that are partially redacted.

Third, it appears that the redaction has gone beyond what is necessary to protect passengers' privacy, as also part of the "Settlement Ref" was redacted, while this field appears to show the number of the compensation card that was provided to passengers.

The Applicant submits that British Airways ought to either submit unredacted copies of these documents, or make a claim for confidentiality pursuant to Rule 23.

### **IV. Follow-up questions arising from the "Nirvana" screenshots**

On August 23, 2013, in response to question Q4 of the Applicant, British Airways represented to the Agency that the denied boarding compensation payments listed in Version No. 1 were all made in cash:

Q4. 'COMPCARD' means a cash payment, as opposed to a voucher (MCO) which can be used as a credit for future travel.

The "Nirvana" screenshots submitted by British Airways on September 5, 2013, however, appear to contradict this. Indeed, the screenshots show a field called "Evoucher expiry date" and the status of a number of compensation cards is shown as "EXPIRED."

It goes without saying that cash cannot expire. Thus, it is difficult to reconcile the answer British Airways provided to question Q4 that the compensation amounts were paid out in cash with the contents of the “Nirvana” screenshots.

Therefore, the Applicant directs the following follow-up question to British Airways, and asks the Agency to order British Airways to answer this question too:

- Q9. On September 5, 2013, British Airways submitted (redacted) screenshots of its “Nirvana” system. The following questions refer to these printouts.
- (a) What does “Evoucher” mean?
  - (b) What is the meaning of “Evoucher expiry date”?
  - (c) How is the “Evoucher expiry date” determined?
  - (d) What is the reason that the “Card Status” of a number of cards is shown as “EXPIRED”?

*Relevance:* Answers to these questions will shed light on British Airways’ current denied boarding practices, and may correct inaccurate information that British Airways may have provided in response to question Q4.

**RELIEF SOUGHT**

The Applicant is asking the Agency that:

- A. the Agency order British Airways to produce data directly from the “Nirvana” system concerning the amounts of denied boarding compensation British Airways paid to passengers departing from Canada to the United Kingdom;
- B. the Agency order British Airways to produce unredacted copies of the “Nirvana” screenshots, or alternatively, make a claim for confidentiality as set out in Rule 23;
- C. the Agency order British Airways to answer question Q9;
- D. the Agency order British Airways to provide a full and complete answer to question Q6;
- E. the Agency grant the Applicant 10 days from the receipt of the answer to questions Q6 and Q9 and/or disposition of the present motion (whichever is later) to file his Reply pursuant to Rule 44.

All of which is most respectfully submitted.

Dr. Gábor Lukács  
Applicant

Cc: Ms. Carol E. McCall, counsel for British Airways