

IN THE FEDERAL COURT OF APPEAL

BETWEEN:

DR. GABOR LUKACS

Appellant

-and-

**CANADIAN TRANSPORTATION AGENCY and
BRITISH AIRWAYS PLC**

Respondents

**MEMORANDUM OF FACT AND LAW
OF THE RESPONDENT
CANADIAN TRANSPORTATION AGENCY**

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**MEMORANDUM OF FACT AND LAW
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OVERVIEW

1. This is the Memorandum of Fact and Law of the Respondent, Canadian Transportation Agency (Agency), in response to the appeal filed before this Honourable Court by Dr. Gabor Lukacs, pursuant to section 41 of the *Canada Transportation Act*, S.C. 1996, c. 10 (CTA).
2. The Appellant requests that this Honourable Court set aside Decision No. 91-C-A-2016 (Decision) of the Agency.
3. Traditionally, administrative tribunals with standing to be heard on appeal have been limited to making submissions on questions of jurisdiction and on standard of review. Although the Supreme Court of Canada has recently found that discretion may be used to broaden the scope of a tribunal's standing in specific circumstances, the Agency is not seeking to broaden

its submissions beyond the traditional issues of standard of review, a general discussion of its jurisdiction with respect to air carrier tariffs, and to address the factual record.

Ontario (Energy Board) v. Ontario Power Generation Inc.,
2015 SCC 44 at paras. 41-62.

PART I

STATEMENT OF FACTS

4. The Agency is a superior independent quasi-judicial administrative body of the Government of Canada which performs two key functions. As an economic regulator, the Agency makes determinations and issues authorities, licences and permits to transportation carriers under federal jurisdiction. As an adjudicative tribunal, the Agency, informally and through formal adjudication, resolves a range of commercial and consumer transportation-related disputes, including complaints regarding the content and application of air carrier tariffs.

A. LEGISLATIVE FRAMEWORK

(i) Powers of the Agency

5. The Agency has, with respect to all matters necessary or proper for the exercise of its jurisdiction, the attendance and examination of witnesses, the production and inspection of documents, the enforcement of its orders or regulations and the entry on and inspection of property, all the powers, rights, and privileges that are vested in a superior court.

Canada Transportation Act, S.C. 1996, c. 10, s. 25.

6. On an application made to the Agency, the Agency may grant the whole or part of the application, or may make any order or grant any further or other relief that to the Agency seems just and proper.

Canada Transportation Act, S.C. 1996, c. 10, s. 25.

7. The finding or determination of the Agency on a question of fact within its jurisdiction is binding and conclusive.

Canada Transportation Act, supra, s. 31.

8. The Agency may review, rescind or vary any decision or order made by it if, in the opinion of the Agency, since the decision or order or the hearing of the application, there has been a change in the facts or circumstances pertaining to the decision, order or hearing.

Canada Transportation Act, supra, s. 32.

(ii) Air Tariffs

9. An air carrier that operates an international service or its agent shall file with the Agency a tariff for that service, including the terms and conditions of free and reduced rate transportation for that service, in the style, and containing the information, required by Division II of the *Air Transportation Regulations*.

Air Transportation Regulations, SOR/88-58, ss. 110(1).

10. Every tariff shall contain the terms and conditions governing the tariff generally, stated in such a way that is clear as to how the terms and conditions apply to the tolls named in the tariff, and clearly stating the carrier's policy in respect of certain terms listed in the *Air Transportation Regulations* including compensation for denial of boarding as a result of overbooking.

Air Transportation Regulations, supra, para. 122(c)(iii).

11. Once filed, the air carrier shall charge the tolls and apply the terms and conditions of carriage specified in the tariff.

Air Transportation Regulations, supra, ss. 110(4).

12. All tolls and terms and conditions of carriage, including free and reduced rate transportation, that are established by an air carrier shall be just and reasonable and shall, under substantially similar circumstances and conditions and with respect to all traffic of the same description, be applied equally to all that traffic.

Air Transportation Regulations, SOR/88-58, ss. 111(1).

13. The Agency may suspend or disallow any tariff or portion of a tariff that appears not to conform with subsection 110(3) to (5) or section 111 or 112, and establish and substitute another tariff or portion thereof for any tariff or portion thereof disallowed.

Air Transportation Regulations, SOR/88-58, ss. 111(1).

B. THE ORIGINAL COMPLAINT

14. The Appellant's original complaint against British Airways PLC (British Airways) is dated January 13, 2013. In this complaint, the Appellant challenged several aspects of British Airways' Tariff. The Appellant argued that;

- (a) Rule 55(C) of the Tariff which is a blanket exclusion of liability is unclear and contradicts the legal principles of the *Montreal Convention*;
- (b) Rules 115(H), 116(H) and 55(C)(6)-(8) are unreasonable because they misstate, contradict and/or misrepresent the liability limits for lost, damaged or delayed baggage found in the *Montreal Convention* and are unreasonably low;

- (c) Rules 55(C)(10), 115(N) and 116(N) which are blanket exclusions of liability for baggage are unreasonable insofar as they concern liability for the contents of checked baggage because they are inconsistent with the *Montreal Convention*;
- (d) Rules 85(A) and 85(B)(2) of the Tariff which are exclusions of liability for delay of passengers are unreasonable; and
- (e) Rule 87(B)(3)(B) which governs the amount of denied boarding compensation payable is unreasonable.

**Application dated January 13, 2013
Appeal Book, TAB 11**

15. With respect to the Appellant's challenge of Rule 87(B)(3)(B) of British Airways' Tariff, the Appellant's arguments were as follows;

- (i) Rule 87(B)(3)(B) is inconsistent with the principle that a flat rate of denied boarding compensation should be paid, which is equal for all passengers, regardless of the fare they paid;
- (ii) The competitors of British Airways have been consistently applying the provisions of *Regulation (EC) 261/2004* for determining the amount of denied boarding compensation, and were able to remain as profitable as other airlines. As such, substituting Rule 87(B)(3)(B) with provisions similar to those of these carriers would not adversely affect the ability of British Airways to meet its commercial obligations;
- (iii) Since British Airways is a Community Carrier within the meaning of Regulation (EC) 261/2004, and thus is subject to the regulations of the European Community governing denied boarding compensation, it is more probable than not that the compensation amounts set out in Rule 87(B)(3)(B) are simply outdated, and do not

reflect British Airways' current practice of complying with Regulation (EC) 261/2004;
and

(iv) Rule 87(B)(3)(B) is unreasonable as it purports to pre-empt the rights of passenger who accept denied boarding compensation to seek damages under any other law, including the *Montreal Convention* ("sole remedy").

**Application dated January 13, 2013, section VI
Appeal Book, TAB 11, pages 97-101**

16. The Appellant's application reproduces the wording of Rule 87(B)(3)(B) of British Airways' Tariff, which read as follows;

SUBJECT TO THE PROVISIONS OF PARAGRAPH (B)(3)(A) OF THIS RULE, CARRIER WILL TENDER LIQUIDATED DAMAGES IN THE AMOUNT OF 100 PERCENT OF THE SUM OF THE VALUES OF THE PASSENGER'S REMAINING FLIGHT COUPONS OF THE TICKET TO THE PASSENGER'S NEXT STOPOVER, OR IF NONE TO HIS DESTINATION, BUT NOT LESS THAN \$50.00 AND NOT MORE THAN \$200.00 PROVIDED THAT IF THE PASSENGER IS DENIED BOARDING IN THE UNITED KINGDOM, THE AMOUNT OF COMPENSATION IN THIS SUBPARAGRAPH WILL READ NOT LESS THAN UKL 10.00 NOR MORE THAN UKL 100.00. SUCH TENDER IF ACCEPTED BY THE PASSENGER AND PAID BY CARRIER, WILL CONSTITUTE FULL COMPENSATION FOR ALL ACTUAL OR ANTICIPATORY DAMAGES INCURRED OR TO BE INCURRED BY THE PASSENGER AS RESULT OF CARRIER'S FAILURE TO PROVIDE PASSENGER WITH CONFIRMED RESERVED SPACE.

**Application dated January 13, 2013
Appeal Book, TAB 11**

17. The Appellant's application challenging numerous provisions of British Airways' Tariff does not refer to Rule 87(B)(3)(A), nor does the application specifically challenge the opening wording of Rule 87(B)(3)(B) which makes reference to Rule 87(B)(3)(A).

**Application dated January 13, 2013
Appeal Book, TAB 11**

C. THE ORIGINAL DECISIONS

18. In Decision No. 10-C-A-2014, the Agency accepted the Appellant's complaint with respect to all of the Tariff rules which were challenged with the exception of Rule 115(H), which had been revised. With respect to 87(B)(3)(B), the Agency concluded that it would not require British Airways to incorporate Regulation (EC) No. 261/2004 into its Tariff, but that it would not suffer a competitive disadvantage if it were required to replace Rule 87(B)(3)(B) with the provisions set out in Regulation (EC) No. 261/2004. The Agency determined that Rule 87(B)(3)(B), as it related to denied boarding compensation tendered by British Airways, failed to strike a balance between the passengers' rights to be subject to reasonable terms and conditions of carriage, and British Airways' statutory, commercial and operational obligations. The Agency concluded that Rule 87(B)(3)(B), as it relates to denied boarding compensation, may be unreasonable within the meaning of subsection 111(1) of the ATR. In addition to these conclusions, the Agency determined that Rule 87(B)(3)(B), insofar as it relates to sole remedy, was unreasonable.

**Agency Decision No. 10-C-A-2014
Appeal Book, TAB 4**

19. The Agency disallowed British Airways' Tariff provisions which had been determined to be unreasonable and/or unclear, including 87(B)(3)(B) in respect of sole remedy. British Airways was then given the opportunity to show cause, by no later than February 17, 2014, as to why the Agency should not require British Airways, with respect to the denied boarding compensation tendered to passengers under Rule 87(B)(3)(B), to apply either:

- (i) the regime applicable in the United States of America;
- (ii) the regime proposed by the Appellant in the proceedings related to Decision No. 342-C-A-2013;

(iii) the regime proposed by Air Canada during the proceedings related to Decision No. 442-C-A-2013; or

(iv) any other regime that British Airways may wish to propose that the Agency may consider to be reasonable within the meaning of subsection 111(1) of the ATR.

Agency Decision No. 10-C-A-2014, para. 144
Appeal Book, TAB 4, p. 34

20. Following the issuance of Decision No. 10-C-A-2014, British Airways proposed to apply the regime proposed by Air Canada set out in Decision No. 442-C-A-2013, which provides for compensation in cash or the equivalent of CAD\$400 for delays up to 4 hours and CAD\$800 for delays in excess of 4 hours. British Airways proposed language of the new Tariff provision as follows;

Amount of compensation payable for flights from Canada to the United Kingdom

(I) Subject to the provisions of paragraph (B)(3)(A) of this Rule, carrier will tender liquidated damages for delay at arrival at point of destination caused by involuntary denied boarding cash or equivalent in the amount of CAD 400 for delay of 0 to 4 hours and in the amount of CAD 800 for delay over 4 hours.

(II) Said tender will be made by carrier on the day and at the place where the failure occurs, and if accepted will be receipted for by the passenger. Provided, however, that when carrier arranges for the passenger's convenience, alternate means of transportation which departs prior to the time such tender can be made to the passenger, tender shall be made by mail or other means within 24 hours after the time the failure occurs.

Agency Decision No. 201-C-A-2014
Appeal Book, TAB 5

21. The Appellant objected to the proposed wording on the basis that the proposed Rule failed to establish conditions governing denied boarding compensation for flights to Canada, and from

Canada to the "European Community" that are outside the United Kingdom. No objection was made to the reference in the proposed wording to Rule 87(B)(3)(A).

Agency Decision No. 201-C-A-2014, para. 8
Appeal Book, TAB 5, p. 44

22. The Agency found that the proposed wording was inconsistent with what Air Canada proposed during the proceedings related to Decision No. 227-C-A-2013, which proposal applied to flights from Canada to the European Union. The Agency ordered British Airways to file with the Agency the proposed Rule with the application of the Rule being for travel from Canada to the European Union.

Agency Decision No. 201-C-A-2014, paras. 10-12
Appeal Book, TAB 5, p. 45

D. THE APPEAL

23. By Decision dated November 27, 2015, a majority of this Court allowed an appeal from Decision No. 201-C-A-2014 and remitted the matter back to the Agency for redetermination. The Court indicated that the Agency's decision lacked clarity with respect to whether British Airways should address denied boarding compensation for flights to Canada from the European Union. A majority of this Court indicated that the Agency must clearly address how British Airways is to "meet its tariff obligations of clarity" so that "the rights and obligations of both the carrier and passengers are stated in such a way as to exclude any reasonable doubt, ambiguity or uncertain meaning" in situations where the tariff is silent with respect to inbound flights.

***Lukacs v. Canada (Canadian Transportation Agency)*, 2015 FCA 269**
Appeal Book, TAB 7

E. THE REDETERMINATION DECISION

24. On redetermination, and in accordance with this Court's direction, the Agency addressed the issue of whether the Tariff can be said to clearly state British Airways' policy regarding denied boarding compensation when that Tariff is silent with respect to flights from the European Union to Canada. The Agency concluded that it is difficult to justify the Tariff's silence in this regard when considering that a carrier's policy regarding denied boarding compensation must be clearly stated and when considering that the Tariff is a means by which a person learns of rights and obligations, as they relate to both the person and the carrier. The Agency then noted that British Airways had elected to apply the regime proposed by Air Canada during the proceedings related to Decision No. 442-C-A-2013. It was further noted that the denied boarding compensation regime appearing in Air Canada's Tariff clearly establishes the carrier's policy, which includes not just the specific compensation amounts which were being proposed, but also incorporates by reference Regulation (EC) 261/2004. The Agency concluded that British Airways' election therefore included not just the specific amounts being proposed for outbound flights, but the context in which these amounts were proposed, which includes a reference to Regulation (EC) 261/2004. The Agency ordered British Airways to amend its Tariff in accordance with its election.

Agency Decision No. 49-C-A-2016
Appeal Book, TAB 8

F. THE COMPLIANCE DECISION

25. On March 9, 2016, British Airways submitted to the Agency's Determinations and Compliance Branch proposed wording for a new Rule 87(B)(3)(C) which provides for denied boarding compensation for flights travelling from the European Union to Canada. This Rule

again is stated as being subject to Rule 87(B)(3)(A), but does not reference Regulation (EC) 261/2004. The proposed wording instead sets out the specific amounts payable for denied boarding compensation.

**Email from Carol McCall to Christine Soloman dated March 9, 2016
Appeal Book, TAB 3**

26. In Decision No. 91-C-A-2016, the Agency noted that the proposed wording does not mention Regulation (EC) No. 261/2004 but sets out the specific amounts of compensation to reflect the amounts stipulated therein. The Agency concluded that the proposed wording incorporates the relevant terms of Regulation (EC) 261/2004, not simply by referring to it, but by actually including the relevant terms. The Agency found that British Airways had not only complied with Decision No. 49-C-A-2016, but had done so in a way that has provided greater clarity in its Tariff than had it simply included a cross-reference to the provision.

**Agency Decision No. 91-C-A-2016
Appeal Book, TAB 2**

27. To date, the Agency has not considered a complaint regarding whether Rule 87(B)(3)(A) complies with the requirements of the *Air Transportation Regulations* SOR/88-58.

PART II

POINTS IN ISSUE

28. This Court has granted leave to appeal solely with respect to whether the inclusion of the exceptions in Rule 87(B)(3)(A) of the proposed Tariff would result in the Tariff not being in compliance with the order of the Agency found in Decision 49-C-A-2016 to amend its Tariff "to reflect the regime proposed by Air Canada in the proceedings related to Decision No. 442-C-A-2013, including the incorporation of Regulation (EC) 261/2004".

Order granting leave to appeal dated May 20, 2016 Appeal Book, TAB 12

29. The Agency respectfully submits that the following issues stand to be determined on this appeal:

(a) What is the appropriate standard of review?

(b) Was it unreasonable for the Agency to conclude that the proposed tariff wording complies with Decision No. 49-C-A-2016?

30. The Agency's submissions which follow are limited to addressing the issue of the appropriate standard of review.

PART III
SUBMISSIONS

A. STANDARD OF REVIEW

31. The Agency is entitled to a presumption of reasonableness when interpreting its home statute, the *Canada Transportation Act*.

***Lukács v. Canada (Transportation Agency)*, 2014 FCA 76, at paras. 11-13 and 16.**

32. This same presumption of reasonableness also applies to statutes closely connected to the Agency's function with which the Agency will have particular familiarity, such as the *Air Transportation Regulations*.

***Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, [2011] 3 S.C.R. 654, at para. 30.**

33. It is now recognized that courts may not be as well-qualified as a given agency to provide an interpretation of the agency's home statute that makes sense in the broad policy context in which the agency operates.

***McLean v. British Columbia (Securities Commission)*, 2013 SCC 67 (CanLII) at paras. 30-31.**

***Council of Canadians with Disabilities v. Via Rail, Canada Inc.*, 2007 SCC 15 (CanLII), [2007] 1 S.C.R. 650, at paragraph 92.**

***Lukács v. Canada (Transportation Agency)*, *supra*, at para. 16.**

34. It is submitted that a decision of the Agency interpreting its own previous Order should be given considerable deference given the Agency's expertise regarding the statutory framework and knowledge of the broad policy context in which it operates.

B. COSTS

35. Generally, an administrative body like the Agency will neither be entitled to nor be ordered to pay costs, at least when responding to a court proceeding to address its jurisdiction and where there has been no misconduct on its part. Where the administrative body has acted in good faith and conscientiously throughout, albeit resulting in error, the reviewing tribunal will not ordinarily impose costs.

Lang v. British Columbia (Superintendent of Motor Vehicles), 2005 BCCA 244, at para. 47, citing Brown and Evans, Judicial Review of Administrative Action in Canada (Toronto: Canvasback, 1998)

36. Accordingly, it is respectfully submitted that costs and disbursements should not be awarded against the Agency as the Agency was acting in good faith in making the Decision so as to fulfill its statutory mandate in a manner that is efficient, effective, responsive and exemplifying stewardship, as required under the Values and Ethics Code of the Public Sector. Furthermore, the Agency has responded in this appeal in order to provide necessary and valuable assistance to this Honourable Court.

Treasury Board of Canada Secretariat, *Values and Ethics Code of the Public Sector, Expected Behaviours*

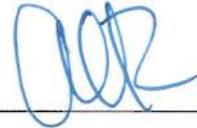
PART IV

ORDER SOUGHT

37. The Agency respectfully requests that this Honourable Court dismiss the appeal without costs or disbursements.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at the City of Gatineau, in the Province of Quebec, this 11th day of October, 2016.



Allan Matte
Counsel for the Respondent
Canadian Transportation Agency

PART V

LIST OF AUTHORITIES

Statutes and Regulations

Canada Transportation Act, S.C. 1996, c. 10, s. 25, 31, 32,

Air Transportation Regulations, SOR/88-58, ss. 110(1), 110(4), 111(1), 122 (c)(iii)

Case Law

Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association, [2011] 3 S.C.R.

Council of Canadians with Disabilities v. Via Rail, Canada Inc., 2007 SCC 15 (CanLII)

Lukács v. Canada (Transportation Agency), 2014 FCA 76

Lang v. British Columbia (Superintendent of Motor Vehicles), 2005 BCCA 244

McLean v. British Columbia (Securities Commission), 2013 SCC 67 (CanLII)

Other Authorities

Treasury Board of Canada Secretariat, *Values and Ethics Code of the Public Sector*, Expected Behaviours

Appendix A



CANADA

CONSOLIDATION

CODIFICATION

Canada Transportation Act

Loi sur les transports au Canada

S.C. 1996, c. 10

L.C. 1996, ch. 10

Current to September 27, 2016

À jour au 27 septembre 2016

Last amended on June 18, 2016

Dernière modification le 18 juin 2016

No reappointment

(5) A person who has served two consecutive terms as a temporary member is not, during the twelve months following the completion of the person's second term, eligible to be reappointed to the Agency as a temporary member.

Members — conflicts of interest

10 (1) A member appointed under subsection 7(2) shall not, directly or indirectly, as owner, shareholder, director, officer, partner or otherwise,

(a) be engaged in a transportation undertaking or business; or

(b) have an interest in a transportation undertaking or business or an interest in the manufacture or distribution of transportation plant or equipment, unless the distribution is merely incidental to the general merchandising of goods.

Temporary members may not hold other office

(2) During the term of office of a temporary member, the member shall not accept or hold any office or employment that is inconsistent with the member's duties under this Act.

Disposal of conflict of interest

(3) If an interest referred to in subsection (1) vests in a member appointed under subsection 7(2) for the benefit of the member by will or succession, the member shall, within three months after the vesting, absolutely dispose of the interest.

1996, c. 10, s. 10; 2015, c. 3, s. 32(E).

Remuneration

Remuneration

11 (1) A member shall be paid such remuneration and allowances as may be fixed by the Governor in Council.

Expenses

(2) Each member is entitled to be paid reasonable travel and living expenses incurred by the member in carrying out duties under this Act or any other Act of Parliament while absent from the member's ordinary place of work.

Members — retirement pensions

12 (1) A member appointed under subsection 7(2) is deemed to be employed in the public service for the purposes of the *Public Service Superannuation Act*.

Renouvellement du mandat

(5) Les membres temporaires ayant occupé leur charge pendant deux mandats consécutifs ne peuvent, dans les douze mois qui suivent, recevoir un nouveau mandat.

Conflits d'intérêts : membres

10 (1) Les membres nommés en vertu du paragraphe 7(2) ne peuvent, directement ou indirectement, à titre de propriétaire, d'actionnaire, d'administrateur, de dirigeant, d'associé ou autre :

a) s'occuper d'une entreprise ou d'une exploitation de transport;

b) avoir des intérêts dans une entreprise ou exploitation de transport ou dans la fabrication ou la distribution de matériel de transport, sauf si la distribution n'a qu'un caractère secondaire par rapport à l'ensemble des activités de commercialisation des marchandises.

Conflits d'intérêts : membres temporaires

(2) Les membres temporaires ne peuvent accepter ni occuper une charge ou un emploi incompatible avec les attributions que leur confère la présente loi.

Cession d'intérêts

(3) Le membre nommé en vertu du paragraphe 7(2) qui est investi d'intérêts visés au paragraphe (1) par l'ouverture d'une succession doit les céder entièrement dans les trois mois suivant la saisine.

1996, ch. 10, art. 10; 2015, ch. 3, art. 32(A).

Rémunération

Rémunération et indemnités

11 (1) Les membres reçoivent la rémunération et touchent les indemnités que peut fixer le gouverneur en conseil.

Frais de déplacement

(2) Les membres ont droit aux frais de déplacement et de séjour entraînés par l'exercice, hors de leur lieu de travail habituel, des fonctions qui leur sont confiées en application de la présente loi ou de toute autre loi fédérale.

Pensions de retraite des membres

12 (1) Les membres nommés en vertu du paragraphe 7(2) sont réputés appartenir à la fonction publique pour

Evidence of deposited documents

(2) A document purporting to be certified by the Secretary of the Agency as being a true copy of a document deposited or filed with or approved by the Agency, or any portion of such a document, is evidence that the document is so deposited, filed or approved and, if stated in the certificate, of the time when the document was deposited, filed or approved.

Powers of Agency

Policy governs Agency

24 The powers, duties and functions of the Agency respecting any matter that comes within its jurisdiction under an Act of Parliament shall be exercised and performed in conformity with any policy direction issued to the Agency under section 43.

Agency powers in general

25 The Agency has, with respect to all matters necessary or proper for the exercise of its jurisdiction, the attendance and examination of witnesses, the production and inspection of documents, the enforcement of its orders or regulations and the entry on and inspection of property, all the powers, rights and privileges that are vested in a superior court.

Power to award costs

25.1 (1) Subject to subsections (2) to (4), the Agency has all the powers that the Federal Court has to award costs in any proceeding before it.

Costs may be fixed or taxed

(2) Costs may be fixed in any case at a sum certain or may be taxed.

Payment

(3) The Agency may direct by whom and to whom costs are to be paid and by whom they are to be taxed and allowed.

Scale

(4) The Agency may make rules specifying a scale under which costs are to be taxed.

Compelling observance of obligations

26 The Agency may require a person to do or refrain from doing any thing that the person is or may be required to do or is prohibited from doing under any Act of Parliament that is administered in whole or in part by the Agency.

Preuve

(2) Le document censé être en tout ou en partie la copie certifiée conforme, par le secrétaire de l'Office, d'un document déposé auprès de celui-ci, ou approuvé par celui-ci, fait foi du dépôt ou de l'approbation ainsi que de la date, si elle est indiquée sur la copie, de ce dépôt ou de cette approbation.

Attributions de l'Office

Directives

24 Les attributions de l'Office relatives à une affaire dont il est saisi en application d'une loi fédérale sont exercées en conformité avec les directives générales qui lui sont données en vertu de l'article 43.

Pouvoirs généraux

25 L'Office a, à toute fin liée à l'exercice de sa compétence, la comparution et l'interrogatoire des témoins, la production et l'examen des pièces, l'exécution de ses arrêtés ou règlements et la visite d'un lieu, les attributions d'une cour supérieure.

Pouvoirs relatifs à l'adjudication des frais

25.1 (1) Sous réserve des paragraphes (2) à (4), l'Office a tous les pouvoirs de la Cour fédérale en ce qui a trait à l'adjudication des frais relativement à toute procédure prise devant lui.

Frais fixés ou taxés

(2) Les frais peuvent être fixés à une somme déterminée, ou taxés.

Paiement

(3) L'Office peut ordonner par qui et à qui les frais doivent être payés et par qui ils doivent être taxés et alloués.

Tarif

(4) L'Office peut, par règle, fixer un tarif de taxation des frais.

Pouvoir de contrainte

26 L'Office peut ordonner à quiconque d'accomplir un acte ou de s'en abstenir lorsque l'accomplissement ou l'abstention sont prévus par une loi fédérale qu'il est chargé d'appliquer en tout ou en partie.

Pending proceedings

30 The fact that a suit, prosecution or proceeding involving a question of fact is pending in any court does not deprive the Agency of jurisdiction to hear and determine the same question of fact.

Fact finding is conclusive

31 The finding or determination of the Agency on a question of fact within its jurisdiction is binding and conclusive.

Review of decisions and orders

32 The Agency may review, rescind or vary any decision or order made by it or may re-hear any application before deciding it if, in the opinion of the Agency, since the decision or order or the hearing of the application, there has been a change in the facts or circumstances pertaining to the decision, order or hearing.

Enforcement of decision or order

33 (1) A decision or order of the Agency may be made an order of the Federal Court or of any superior court and is enforceable in the same manner as such an order.

Procedure

(2) To make a decision or order an order of a court, either the usual practice and procedure of the court in such matters may be followed or the Secretary of the Agency may file with the registrar of the court a certified copy of the decision or order, signed by the Chairperson and sealed with the Agency's seal, at which time the decision or order becomes an order of the court.

Effect of variation or rescission

(3) Where a decision or order that has been made an order of a court is rescinded or varied by a subsequent decision or order of the Agency, the order of the court is deemed to have been cancelled and the subsequent decision or order may be made an order of the court.

Option to enforce

(4) The Agency may, before or after one of its decisions or orders is made an order of a court, enforce the decision or order by its own action.

1996, c. 10, s. 33; 2002, c. 8, s. 122; 2006, c. 11, s. 17; 2007, c. 19, s. 6.

Fees

34 (1) The Agency may, by rule, fix the fees that are to be paid to the Agency in respect of applications made to

Affaire en instance

30 L'Office a compétence pour statuer sur une question de fait, peu importe que celle-ci fasse l'objet d'une poursuite ou autre instance en cours devant un tribunal.

Décision définitive

31 La décision de l'Office sur une question de fait relevant de sa compétence est définitive.

Révision, annulation ou modification de décisions

32 L'Office peut réviser, annuler ou modifier ses décisions ou arrêtés, ou entendre de nouveau une demande avant d'en décider, en raison de faits nouveaux ou en cas d'évolution, selon son appréciation, des circonstances de l'affaire visée par ces décisions, arrêtés ou audiences.

Homologation

33 (1) Les décisions ou arrêtés de l'Office peuvent être homologués par la Cour fédérale ou une cour supérieure; le cas échéant, leur exécution s'effectue selon les mêmes modalités que les ordonnances de la cour saisie.

Procédure

(2) L'homologation peut se faire soit selon les règles de pratique et de procédure de la cour saisie applicables en l'occurrence, soit au moyen du dépôt, auprès du greffier de la cour par le secrétaire de l'Office, d'une copie certifiée conforme de la décision ou de l'arrêté en cause, signée par le président et revêtue du sceau de l'Office.

Annulation ou modification

(3) Les décisions ou arrêtés de l'Office qui annulent ou modifient des décisions ou arrêtés déjà homologués par une cour sont réputés annuler ces derniers et peuvent être homologués selon les mêmes modalités.

Faculté d'exécution

(4) L'Office peut toujours faire exécuter lui-même ses décisions ou arrêtés, même s'ils ont été homologués par une cour.

1996, ch. 10, art. 33; 2002, ch. 8, art. 122; 2006, ch. 11, art. 17; 2007, ch. 19, art. 6.

Droits

34 (1) L'Office peut, par règle, établir les droits à lui verser relativement aux questions ou demandes dont il est saisi, notamment les demandes de licences ou de permis et les demandes de modification ou de renouvellement de ceux-ci.



CANADA

CONSOLIDATION

CODIFICATION

Air Transportation Regulations

Règlement sur les transports aériens

SOR/88-58

DORS/88-58

Current to September 27, 2016

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DIVISION II

International

Application

108 Subject to paragraph 135.3(1)(d), this Division applies in respect of every air carrier that operates an international service, except an air carrier that operates TPCs, TPNCs or TGCs.

SOR/96-336, s. 55.

Exception

109 An air carrier that operates an international service that serves the transportation requirements of the bona fide guests, employees and workers of a lodge operation, including the transportation of luggage, materials and supplies of those guests, employees and workers is excluded, in respect of the service of those requirements, from the requirements of subsection 110(1).

Filing of Tariffs

110 (1) Except as provided in an international agreement, convention or arrangement respecting civil aviation, before commencing the operation of an international service, an air carrier or its agent shall file with the Agency a tariff for that service, including the terms and conditions of free and reduced rate transportation for that service, in the style, and containing the information, required by this Division.

(2) Acceptance by the Agency of a tariff or an amendment to a tariff does not constitute approval of any of its provisions, unless the tariff has been filed pursuant to an order of the Agency.

(3) No air carrier shall advertise, offer or charge any toll where

(a) the toll is in a tariff that has been rejected by the Agency; or

(b) the toll has been disallowed or suspended by the Agency.

(4) Where a tariff is filed containing the date of publication and the effective date and is consistent with these Regulations and any orders of the Agency, the tolls and terms and conditions of carriage in the tariff shall, unless they are rejected, disallowed or suspended by the Agency or unless they are replaced by a new tariff, take effect on the date stated in the tariff, and the air carrier shall on

SECTION II

Service international

Application

108 Sous réserve de l'alinéa 135.3(1)d), la présente section s'applique aux transporteurs aériens qui exploitent un service international, sauf ceux qui effectuent des VAP, des VAPNOR ou des VAM.

DORS/96-336, art. 55.

Exception

109 Le transporteur aérien est exempté de l'application du paragraphe 110(1) en ce qui concerne l'exploitation d'un service international servant à répondre aux besoins de transport des véritables clients, des véritables employés et des véritables travailleurs d'un hôtel pavillonnaire, y compris le transport des bagages, du matériel et des fournitures de ces personnes.

Dépôt des tarifs

110 (1) Sauf disposition contraire des ententes, conventions ou accords internationaux en matière d'aviation civile, avant d'entreprendre l'exploitation d'un service international, le transporteur aérien ou son agent doit déposer auprès de l'Office son tarif pour ce service, conforme aux exigences de forme et de contenu énoncées dans la présente section, dans lequel sont comprises les conditions du transport à titre gratuit ou à taux réduit.

(2) L'acceptation par l'Office, pour dépôt, d'un tarif ou d'une modification apportée à celui-ci ne constitue pas l'approbation de son contenu, à moins que le tarif n'ait été déposé conformément à un arrêté de l'Office.

(3) Il est interdit au transporteur aérien d'annoncer, d'offrir ou d'exiger une taxe qui, selon le cas :

a) figure dans un tarif qui a été rejeté par l'Office;

b) a été refusée ou suspendue par l'Office.

(4) Lorsqu'un tarif déposé porte une date de publication et une date d'entrée en vigueur et qu'il est conforme au présent règlement et aux arrêtés de l'Office, les taxes et les conditions de transport qu'il contient, sous réserve de leur rejet, de leur refus ou de leur suspension par l'Office, ou de leur remplacement par un nouveau tarif, prennent effet à la date indiquée dans le tarif, et le transporteur aérien doit les appliquer à compter de cette date.

and after that date charge the tolls and apply the terms and conditions of carriage specified in the tariff.

(5) No air carrier or agent thereof shall offer, grant, give, solicit, accept or receive any rebate, concession or privilege in respect of the transportation of any persons or goods by the air carrier whereby such persons or goods are or would be, by any device whatever, transported at a toll that differs from that named in the tariffs then in force or under terms and conditions of carriage other than those set out in such tariffs.

SOR/98-335, s. 56; SOR/98-197, s. 6(E).

111 (1) All tolls and terms and conditions of carriage, including free and reduced rate transportation, that are established by an air carrier shall be just and reasonable and shall, under substantially similar circumstances and conditions and with respect to all traffic of the same description, be applied equally to all that traffic.

(2) No air carrier shall, in respect of tolls or the terms and conditions of carriage,

(a) make any unjust discrimination against any person or other air carrier;

(b) give any undue or unreasonable preference or advantage to or in favour of any person or other air carrier in any respect whatever; or

(c) subject any person or other air carrier or any description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatever.

(3) The Agency may determine whether traffic is to be, is or has been carried under substantially similar circumstances and conditions and whether, in any case, there is or has been unjust discrimination or undue or unreasonable preference or advantage, or prejudice or disadvantage, within the meaning of this section, or whether in any case the air carrier has complied with the provisions of this section or section 110.

SOR/93-253, s. 2; SOR/96-335, s. 57.

112 (1) All air carriers having joint tolls shall establish just and reasonable divisions thereof between participating air carriers.

(2) The Agency may

(a) determine and fix just and equitable divisions of joint tolls between air carriers or the portion of the joint tolls to be received by an air carrier;

(5) Il est interdit au transporteur aérien ou à ses agents d'offrir, d'accorder, de donner, de solliciter, d'accepter ou de recevoir un rabais, une concession ou un privilège permettant, par un moyen quelconque, le transport de personnes ou de marchandises à une taxe ou à des conditions qui diffèrent de celles que prévoit le tarif en vigueur.

DORS/98-335, art. 56; DORS/98-197, art. 6(A).

111 (1) Les taxes et les conditions de transport établies par le transporteur aérien, y compris le transport à titre gratuit ou à taux réduit, doivent être justes et raisonnables et doivent, dans des circonstances et des conditions sensiblement analogues, être imposées uniformément pour tout le trafic du même genre.

(2) En ce qui concerne les taxes et les conditions de transport, il est interdit au transporteur aérien :

a) d'établir une distinction injuste à l'endroit de toute personne ou de tout autre transporteur aérien;

b) d'accorder une préférence ou un avantage indu ou déraisonnable, de quelque nature que ce soit, à l'égard ou en faveur d'une personne ou d'un autre transporteur aérien;

c) de soumettre une personne, un autre transporteur aérien ou un genre de trafic à un désavantage ou à un préjudice indu ou déraisonnable de quelque nature que ce soit.

(3) L'Office peut décider si le trafic doit être, est ou a été acheminé dans des circonstances et à des conditions sensiblement analogues et s'il y a ou s'il y a eu une distinction injuste, une préférence ou un avantage indu ou déraisonnable, ou encore un préjudice ou un désavantage au sens du présent article, ou si le transporteur aérien s'est conformé au présent article ou à l'article 110.

DORS/93-253, art. 2; DORS/96-335, art. 57.

112 (1) Les transporteurs aériens qui appliquent des taxes pluritransporteurs doivent établir une répartition juste et raisonnable de ces taxes entre les transporteurs aériens participants.

(2) L'Office peut procéder de la façon suivante :

a) déterminer et fixer la répartition équitable des taxes pluritransporteurs entre les transporteurs aériens, ou la proportion de ces taxes que doit recevoir un transporteur aérien;

basis shall publish all its tolls for those services at a rate per mile, where distance can be measured, or at a rate per hour where distance cannot be measured, which tolls shall be applicable to the entire capacity of the aircraft.

(2) An air carrier that operates a non-scheduled international service on a charter basis may, in lieu of tolls described in subsection (1), establish specific point-to-point flat sum charter prices.

SOR/96-335, s. 63.

Currency

119 All tolls shall be expressed in Canadian currency and may also be expressed in terms of currencies other than Canadian.

Manner of Tariff Filing

120 (1) Tariffs in any medium may be filed with the Agency provided that, where a medium other than paper is to be used, the Agency and the filer have signed an agreement for the processing, storage, maintenance, security and custody of the data base.

(2) Tariffs shall be maintained in a uniform and consistent manner and shall be numbered consecutively with the prefix "CTA(A)" and every issuing air carrier or agent of the carrier shall number tariffs in the carrier's or agent's own series.

SOR/93-253, s. 2(F); SOR/96-335, s. 64.

121 [Repealed, SOR/96-335, s. 64]

Contents of Tariffs

122 Every tariff shall contain

(a) the terms and conditions governing the tariff generally, stated in such a way that it is clear as to how the terms and conditions apply to the tolls named in the tariff;

(b) the tolls, together with the names of the points from and to which or between which the tolls apply, arranged in a simple and systematic manner with, in the case of commodity tolls, goods clearly identified; and

(c) the terms and conditions of carriage, clearly stating the air carrier's policy in respect of at least the following matters, namely,

(i) the carriage of persons with disabilities,

demande par affrètements doivent publier les taxes de ces services selon un taux par mille lorsque la distance est mesurable et selon un taux à l'heure dans les autres cas, pour la capacité entière de l'aéronef.

(2) Les transporteurs aériens qui exploitent un service international à la demande par affrètements peuvent établir des prix forfaitaires pour les vols affrétés entre des points déterminés, au lieu des taxes visées au paragraphe (1).

DORS/96-335, art. 63.

Devises

119 Les taxes doivent être indiquées en devises canadiennes et peuvent être données en outre en devises étrangères.

Modalités de dépôt

120 (1) Les tarifs peuvent être déposés auprès de l'Office sur tout support. Toutefois, si le support choisi n'est pas le papier, l'Office et le déposant doivent, avant le dépôt, conclure une entente pour le traitement, le stockage, la mise à jour, la sécurité et la garde de la base de données.

(2) Les tarifs doivent être uniformes et cohérents et être numérotés consécutivement, le numéro étant précédé de « OTC(A) ». Le transporteur aérien émetteur ou son agent doit numéroter les tarifs suivant ses propres séries.

DORS/93-253, art. 2(F); DORS/96-335, art. 64.

121 [Abrogé, DORS/96-335, art. 64]

Contenu des tarifs

122 Les tarifs doivent contenir :

a) les conditions générales régissant le tarif, énoncées en des termes qui expliquent clairement leur application aux taxes énumérées;

b) les taxes ainsi que les noms des points en provenance et à destination desquels ou entre lesquels elles s'appliquent, le tout étant disposé d'une manière simple et méthodique et les marchandises étant indiquées clairement dans le cas des taxes spécifiques;

c) les conditions de transport, dans lesquelles est énoncée clairement la politique du transporteur aérien concernant au moins les éléments suivants :

(i) le transport des personnes ayant une déficience,

- (ii) acceptance of children for travel,
- (iii) compensation for denial of boarding as a result of overbooking,
- (iv) passenger re-routing,
- (v) failure to operate the service or failure to operate on schedule,
- (vi) refunds for services purchased but not used, whether in whole or in part, either as a result of the client's unwillingness or inability to continue or the air carrier's inability to provide the service for any reason,
- (vii) ticket reservation, cancellation, confirmation, validity and loss,
- (viii) refusal to transport passengers or goods,
- (ix) method of calculation of charges not specifically set out in the tariff,
- (x) limits of liability respecting passengers and goods,
- (xi) exclusions from liability respecting passengers and goods, and
- (xii) procedures to be followed, and time limitations, respecting claims.

SOR/93-253, s. 2; SOR/96-335, s. 65.

123 [Repealed, SOR/96-335, s. 65]

Supplements

124 (1) A supplement to a tariff on paper shall be in book or pamphlet form and shall be published only for the purpose of amending or cancelling that tariff.

(2) Every supplement shall be prepared in accordance with a standard form provided by the Agency.

(3) Supplements are governed by the same provisions of these Regulations as are applicable to the tariff that the supplements amend or cancel.

SOR/93-253, s. 2(F); SOR/96-335, s. 66.

- (ii) l'admission des enfants,
- (iii) les indemnités pour refus d'embarquement à cause de sur réservation,
- (iv) le réacheminement des passagers,
- (v) l'inexécution du service et le non-respect de l'horaire,
- (vi) le remboursement des services achetés mais non utilisés, intégralement ou partiellement, par suite de la décision du client de ne pas poursuivre son trajet ou de son incapacité à le faire, ou encore de l'inaptitude du transporteur aérien à fournir le service pour une raison quelconque,
- (vii) la réservation, l'annulation, la confirmation, la validité et la perte des billets,
- (viii) le refus de transporter des passagers ou des marchandises,
- (ix) la méthode de calcul des frais non précisés dans le tarif,
- (x) les limites de responsabilité à l'égard des passagers et des marchandises,
- (xi) les exclusions de responsabilité à l'égard des passagers et des marchandises,
- (xii) la marche à suivre ainsi que les délais fixés pour les réclamations.

DORS/93-253, art. 2; DORS/96-335, art. 65.

123 [Abrogé, DORS/96-335, art. 65]

Suppléments

124 (1) Les suppléments à un tarif sur papier doivent être publiés sous forme de livres ou de brochures et ne doivent servir qu'à modifier ou annuler le tarif.

(2) Les suppléments doivent être conformes au modèle fourni par l'Office.

(3) Les suppléments sont régis par les dispositions du présent règlement qui s'appliquent aux tarifs qu'ils modifient ou annulent.

DORS/93-253, art. 2(F); DORS/96-335, art. 66.