



April 16, 2014

File No. M4120-3/14-00909

BY E-MAIL: cmccall@pmlaw.com

BY E-MAIL: lukacs@AirPassengerRights.ca

British Airways
c/o Paterson MacDougall Law
Barristers and Solicitors
1 Queen Street East Suite 900
Toronto, Ontario
M5C 2W5

Gábor Lukács

Halifax, Nova Scotia

Attention: Carol McCall

Dear Madam/Sir,

Re: British Airways' response to show cause order in Decision No. 10-C-A-2014

BACKGROUND

In Decision No. 10-C-A-2014 (*Lukács v. British Airways*) dated January 17, 2014, the Canadian Transportation Agency (Agency), among other matters, provided British Airways with the opportunity to show cause why the Agency should not require British Airways to tender denied boarding compensation using:

1. The regime applicable in the United States of America;
2. The regime proposed by Gábor Lukács in the proceedings related to Decision No. 342-C-A-2013;
3. The regime proposed by Air Canada during the proceedings related to Decision No. 442-C-A-2013 (*Azar v. Air Canada*); or
4. 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 *Air Transportation Regulations* (ATR).

Mr. Lukács was also provided with an opportunity to reply to British Airways' submission.

In its response dated March 17, 2014, British Airways proposes to apply the same regime as that proposed by Air Canada in the course of the proceedings associated with Decision No. 442-C-A-2013, and British Airways provided a tariff amendment applicable to carriage from Canada to the United Kingdom.

Mr. Lukács, in his reply dated March 26, 2014, challenges British Airways' proposal, and puts forward alternative denied boarding compensation amounts.

British Airways subsequently filed an additional submission dated March 28, 2014, addressing Mr. Lukács' reply.

Mr. Lukács then filed a further submission dated April 1, 2014. He maintains that Decision No. 10-C-A-2014 did not provide British Airways with the right to reply to his submission, and requests that he be allowed to respond to British Airways' additional submission.

ISSUE

Should the Agency accept the portions of Mr. Lukács' reply that do not respond directly to the response of British Airways and the subsequent submissions dated March 28 and April 1, 2014 filed by British Airways and Mr. Lukács.

SUBMISSIONS

Mr. Lukács' reply dated March 26, 2014

Mr. Lukács submits that British Airways' proposed tariff provision is unreasonable because it fails to establish conditions governing flights to Canada, and from Canada to points within the European Union. He asserts that given that Air Canada had already incorporated into its tariff the European regulations governing denied boarding compensation, the issue addressed in Decision No. 442-C-A-2013 was not the compensation tendered by Air Canada for flights departing from the European Union, but the compensation offered for flights from Canada to the European Union. Mr. Lukács maintains that the purpose of Decision No. 442-C-A-2013 was not to relieve Air Canada from the obligation to tender denied boarding compensation for flights to Canada, as British Airways' proposed provision implicitly purports to do.

Mr. Lukács argues that British Airways' main competitors in the Canada – European Union market are Lufthansa and Air France, not Air Canada. He opines that if British Airways were permitted to adopt Air Canada's denied boarding compensation regime, British Airways would enjoy a competitive advantage relative to Lufthansa and Air France, which both provide denied boarding compensation of 300 or 600 euros, depending on the length of delay.

Mr. Lukács submits that given a change in the exchange rate between the Canadian dollar and euro since Air Canada's proposal was advanced during the proceedings relating to Decision No. 442-C-A-2013, the regime proposed by British Airways entails levels of compensation that are 11 percent lower than Deutsche Lufthansa Aktiengesellschaft (Lufthansa German Airlines) and Société Air France carrying on business as Air France, and the European Union, in general. He adds that as the evidence on file indicates that British Airways' practice has been to tender compensation in amounts equivalent to 300 or 600 euros, depending on the length of delay, for carriage from the United Kingdom to Canada, it would seem reasonable to require that British Airways compensate passengers who are denied boarding for flights from the European Union to Canada 300 euros for delays of less than 4 hours, and 600 euros for delays exceeding four hours, or the equivalent amounts in British pound sterling or local currency.

With respect to carriage from Canada to the European Union, Mr. Lukács contends that the most logical and simple regime would be one that is symmetric to that applied to travel from the European Union to Canada. He submits that should the Agency determine that denied boarding compensation be tendered in Canadian dollars, it is proposed that the amounts be \$450 for delays of less than 4 hours, and \$900 for delays of more than 4 hours.

Mr. Lukács suggests that, alternatively, in view of WestJet, Sunwing Airlines Inc. and Porter Airlines Inc.'s recent adoption of the denied boarding compensation regime in place in the United States, it may be appropriate to require British Airways to apply that regime.

British Airways' additional submission dated March 28, 2014

British Airways submits that in Decision No. 10-C-A-2014, the Agency decided that it would not require British Airways to incorporate by reference the European regulations relating to denied boarding compensation. British Airways argues that in his submission respecting British Airways' proposed denied boarding compensation regime, Mr. Lukács is attempting to accomplish the same result that he sought during proceedings relating to the Decision.

Mr. Lukács' submission dated April 1, 2014

Mr. Lukács maintains that Decision No. 10-C-A-2014 did not provide British Airways with the right to respond to his reply. He indicates that, normally, he would request that British Airways' response be struck; however, in this case, given the "gross" misstatements by British Airways respecting Decision No. 10-C-A-2014, he is seeking permission to reply to that response.

ANALYSIS

In Decision No. 10-C-A-2014, the Agency provided British Airways with an opportunity to choose from among four options the denied boarding compensation regime that British Airways wishes to apply. In its response, British Airways advises that it proposes to apply the regime proposed by Air Canada during the proceedings respecting Decision No. 442-C-A-2013, and filed a tariff amendment in that regard.

Mr. Lukács' reply dated March 26, 2014 not only addresses British Airways' proposal, but also includes submissions regarding carriage from the European Union to Canada, the denied boarding compensation regimes applied by Lufthansa and Air France, the U.S. regime, and a regime that he proposes that features higher levels of compensation prompted by a change in Canadian dollar – euro exchange rate since Air Canada advanced the aforementioned proposal.

The Agency, in its Decision provided Mr. Lukács with an opportunity to reply to British Airways' response. Mr. Lukács was not granted an opportunity to raise additional arguments unrelated to those raised by British Airways in its response. The Agency finds that parts of Mr. Lukács' reply submissions are unrelated to the specific matter of the denied boarding compensation regime proposed by Air Canada during the course of proceedings related to Decision No. 442-C-A-2013, and therefore will not accept those unrelated reply submissions. The Agency directs Mr. Lukács, by the close of business on April 23, 2014, to refile his reply dated March 26, 2014 with all submissions that are unrelated to the specific matter of the denied boarding compensation regime proposed by Air Canada during the course of proceedings related to Decision No. 442-C-A-2013 deleted.

British Airways' additional submission dated March 28, 2014, and the subsequent April 1, 2014 submission filed by Mr. Lukács will not form part of the record.

Should you have any questions, you may contact Mike Redmond by facsimile at 819-953-7910, or by e-mail at mike.redmond@otc-cta.gc.ca.

BY THE AGENCY:

(signed)

Sam Barone
Member

(signed)

Geoffrey C. Hare
Member