

Halifax, NS

lukacs@AirPassengerRights.ca



May 17, 2016

VIA EMAIL

The Secretary
Canadian Transportation Agency
Ottawa, ON K1A 0N9

Dear Madam Secretary:

Re: Mr. Christopher C. Johnson and Dr. Gábor Lukács v. Air Canada
Application concerning failure to apply the tariff and application of terms and conditions not set out in the tariff and with respect to delayed passengers
Case No.: 15-05627
Request to submit rebuttal evidence and for an extension

The Applicants are hereby requesting, pursuant to Rules 30 and 34 of the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, S.O.R./2014-104 ("*Dispute Rules*"), that they be permitted to submit rebuttal evidence and that their deadline for filing the Reply be extended until after disposition of the present request.

I. Relief sought

The Applicants are asking the Agency:

- (a) to allow the Applicants to submit rebuttal evidence by way of the witnessed statements of Dr. Hymie Rubenstein and Ms. Nopsie Rubenstein; and
- (b) to extend the Applicants' deadline for serving and filing their Reply under Rule 20 to 10 business days after disposition of the present request.

II. Summary of the facts

On December 3, 2015, the Applicants brought the within Application against Air Canada, challenging Air Canada's policy purporting to limit its liability with respect to delay of passengers to \$100.00 of hotel costs per night, \$7 for breakfast, \$10 for lunch, and \$15 for dinner (the "Impugned Policy"), and alleging among other things that:

- (i) the Impugned Policy is not set out in Air Canada's International Tariff, contrary to s. 122 of the *ATR*;
- (ii) the Impugned Policy is unreasonable within the meaning of s. 111 of the *ATR*, because it purports to fix a lower limit of liability than what is set out in the *Montreal Convention*; and
- (iii) since 2013 or earlier, Air Canada has failed to apply the terms and conditions set out in its tariff by applying the Impugned Policy and/or other unofficial policies instead of the provisions of the *Montreal Convention*, contrary to s. 110(4) of the *ATR*.

On December 29, 2015, the Agency opened pleadings.

On January 20, 2016, Air Canada filed its answer with the Agency, in which Air Canada represented to the Agency that:

- (a) the Impugned Policy "does not constitute Air Canada's expense policy for expense refund requests";
- (b) Air Canada reviews claims made under the *Montreal Convention* in accordance with the provisions of the Convention; and
- (c) Air Canada has no policy limiting reimbursement of passengers' expenses for delays or cancellations that are within its control.

Air Canada's Answer, Annex A-6: Statement of Ms. Robinson, para. 6
Air Canada's Answer, paras. 25, 28-29

The representations of Air Canada are strenuously disputed by the Applicants.

On May 16, 2016, Dr. Hymie Rubenstein and Ms. Nopsie Rubenstein, two Air Canada passengers who were delayed for a total of 65 hours for reasons within Air Canada's control and who were affected by the Impugned Policy in late April 2016, provided the attached witnessed statements to the Applicants.

III. Arguments in support of the request

Rebuttal evidence

1. The statements of Dr. Hymie Rubenstein and Ms. Nopsie Rubenstein, over whom the Applicants have no control, were signed on May 16, 2016, and as such they were not available to the Applicants earlier.
2. The evidence of Dr. Hymie Rubenstein and Ms. Nopsie Rubenstein demonstrates that:
 - (a) they were Air Canada passengers, and they were delayed by a total of 65 hours due to the delay of Flight AC 1965 on April 1, 2016;
 - (b) Air Canada acknowledged that it was required to provide them with accommodation (see Exhibit “I”, p. 1, at the bottom: “In accordance with our tariff Air Canada will provide a hotel room”), indicating that the delay was within Air Canada’s control;
 - (c) they were not offered hotel accommodation, and instead were told to submit their receipts to Air Canada’s Customer Relations (just as Mr. Johnson was told);
 - (d) nevertheless, Air Canada refused their claim for reimbursement of their out-of-pocket expenses, and only paid them \$200.00 “as goodwill” and contribution “toward the cost you incurred on your own”; and
 - (e) although Dr. Rubenstein explicitly claimed the out-of-pocket expenses for accommodation and meals under Article 19 of the *Montreal Convention*, Air Canada ignored the claim, and instead stated that “The compensation offered as a measure of goodwill was based on guidelines that are used consistently” (see Exhibits “I” and “J”).
3. Thus, the evidence of Dr. Hymie Rubenstein and Ms. Nopsie Rubenstein shows that:
 - (a) Air Canada continues to apply the “Impugned Policy” (euphemistically rechristened as “guidelines”) to deny passengers’ claims for reimbursement of out-of-pocket expenses under the *Montreal Convention* even in cases where it is not disputed that the delay was within Air Canada’s control; and thus
 - (b) Air Canada’s aforementioned representations to the Agency, dated January 2016, are false.

Extension

4. The Applicants are seeking an extension in order to be able to incorporate the evidence of Dr. Hymie Rubenstein and Ms. Nopsie Rubenstein into their Reply.

IV. Documents relied on

The Applicants rely on all materials that have been served and filed with the Agency in the present proceeding, including, but not limited to:

1. the Application, dated December 3, 2016;
2. Air Canada's Answer of January 20, 2016;
3. the witnessed statement of Dr. Hymie Rubenstein; and
4. the witnessed statement of Ms. Nopsie Rubenstein.

All of which is most respectfully submitted.

Dr. Gábor Lukács
Co-applicant and
representative for Mr. Johnson

Cc: Mr. Jean-Francois Bisson-Ross, Counsel - Litigation, Air Canada
(Jean-Francois.Bisson-Ross@aircanada.ca)

Kerianne Wilson, Counsel - Regulatory & Litigation, Air Canada
(kerianne.wilson@aircanada.ca)