

Halifax, NS

lukacs@AirPassengerRights.ca



May 25, 2013

Document contains false and defamatory statements

Air Transat has chosen to include in its May 21, 2013 submissions to the Canadian Transportation Agency certain allegations about the intentions and the employment history of the undersigned.

It goes without saying that these allegations are false and defamatory, and we will likely be seeking to have these allegations struck from the record.

Nevertheless, the entire May 21, 2013 answer of Air Transat, including the false and defamatory statements, is posted here as a matter of policy to provide full and complete reports about the proceedings before the Agency that may be of interest to the travelling public.

Dr. Gábor Lukács



May 21, 2013

Mr. Mike Redmond
Chief, Tariff Investigations
Rail, Air and Marine Disputes Directorate
Canadian Transportation Agency
15 Eddy Street
Gatineau, Quebec K1A 0N9

Dear Mr. Redmond:

**RE: Complaint Concerning Air Transat's International Tariff Rules 5.2(a) and 5.2(b)
File No. M4120-3/13-02438**

The present is Air Transat's response to the above-mentioned complaint filed on 24 April 2013 by Mr. Gabor Lukacs (Complainant).

Air Transat finds it very regrettable that this matter resulted in a formal complaint process before the Agency. Indeed, at no time during preliminary e-mail exchanges with the Complainant (copy attached) did we refuse to consider his request. In fact, we had clearly undertaken to follow-up in this respect but had simply suggested a slightly expanded timeframe than what was demanded given severely constrained resources further to additional administrative personnel cutbacks earlier this spring.

Indeed, we note that once the deadlines for response and reply by the respective parties in this matter are factored in, we arrive at almost the same date for resolution as had been proposed by the undersigned i.e. 31 May 2013, without of course including the additional time for the Agency to render its decision. If the interest of consumers was really driving this complaint, they are no better off at this point.

Moreover, by copying Agency tariff personnel on one of the afore-mentioned exchanges, Air Transat simply sought to keep them apprised of the possibility that a tariff amendment process was going to be undertaken and filings subsequently made in this regard. It is this action, which the Complainant characterizes as "grossly inappropriate" that is ostensibly what motivated him to file his complaint in the present matter. We submit that any reasonable observer would qualify such a reaction as exaggerated and evident in its self-serving mission of provoking a complaint.

We would also note for the record that the Complainant issued a tweet a few hours after filing his complaint about having hauled Air Transat before the Agency on a consumer protection issue. Given the circumstances and our willingness to address the substantive





issues raised with our tariff, such a declaration could be characterized as highly misleading and raises the question as to why this needed to be made public before the Agency's ruling. In a separate e-mail received during this process, the Complainant took mighty offence to the undersigned's suggestion that public resources were being needlessly wasted in this matter. We believe that the facts as described above may now speak for themselves with respect to this contention.

Notwithstanding, Air Transat is hereby prepared to respect its previously stated commitment and attaches herein for the Agency's consideration proposed amendments to Rules 5.2 and 21 of our Scheduled International Tariff. We believe that these changes render the provisions in question consistent with the findings of Decision 16-C-A-2013, and provide undertakings to passengers, who have had their scheduled departure times advanced in certain circumstances, that are similar to those in the event of overbooking, cancellation or delay. Similar amendments will be made to the relevant provisions of our charter and transborder tariffs to ensure uniformity of application.

Should the Agency find these proposed amendments to be satisfactory, Air Transat submits that this would respond to the substantive issues raised by the Complainant, and would thus pre-empt the need for any further action in this respect.

Sincerely,

AIR TRANSAT A.T. INC.

A handwritten signature in blue ink, appearing to read "George Petsikas", with a large, sweeping flourish at the end.

George Petsikas
Senior Director, Government & Industry Affairs

GP/cta.3.2
encl

c.c. Gabor Lukacs



RULE 3. CURRENCY

All monetary amounts published in this tariff are stated in the lawful currency of Canada unless otherwise specified.

RULE 4. CAPACITY LIMITATIONS

The Carrier shall limit the number of passengers carried on any one flight at fares governed by rules making reference hereto and such fares will not necessarily be available on all flights operated by the Carrier. The number of seats which the Carrier shall make available on a given flight will be determined by the Carrier's best judgment as to the anticipated total passenger load on each flight.

(C) RULE 5. CONDITIONS OF CARRIAGE**5.1 Substitution of Aircraft:**

The Carrier may without notice, and subject to any necessary approval of the CTA or government authority, substitute an aircraft of the same or any other appropriate type for the aircraft agreed upon for a flight.

5.2 (C) Responsibility for schedules and operations (Subject to Rule 21):

- a) The Carrier will endeavor to transport passengers and baggage with reasonable dispatch. Times shown in schedules, scheduled contracts, tickets, air waybills or elsewhere are not guaranteed. Flight schedules are subject to change without notice. Notwithstanding, the Carrier will make reasonable efforts to inform passengers of delays and schedule changes and, to the extent possible, the reason for the delay or change.
- b) Where a routing modification subsequent to the purchase of travel results in a change from a direct service to a connecting service, the Carrier will, upon request by the passenger, provide a full refund of the unused portion of the fare paid.
- c) Without limiting the generality of the foregoing, the Carrier cannot guarantee that a passenger's baggage will be carried on the flight if sufficient space is not available as determined by the Carrier. Notwithstanding, if the baggage does not arrive on the same flight, the Carrier will take steps to deliver the baggage to the passenger's residence/hotel as soon as possible. The Carrier will take steps to inform the passenger on the status of delivery and will provide the passenger with an overnight kit, as required.
- d) If a flight is delayed for more than four (4) hours beyond scheduled departure time, the Carrier will provide the passenger with a meal voucher. If the flight is delayed more than eight (8) hours and requires an overnight stay, the Carrier will pay for an overnight hotel stay and airport transfers for passengers who did not originate their travel at that airport. If the delay occurs while onboard, the Carrier will offer drinks and snacks, where it is safe to do so. If the delay exceeds 90 minutes and if the aircraft commander permits, the Carrier will offer passengers the option of disembarking until it is time to depart.

RULE 21 – ADDITIONAL PASSENGER SERVICE COMMITMENTS

1. Given that passengers have a right to information on flight times and schedule changes, the Carrier will make reasonable efforts to inform passengers of delays and schedule changes and to the extent possible, the reason for the delay or change.
2. (C)(i) Given that passengers have a right to take the flight they paid for, if the passenger's journey is interrupted by a flight cancellation, overbooking or in the event that the originally scheduled departure time is advanced by more than six (hours) with less than 48 hours advance notice to the passenger, the Carrier will take into account all the circumstances of the case as known to it and will provide the passenger with the option of accepting one or more of the following remedial choices:
 - a) transportation to the passenger's intended destination within a reasonable time at no additional cost ;
 - b) return transportation to the passenger's point of origin within a reasonable time at no additional cost;
 - c) where no reasonable transportation option is available and upon surrendering of the unused portion of the ticket, a cash amount or travel credit (at the passenger's discretion) in an amount equal to the fare and charges paid will be refunded or provided as a credit where no portion of the ticket has been used. Where a portion of the ticket has been used, an amount equal to the lowest comparable one-way fare for the class of service paid for shall be refunded or provided as a credit in the event of a one-way booking/itinerary, and for round-trip, circle trip or open jaw bookings/itineraries, an amount equal to fifty percent of the round-trip fare and charges for the class of service paid for, for the unused flight segment(s), shall be refunded or provided as a credit.
- (ii) 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;
 - (b) the circumstances of the passenger, as known to it, including any factors which impact upon the importance of timely arrival at destination.
- (C)(iii) Having taken all the known circumstances into consideration, the Carrier will take all measures that can reasonably be required to avoid or mitigate the damages caused by the overbooking, cancellation or flight departure time advancement. Where a passenger who accepts option (a) or option (b) or option (c) nevertheless incurs expense as a result of the overbooking, cancellation or flight departure time advancement, the Carrier will in addition offer a cash payment or travel credit, the choice of which will be at the passenger's discretion.
- (C)(iv) When determining the amount of the offered cash payment or travel credit, the Carrier will consider all circumstances of the case, including any expenses which the passenger, acting reasonably, may have incurred as a result of the overbooking, cancellation or flight departure time advancement, as for example, costs incurred for accommodation, meals or additional transportation. The Carrier will set the amount of compensation offered with a view to reimbursing the passenger for all such reasonable expenses.

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- (v) The rights of a passenger against the Carrier in the event of overbooking or cancellation are, in most cases of international carriage, governed by an international convention known as the Montreal Convention, 1999. Article 19 of that Convention provides that an air carrier is liable for damage caused by delay in the carriage of passengers and goods unless it proves that it did everything it could be reasonably expected to do to avoid the damage. There are some exceptional cases of international carriage in which the rights of the passengers are not governed by an international convention. In such cases only, a court of competent jurisdiction can determine which system of laws must be consulted to determine what those rights are.
3. (C) Given that passengers have a right to punctuality, the Carrier will do the following:
- a) If a flight is delayed/advanced and the difference between the scheduled departure of the flight and the actual departure of the flight exceeds 4 hours, the Carrier will provide the passenger with a meal voucher;
 - b) If a flight is delayed/advanced by more than 8 hours and the delay/advancement involves an overnight stay, the Carrier will pay for an overnight hotel stay and airport transfers for passengers who did not start their travel at that airport;
 - c) If the passenger is already on the aircraft when a delay occurs, the Carrier will offer drinks and snacks if it is safe, practical and timely to do so. If the delay exceeds 90 minutes and the aircraft commander permits, the Carrier will offer passengers the option of disembarking from the aircraft until it is time to depart.
4. Given that passengers have a right to retrieve their luggage quickly, if the luggage does not arrive on the same flight as the passenger, the Carrier will take steps to deliver the luggage to the passenger's residence/hotel as soon as possible. The Carrier will take steps to inform the passenger on the status of the luggage and will provide the passenger with an over-night kit as required. Compensation will be provided as per the provisions of this tariff.
5. Given that nothing in this tariff would make the Carrier responsible for acts of force majeure per Rule 5.3 or for the acts of third parties that are not deemed servants and/or agents of the Carrier per applicable law or international conventions, the Carrier will not be held responsible for inclement weather or for the actions of such third parties including governments, air traffic control service providers, airport authorities, security and law enforcement agencies, or border control management authorities.
6. In the event of a conflict between the provisions of this Rule and those of any other rule in this tariff, the provisions of this Rule shall prevail except with respect to Rule 5.3.

George Petsikas

From: George Petsikas
Sent: April-24-13 10:59 AM
To: 'Gabor Lukacs'
Cc: Bernard Bussières; Greg Danylchenko; hilary.percival@otc-cta.gc.ca; Ben Bedard
Subject: RE: Air Transat's Rule 5.2 (a) and (b)

Thank you very much for your reply! I am delighted by your decision to file a complaint with the CTA as this will give us the opportunity to thoroughly (and publicly) denounce your chronic abuse of the complaints process and misuse of public resources to promote your personal agenda and career interests further to your dismissal by your previous employer.

I wish you a delightful rest of the day!

George Petsikas

-----Original Message-----

From: Gabor Lukacs [mailto:dr.gabor.lukacs@gmail.com] On Behalf Of Gabor Lukacs
Sent: April-24-13 10:50 AM
To: George Petsikas
Cc: Bernard Bussières; Greg Danylchenko; hilary.percival@otc-cta.gc.ca; Ben Bedard
Subject: RE: Air Transat's Rule 5.2 (a) and (b)

Dear Mr. Petsikas,

I find it grossly inappropriate that you Cc-ed officers of the Canadian Transportation Agency to our informal correspondence.

As you know, any kind of discussions about settlements or mediations are to be handled by special staff, who are not communicating about details of such discussions with those officers of the Agency who are involved in the decision-making process (such as case officers).

I regret that you have chosen to handle this matter in such an uncollegial and confrontational manner, leaving me no choice but to file a formal complaint.

Yours very truly,
Dr. Gabor Lukacs

On Wed, 24 Apr 2013, George Petsikas wrote:

> Thank you for your suggestion. After brief review, we have determined
> that your proposed "deadline" is not feasible in terms of the
> availability of required internal resources and we maintain our target
> date of 31 May 2013 for completing our review and undertaking any
> necessary follow-up measures with the appropriate (and duly authorized
> under statute) regulatory authority i.e. the Canadian Transportation
> Agency.

>
> Kind regards.

>
> George Petsikas

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> -----Original Message-----

> From: Gabor Lukacs [mailto:dr.gabor.lukacs@gmail.com] On Behalf Of
> Gabor Lukacs
> Sent: April-22-13 2:48 PM
> To: George Petsikas
> Cc: Gerard Chouest; Bernard Bussières
> Subject: RE: Air Transat's Rule 5.2 (a) and (b)

>
> Mr. Petsikas,
>
> Thank you for your message. It is my understanding WestJet has already
> amended its tariffs according, and frankly, we are talking about a
> very simple and straightforward change.

> I would appreciate if you dealt with this matter by May 3, 2013.

> Best wishes,
> Dr. Gabor Lukacs

> On Mon, 22 Apr 2013, George Petsikas wrote:

>> Thank you for your note. We have not had a chance to review the
>> Porter decision in question. Based on current scheduling commitments
>> and limited internal resource availabilities, I expect that we will
>> be able to consider a course of action, if any, per your suggestion
>> hereunder by
>> 31 May 2013.
>>
>> Kind regards.

>> -----Original Message-----

>> From: Gabor Lukacs [mailto:dr.gabor.lukacs@gmail.com] On Behalf Of
>> Gabor Lukacs
>> Sent: April-21-13 7:20 PM
>> To: George Petsikas
>> Cc: Gerard Chouest
>> Subject: Air Transat's Rule 5.2 (a) and (b)

>> Dear Mr. Petsikas,
>>
>> I hope this message reaches you in good spirit and health.

>> I am sure you are aware of the Agency's decision in Lukacs v. Porter,
>> 16-C-A-2013, where the Agency disallowed certain provisions in
>> Porter's tariffs.

>> Tonight I came across similar provisions in Air Transat's tariffs
>> (Rules
>> 5.2(a) and 5.2(b)).

>> I was wondering if you would be so kind to have these changed so that
>> they will comply with the Agency's aforementioned decision.

>> I look forward to hearing from you.