



September 4, 2015

Case No. 15-03912

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SkyGreece Airlines S.A.
c/o Paliare Roland Rosenberg Rothstein LLP

Dr. Gábor Lukács

Dear Sirs/Madam:

Re: Application by Dr. Gábor Lukács, dated Friday, August 28, 2015, against SkyGreece Airlines, S.A. and Requests by SkyGreece Airlines, S.A. for dismissal and by Dr. Gábor Lukács for interim relief

BACKGROUND

Request for Dismissal

On Tuesday, September 1, 2015, SkyGreece Airlines, S.A. (SkyGreece) filed a request to dismiss the application, on the grounds that Dr. Lukács does not have standing.

Request for an Interim Order

On Wednesday, September 2, 2015, Dr. Lukács filed a request for an interim order for the Agency to direct SkyGreece to arrange, at its own cost, for transportation on flights of other airlines for all of its stranded passengers within a reasonable amount of time, and no later than 24 hours.

Show Cause Decision of the Agency

On Wednesday, September 2, 2015, a different Panel of the Agency issued Decision No. LET-A-55-2015 (Show Cause). In the Show Cause, given the seriousness and urgency of the situation, that Panel of the Agency, to avoid a multitude of proceedings, of its own motion decided to examine whether SkyGreece has failed to apply the terms and conditions of carriage set out in its applicable tariff, pursuant to section 113.1 of the *Air Transportation Regulations*, SOR/88-58, as amended (ATR). In the Show Cause, that Panel of Agency noted the notice posted by SkyGreece that it was ceasing all operations temporarily and directing affected passengers to their travel agents to resolve any problems, as well as the fact that 15 persons affected by flights cancelled by SkyGreece have filed air travel complaints forms through the Agency's Web site under the non-adjudicative alternative dispute resolution process established by the *Canada Transportation Act*, S.C. 1996, c. 10, as amended (CTA).

ISSUE

In light of the Show Cause issued by a different Panel of the Agency, should the application filed by Dr. Lukács against SkyGreece dated Friday, August 28, 2015, be stayed pending resolution of the Show Cause?

JURISPRUDENCE APPLICABLE TO A STAY OF PROCEEDINGS

In *Mylan Pharmaceuticals ULC v. AstraZeneca Canada, Inc.*, [2011] F.C.J. No. 1607, the Federal Court of Appeal held as follows, at para. 5:

**This Court deciding not to exercise its jurisdiction until some time later. When we do this, we are exercising a jurisdiction that is not unlike scheduling or adjourning a matter. Broad discretionary considerations come to bear in decisions such as these. There is a public interest consideration - the need for proceedings to move fairly and with due dispatch - but this is qualitatively different from the public interest considerations that apply when we forbid another body from doing what Parliament says it can do. As a result, the demanding tests prescribed in *RJR-MacDonald* do not apply here. This is not to say that this Court will lightly delay a matter. It all depends on the factual circumstances presented to the Court. In some cases, it will take much to convince the Court, for example where a long period of delay is requested or where the requested delay will cause harsh effects upon a party or the public. In other cases, it may take less.*

The Court concluded as follows, at para. 14:

...we are to ask ourselves whether, in all the circumstances, the interests of justice support the appeal being delayed.

ANALYSIS AND FINDINGS

Subsection 41(1) of the Dispute Adjudication Rules provides as follows:

The Agency may, at the request of a party, stay a dispute proceeding in any of the following circumstances:

- (a) a decision is pending on a preliminary question in respect of the dispute proceeding;
- (b) a decision is pending in another proceeding or before any court in respect of an issue that is the same as or substantially similar to one raised in the dispute proceeding;
- (c) a party to the dispute proceeding has not complied with a requirement of these Rules or with a procedural direction issued by the Agency;
- (d) the Agency considers it just and reasonable to do so.

Section 6 of the Dispute Adjudication Rules provides as follows:

The Agency may, at the request of a person, dispense with compliance with or vary any rule at any time or grant other relief on any terms that will allow for the just determination of the issues.

Section 5 of the Dispute Adjudication Rules provides as follows:

(1) These Rules are to be interpreted in a manner that facilitates the most expeditious determination of every dispute proceeding, the optimal use of Agency and party resources and the promotion of justice.

(2) Anything that may be done on request under these Rules may also be done by the Agency of its own initiative.

Mandate of the Agency

The Agency is responsible for ensuring that air carriers abide by the terms and conditions of their respective tariffs, as required by the ATR:

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

...

113.1 If an air carrier that offers an international service fails to apply the fares, rates, charges or terms and conditions of carriage set out in the tariff that applies to that service, the Agency may direct it to

- (a) take the corrective measures that the Agency considers appropriate;
- and
- (b) pay compensation for any expense incurred by a person adversely affected by its failure to apply the fares, rates, charges or terms and conditions set out in the tariff.

Furthermore, section 26 of the CTA provides as follows:

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.

The Agency fulfills its role through a variety of mechanisms. The first mechanism is the complaint process, whereby a person may bring an application against an air carrier for failure to apply the terms and conditions of carriage specified in its tariff. The second mechanism is an own motion enforcement process, whereby the Agency may directly and independently require an air carrier to demonstrate that it is properly applying the terms and conditions of carriage specified in its tariff.

In this case, a dispute proceeding was commenced against SkyGreece. Because a dispute proceeding is quasi-judicial in nature, parties to a dispute proceeding are guaranteed substantial procedural rights by law to ensure that they are fully and fairly heard by the Agency. As a result, dispute proceedings are necessarily complex and time-consuming.

By contrast, the own motion enforcement process significantly reduces the procedural burden on both the Agency and the air carrier, allowing for a resolution that is equally fair but substantially less time-consuming.

It is for this reason that a different Panel of the Agency decided that, given the urgency and seriousness of the situation created by the temporary cessation of operations by SkyGreece, justice required that the Agency act with the utmost speed to ensure that the carrier was properly affording affected passengers their legal rights. Thus, that Panel issued the Show Cause in response to the notice posted by SkyGreece that it was ceasing all operations temporarily, and the fact that 15 persons affected by flights cancelled by SkyGreece filed air travel complaints forms.

Whether a Stay of the Dispute Proceeding is Warranted

The exigencies of the situation, including the fact that 15 persons affected by flights cancelled by SkyGreece filed air travel complaints forms, required a different panel of the Agency to address the matter through an own motion enforcement process, despite the existence of this dispute proceeding.

However, as a result of this own motion enforcement process, the same issue involving the same passengers and the same air carrier is now being addressed by a different Panel through the Show Cause on a much shorter timetable than this dispute proceeding. Therefore, this Panel must consider whether a stay of the dispute proceeding is warranted, pending the outcome of the Show Cause.

Relevant to deciding whether a stay is warranted are two primary considerations: the length of the stay, and most importantly, the effect of the stay on the parties.

First, a stay of this dispute proceeding will not involve a long delay. A stay of proceedings would only be imposed until resolution of the Agency's own motion investigation, including any corrective measures that might be ordered as a result, after which the dispute proceeding may resume in accordance with the time lines already established.

Second, and most critically, a stay of proceedings will not cause harsh effects upon the parties.

With respect to Dr. Lukács, as he is not a passenger affected by the temporary suspension of operations by SkyGreece, he will suffer no harsh effects by a stay of this dispute proceeding.

With respect to passengers affected by the temporary suspension of operations by SkyGreece, their interests are being immediately addressed by a different Panel of the Agency, using its own motion enforcement process, weeks in advance of the scheduled conclusion of the current dispute proceeding. A stay of proceedings does not prejudice passengers as it will not delay the possibility they will receive a remedy.

While a request for an interim order has been filed in this case, a stay of proceedings does not jeopardize the ability of passengers to receive an urgent remedy. The request for interim relief will necessarily require, as a matter of procedural fairness, that SkyGreece be given an opportunity to respond and the applicant an opportunity to reply. Under the Dispute Adjudication Rules, such an exchange of pleadings would require more than a week to complete, and the Agency would then have to weigh the evidence submitted against the strict legal test for granting interim relief. By contrast, the Show Cause has the potential to provide immediate relief to passengers without lengthy pleadings or the need to satisfy an onerous legal test.

Therefore, the Agency finds that there is no prejudice to passengers in staying this dispute proceeding pending resolution of the Show Cause.

With respect to SkyGreece, a stay of the dispute proceeding, pending resolution of the Show Cause, obviates the need for SkyGreece to respond to two parallel processes of the Agency, both addressing the same issue. Therefore, it significantly reduces the burden on SkyGreece, enabling the carrier to focus on providing the evidence sought by the Agency about its treatment of passengers during its temporary cessation of operations.

Therefore, the Agency finds that there is no prejudice to SkyGreece in staying this dispute proceeding pending resolution of the Show Cause.

ORDER

In light of the above, pursuant to sections 5 and 6 and subsection 41(1) of the Dispute Adjudication Rules, the Agency stays this proceeding until resolution of the Agency's own motion investigation, including any corrective measures that might be ordered as a result.

OTHER MATTERS

On Thursday, September 3, 2015, the Agency received a submission from SkyGreece stating that it had filed a Notice of Intention to Make a Proposal with the office of the Official Receiver at Toronto. This issue will be dealt with by the Panel assigned to the Show Cause (Case No. 15-03972).

Any questions or other correspondence in regards to this matter should refer to Case No. 15-03912 and be filed through the Agency's Secretariat e-mail address: secretariat@otc-cta.gc.ca

BY THE AGENCY:

(signed)

Stephen Campbell
Member

(signed)

Raymon J. Kaduck
Member