

ANNEX A

From: Julianna Fox
Sent: Friday, December 09, 2011 1:11 PM
To: Gabor Lukacs; David Rheault
Cc: Suzanne Asoli-Rizzi
Subject: RE: Non-compliance with Rule 245AC

Dr. Lukacs,

Air Canada has no additional comments to make beyond those included in our letter of December 6, 2011. Further, please note that privacy law constraints prohibit us from discussing other passengers' situations with you.

Kind regards,

Julianna Fox
Counsel / Conseillère juridique
Air Canada
Tel.: (514)422-5883
Fax: (514)422-5839

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

From: Gabor Lukacs [<mailto:>]
Sent: Friday, December 09, 2011 1:02 PM
To: Julianna Fox; David Rheault
Cc: Suzanne Asoli-Rizzi
Subject: Re: Non-compliance with Rule 245AC

Dear Ms. Fox,

I trust that you have received my message below.

Please be advised that should I not receive an answer to my inquiry by the end of the day today, I will be proceeding by a formal complaint to the CTA.

Yours very truly,
Gabor Lukacs

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

From: Gabor Lukacs [mailto:gabor.lukacs@aircanada.com]
Sent: Tuesday, December 06, 2011 3:16 PM
To: Julianna Fox; David Rheault
Cc: Suzanne Asoli-Rizzi
Subject: Re: Non-compliance with Rule 245AC

Dear Ms. Fox,

I am in receipt of your letter of December 6, 2011. Unfortunately, it fails to address two significant issues raised in my complaint:

A. that Air Canada misrepresented to me and to my partner, and to other passengers the provisions of Rule 245 by claiming that no compensation would be paid to passenger who voluntarily took a later flight; and

B. that Air Canada failed to comply with Rule 245AC by failing to offer compensation to those who voluntarily took a later flight (we are aware of at least 3 such passengers).

Are you prepared to address these issues by the end of this week, or do you prefer to deal with them under s. 67.1(b) of the CTA?

Please advise.

Yours very truly,
Gabor Lukacs

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

From: Julianna Fox
Sent: Tuesday, December 06, 2011 2:29 PM
To: 'Gabor Lukacs'
Cc: David Rheault; Suzanne Asoli-Rizzi
Subject: RE: Non-compliance with Rule 245AC

Dr Lukacs,

Please see our attached correspondence.

Have a good week.

Julianna Fox
Counsel / Conseillère juridique
Air Canada
Tel.: (514)422-5883
Fax: (514)422-5839

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Julianna Fox
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P.O. Box 7000, Station Airport
Dorval, Québec
H4Y 1J2

VIA EMAIL

Without prejudice

December 6th, 2011

Attention: Dr. Gabor Lukacs
Email :

RE: Your email dated November 27, 2011 entitled “Non-compliance with rule 245AC”

Dr. Lukacs,

We confirm receipt of our email dated November 27, 2011, in which you describe your experience in relation to flight AC 676 from Ottawa to Halifax on November 23, 2011. We take note of the description of events set out in your email and wish to inform you of the following with respect to the application of Air Canada’s domestic tariff rule 245.

Airline customers place a high value on refundable tickets (in case they can't make their flight, don't show up or decide to change travel plans) and on flexibility. In these cases, overbooking is a means which allows carriers to offer some flexibility. A complex system reviewing historical booking patterns, as well as taking into consideration holidays and events, predicts with very good accuracy the amount of seats that can be sold in addition to the capacity of the aircraft. In rare circumstances, there are times when at time of departure, there are too many persons holding tickets than there are seats for a given flight. This is usually not known until the very last minute at flight cut-off.

In the situation where a flight appears to likely be oversold, Air Canada will seek volunteers before commencing involuntary denied boarding procedures. Passengers who offer to voluntarily relinquish a confirmed seat and are in fact displaced from the flight on which they are holding a reservation, will be compensated in accordance with domestic tariff rule 245(E) where the conditions set out in subparagraphs (A) and (B) are met, and where none of the exceptions apply. Therefore, in order for compensation to be granted to a passenger who offers to voluntarily relinquish a confirmed seat, it must not have been possible to accommodate said passenger on the flight on which he held a confirmed reservation, and the flight must have departed without him (tariff rule 245 (E) subparagraph (B)).

.../2

We have reviewed the facts surrounding flight AC 676 on November 23, 2011. We note that, while you offered to volunteer to relinquish your seat (as alleged in your email), there was ultimately enough available seats on the aircraft to accommodate you and your partner on AC 676 on that date. In fact, not all cases of oversold flights entail the requirement to deny boarding to passengers as certain passengers that hold confirmed seats are “no-shows” or have missed their connection. It is precisely such circumstances that have lead courts to recognize the reasonableness of the practice of overbooking flights. This practice was described by Justice Powell of the U.S. Supreme Court in *Nader v. Allegheny Airlines Inc.*, US 290 (1976):

“Such overbooking is common industry practice, designed to ensure that each flight leaves with as few empty seats as possible despite the large number of “no-shows” – reservation-holding passengers who do not appear at flight time. By use of statistical studies of no-show patterns on specific flights, the airlines attempt to predict the appropriate number of reservations necessary to fill each flight. In this way, they attempt to ensure the most efficient use of aircraft while preserving a flexible booking system that permits passengers to cancel and change reservations without notice or penalty.”

Consequently, as there were enough seats to transport you and your partner on flight AC 676 on November 23, 2011, neither you nor your partner were entitled to compensation in accordance with domestic tariff rule 245.

As such, we have concluded that you and your partner were handled appropriately.

Sincerely,



Julianna Fox
Counsel, Regulatory and International

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

From: Gabor Lukacs [mailto:gabor.lukacs@aircanada.com]
Sent: Friday, December 02, 2011 11:45 AM
To: Julianna Fox
Cc: David Rheault; Suzanne Asoli-Rizzi
Subject: RE: Non-compliance with Rule 245AC

Dear Ms. Fox,

Thank you for your prompt answer. I appreciate that you are investigating the complaint. I look forward to hearing from you next week.

Have a good weekend!

Yours very truly,
Gabor Lukacs

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

From: Julianna Fox
Sent: Friday, December 02, 2011 11:43 AM
To: 'Gabor Lukacs'; David Rheault
Cc: Suzanne Asoli-Rizzi
Subject: RE: Non-compliance with Rule 245AC

Dr. Lukacs,

We have indeed received your email dated November 27th, 2011. We are currently in the process of reviewing the facts described in your email.

We will be providing you with an answer next week.

Kind regards,

Julianna Fox
Counsel / Conseillère juridique
Air Canada
Tel.: (514)422-5883
Fax: (514)422-5839

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

> From: Gabor Lukacs [mailto:gabor.lukacs@aircanada.com]
> Sent: Friday, December 02, 2011 11:41 AM
> To: Julianna Fox; David Rheault
> Cc: Suzanne Asoli-Rizzi
> Subject: Re: Non-compliance with Rule 245AC

>

> Dear Madam and Sir,

>

> I was wondering if my email below has been received as well as if you see a possibility to deal with the complaint informally, or you prefer to involve the CTA.

> Yours very truly,

> Gabor Lukacs

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

From: Gabor Lukacs [mailto:gabor.lukacs@aircanada.com]
Sent: Sunday, November 27, 2011 4:55 PM
To: Julianna Fox; David Rheault
Cc: Suzanne Asoli-Rizzi
Subject: Non-compliance with Rule 245AC

Dear Madam and Sir,

I am writing concerning our experience on November 23, 2011, at the Ottawa airport in relation to flight AC 676 to Halifax. The flight was oversold, and consequently, Air Canada was calling for volunteers as per Rule 245(B)(1).

Both my partner and I offered to volunteer to give up our seats and take a later flight, and inquired about the amount of compensation that we would be paid.

To our greatest surprise, we were told that Air Canada does not pay compensation to volunteers who give up their seats. The same information was repeated by several agents, who stated that they have not heard of a case where volunteers who gave up their seats and agreed to be rebooked on a later flight were provided compensation.

I find this greatly disturbing, both from the perspective of compliance with Air Canada's own tariffs, and also from a personal perspective.

I am requesting that:

(a) you investigate the circumstances that led to the need for requesting volunteers to give up their seats on flight AC 676 from Ottawa to Halifax on November 23, 2011;

(b) you compensate all passengers, including my partner and myself, who volunteered to give up their seats in accordance with Rule 245(B)(1) and Rule 245(E).

I look forward to hearing from you.

Yours very truly,
Gabor Lukacs

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