



AIR CANADA

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By Email

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The Secretary
CANADIAN TRANSPORTATION AGENCY
Complaints and Investigation Division
Air & Marine Investigations Directorate
15, Eddy Street, 19th Floor,
Hull/Ottawa, Canada, K1A 0N9

Attention: Mr. Mike Redmond

**Re: Complaint by Mr. Gábor Lukács against Air Canada
CTA File No. M 4120-3/11-06673**

The present is in response to the Agency's decision no. 204-C-A-2013 (the "Decision").

Air Canada notes the importance of the Agency's reiteration that overbooking by full service carriers is considered as an acceptable practice carried out industry-wide and that the reason airlines, such as Air Canada, overbook is notably because they sell fully refundable tickets that allow passengers to have flexible travel plans. The consequence of Air Canada's flexible fare structure is the occurrence of a significant amount of no-show passengers. More particularly, the practice of selling refundable tickets results in customer no-show rates that are much higher than those of carriers that do not offer the option to their customers to purchase such tickets. Air Canada must therefore maximize the use of its aircraft and operate at maximum capacity in order to provide a low fare product that is affordable to passengers. As set out by the Agency, the practice of overselling indeed strikes a balance between Air Canada's statutory, commercial and operational obligations and the passengers' rights to be subject to reasonable terms and conditions of carriage.

With respect to the Agency's findings and show cause for domestic tariff rules 245(E)(1)(b)(iv) and 245(E)(2), Air Canada submits the following.



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Domestic tariff rule 245(E)(1)(b)(iv)

In light of the Agency's decision, Air Canada proposes the following modification to its current tariff provision regarding the exception to the payment of denied boarding compensation in the case of aircraft downgauge for operational and/or safety purposes:

(iv) if, for operational ~~and~~ or safety reasons occurring beyond carrier's control, his aircraft has been substituted with one of lesser capacity.

Domestic tariff rule 245(E)(2)

Currently, Air Canada's denied boarding compensation for domestic economy class travel is as follows: \$100CAD in cash or \$200CAD in travel vouchers.

Air Canada submits that the Agency should adopt its own regime as opposed to mimic the U.S. regime, which was developed following a consultation process with relevant industry players and accounts for issues specific to the U.S. air transportation market. In any event, the Agency has departed from the spirit of the U.S. legislation with respect to downgages and should do the same with respect to denied boarding compensation amounts. Indeed, the U.S. Department of Transportation retained, as part of its rule, the provision that compensation ought not to be paid for denied boarding caused by downgages, even for reasons within the carrier's control. In the comment section to the April 25, 2011 updated rule 14 CFR Part 250.5 (Vol. 26, No. 79, page 23141), the D.O.T. specifically stated that "*Consumer Travel Alliance and FlyerRights.org both suggest that the Department should not exempt carriers from complying with the oversales rule when the involuntary denied boarding is caused by an equipment change due to factors that are within carrier's control, e.g., crew schedule or maintenance issues. We have carefully examined this suggestion but are not convinced that this proposal is consistent with the underlying rationale of our oversales rule*". The requirement to pay denied boarding compensation for downgages therefore goes beyond the obligations set out under the U.S. legislation.

The amounts set out under the U.S. regime were specifically established in order to strike a balance between permitting carriers to continue to overbook flights, but limiting the carrier's financial burden from compensating passengers due to oversales, and adequately protecting passenger's interests in oversales situations (see comment section to the April 25, 2011 updated rule 14 CFR Part 250.5, Vol. 26, No. 79, page 23136). Aside from the fact that U.S. denied boarding compensation levels were established in order to account for specific realities in the U.S. air transportation market, the mere fact that the Agency considers Air Canada's domestic tariff rule 245(E)(1)(b)(iv) as unreasonable – thus imposing greater obligations on Air Canada than under the U.S. legislation – also affects the delicate balance that was struck by U.S. legislator in setting the amounts of compensation.



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As such, Air Canada reiterates that the Agency should adopt its own regime as opposed to mimic the U.S. regime. Air Canada suggests the adoption of Mr. Lukacs' denied boarding compensation approach, with certain modifications as set out below.

At page 66 of the Decision, the Agency set aside the principles established in decision no. 666-C-A-2001, in which the Agency had previously recognized the validity of Air Canada's denied boarding compensation amounts. This factor coupled with the Agency's position that a regime similar to the one in place in the U.S. under 14 CFR Part 250.5, which provides for compensation as a percentage of the one-way fare to the passenger's destination up to a maximum amount, leads to the conclusion that the Agency would not consider a denied boarding compensation regime that does not issue the same amount to each passenger as "discriminatory" within the meaning of subsection 67.2(1) of the CTA.

Considering the foregoing, Air Canada proposes a compensation regime which intertwines Mr. Lukacs' proposal with aspects of the of the U.S. regime. Air Canada notes that, for the purposes of the below proposal, "air transportation charges" has the meaning set out in section 135.5 of the *Air Transportation Regulations* and includes every fee or charge that must be paid upon the purchase of the air service, including the charge for the costs to the air carrier of providing the service, but excluding any third party charge.

Delay at arrival	Air Canada's proposed denied boarding compensation amounts	Air Canada's voucher amounts
0 to 1 hour	\$100CAD	or \$150CAD voucher
1 to 6 hours	100% of one-way air transportation charges but no less than \$100CAD and no more than \$400CAD.	or \$400CAD voucher
6 hours and more	200% of one-way air transportation charges but no less than \$100CAD and no more than \$800CAD.	or \$800CAD voucher

The above proposal strikes a balance between Mr. Lukacs' proposal and the carrier's financial burden from compensating passengers due to oversales while adequately protecting passenger's interests in oversales (and downgauge) situations. Indeed, this proposal reflects the following commercial realities:

- The denied boarding compensation amount increases depending on the length of delay at arrival. Air Canada recognizes that the inconvenience to passengers likely increases as the length of delay increases. As such, this is reflected in the above proposal.

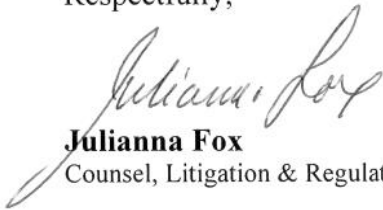


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- The denied boarding compensation will reflect the one-way air transportation charges. The upper limit of the compensation is set as per Mr. Lukacs' recommendation and calculations. Using such levels as maximum amounts allows for the assurance that, according to Mr. Lukacs' submissions, between 84% to 90% of persons who purchased economy cabin tickets that may be denied boarding are compensated adequately based on the fares paid. In other words, the capped percentage based approach means that for delays of between 1 to 6 hours, 84% and 90% of persons that may potentially be denied boarding would travel without assuming one-way air transportation charges as they will be reimbursed based on the one-way air transportation charges paid to Air Canada as well as reprotected based on Air Canada tariff provisions. For delays of over 6 hours, such passengers would receive the double amount of compensation.
- A lower level is set in order to ensure that passengers purchasing deeply discounted fares are compensated at no less than the current compensation level of \$100CAD.

Finally, Air Canada reminds the Agency that it must account for commercial and competitive realities within the Canadian air transportation industry in deciding this matter. With the above proposal, Air Canada would have the most generous denied boarding compensation amounts amongst Canadian carriers. As the Agency's final decision will only be imposed on Air Canada, other carriers will not be obliged to apply the compensation levels that will be set out therein. Air Canada therefore underlines that, in order to maintain a level playing field, any initiative regarding imposing denied boarding compensation levels should be done *via* regulation and not adjudication.

Respectfully,



Julianna Fox
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cc. Mr. Gabor Lukács