



Backgrounder - Canadian Transportation Agency determination on the 2017 Air Transat Tarmac Delay Inquiry

Inquiry

A detailed background of the inquiry and the events leading up to it is available in the [determination](#).

The CTA considered two issues in these proceedings:

- Did Air Transat properly apply its tariff during these incidents, pursuant to subsection 110(4) of the *Air Transportation Regulations*?
- Are Air Transat's applicable tariff provisions reasonable, pursuant to subsection 111(1) of the *Air Transportation Regulations*?

Findings

Upon review of testimony and evidence filed in the proceedings, the CTA found with respect to both flights, that Air Transat did not properly apply the rules of its tariff relating to drinks and snacks and disembarking the passengers as the aircraft commanders did not consider this option when the delay exceeded 90 minutes (rules 5.2d) and 21.3c)).

In addition, the CTA found the tariff rules relating to disembarkation and Force Majeure (rules 5.2d) and 21.3c)) were unreasonable on the grounds that:

- Their disembarkation provision did not create a positive obligation to disembark passengers.
- Their Force Majeure provisions were overly broad and included events that have not been determined to constitute Force Majeure.

Orders

Based on its findings that Air Transat did not properly apply the rules of its tariff, the CTA has ordered Air Transat to:

- compensate all passengers of Flight Nos. 157 and 507 for expenses incurred as a result of its failure to properly apply its tariff; and

- take the following corrective measure to ensure future compliance with tariff obligations:
 - ensure that proper training is provided to all Air Transat employees, including aircraft commanders, flight crew, operations staff, and any servant or agent engaged in delivering services during onboard delays so that they have knowledge of applicable tariff provisions, policies and procedures. Such training should emphasize that these provisions and policies are set out in the tariff and are legal obligations that Air Transat is bound to respect; and,
 - provide information on the required training, once it has been developed and delivered, and no later than May 24, 2018.

Based on its finding that elements of Rules 5.2d) and 21.3c) of the tariff are unreasonable, the CTA has ordered Air Transat to:

- revise these rules and all corresponding rules of its other international tariffs so that the existing text in respect of food and water distribution and disembarking with the commander's permission after 90 minutes is supplemented with the terms and conditions that incorporate the provisions of Air Transat's *Contingency Plan for Lengthy Tarmac Delays at US Airports* (Revised April 2016). Those terms and conditions create a positive obligation to disembark passengers if a tarmac delay reaches four hours – unless there are safety, security, or air traffic control issues that prevent it – and require that during the delay, the carrier provide passengers with updates every 30 minutes, working lavatories, and medical assistance if needed; and,
- file these amendments with the CTA as soon as possible, and no later than February 27, 2018.

Based on its finding that Rule 5.3.1 of the tariff is unreasonable, the CTA has ordered Air Transat to:

- revise Rule 5.3.1 and all corresponding rules of its other international tariffs to reflect the definition of Force Majeure found in the CTA's sample tariff for domestic and international scheduled flights; and,
- file these amendments with the CTA as soon as possible, and no later than February 27, 2018.

Compensation

Air Transat has until May 24, 2018, to compensate all passengers for out-of-pocket expenses. The CTA does not have the statutory authority to award compensation for the inconvenience that passengers experienced, nor for pain and suffering.

A CTA enforcement officer will be assigned to monitor the payment of compensation to ensure that Air Transat adheres to the CTA order.

Penalty

Following examination of the details and severity of the incident and the findings of the CTA in the inquiry, the Designated Enforcement Officer issued a penalty of \$295,000 which Air Transat must pay by January 3, 2018. A credit up to the amount of the penalty will be applied and accepted as payment in lieu upon provision of evidence, to the satisfaction of the Chief Compliance Officer, of the

amount of compensation provided to passengers on Flight Nos. 157 and 507, excluding the refund of out of pocket expenses.

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