

Halifax, NS
lukacs@AirPassengerRights.ca



May 26, 2013

VIA EMAIL

The Secretary
Canadian Transportation Agency
Ottawa, Ontario, K1A 0N9

Attention: Mr. Mike Redmond, Chief, Tariff Investigations

Dear Madam Secretary:

**Re: Dr. Gábor Lukács v. Air Transat
Complaint about Air Transat's International Tariff Rules 5.2(a) and 5.2(b)
File No.: M 4120-3/13-02438
Motion to expunge irrelevant, prejudicial, and scandalous materials**

Please accept the following submissions as a motion in relation to the above-noted complaint pursuant to ss. 14(3)(b) and 32 of the *Canadian Transportation Agency General Rules, S.O.R./2005-35*. The Applicant is asking the Agency to expunge from the record:

- (a) the email of Mr. Petsikas, dated April 24, 2013, which was attached as an exhibit to Air Transat's May 21, 2013 answer; and
- (b) paragraphs 2, 3, 4 and 5 of Air Transat's May 21, 2013 answer.

The Applicant submits that the impugned materials are irrelevant to any of the issues in the present proceeding, and some of them are also scandalous.

BACKGROUND

On April 24, 2013, the Applicant filed a complaint with the Agency about Air Transat's International Tariff Rules 5.2(a) and 5.2(b). The Applicant argued that the impugned rules were unreasonable within the meaning of s. 111 of the *Air Transportation Regulations*, and as such they ought to be disallowed by the Agency.

On May 21, 2013, Air Transat filed its answer to the complaint. Air Transat did not dispute the Applicant's position that its Existing Rules were unreasonable, but instead proposed to amend its tariff provisions (the "Proposed Rules").

Consequently, the only issues to be decided in the present proceeding is whether Air Transat's Existing Rules are reasonable, and whether the Proposed Rules are reasonable.

Air Transat did not confine its submissions to these issues, but rather devoted a substantial portion of its submissions to describing its communications with the Applicant prior to the filing of the complaint, and engaged in an *ad hominem* attack against the Applicant. In support of this personal attack on the Applicant, Air Transat also submitted an email sent by Mr. Petsikas to the Applicant, which was also carbon copied to a number of Agency officers, in which Mr. Petsikas made false and defamatory allegations about the Applicant. Some of these malicious falsehoods included references to the Applicant's previous employment.

In the present motion, the Applicant is asking the Agency to expunge from the record these irrelevant and prejudicial submissions and materials.

I. Relevance

The only issues to be determined in the present proceeding are whether Air Transat's Existing Rules and Proposed Rules are reasonable. The personal qualities of the Applicant are of no relevance to determining these issues.

Similarly, the alleged tweet about "having hauled Air Transat before the Agency on a consumer protection issue" (a copy of which was not submitted for reasons known only to Air Transat) does not affect the reasonableness of Air Transat's Existing and Proposed Rules, and as such, it is of no assistance in resolving the present dispute.

The Applicant had no obligation to communicate with Air Transat informally prior to the filing of the complaint. Thus, any prior communications between the Applicant and Air Transat bear no relevance with respect to the two issues that need to be determined by the Agency, and their inclusion in Air Transat's answer serves the sole purpose of creating prejudice and distraction from the substantive issues to be determined.

II. Prejudice

The Applicant's complaint is clearly well founded. Indeed, Air Transat was unable to present even a single argument against the Applicant's position with respect to the unreasonableness of the Existing Rules. Thus, Air Transat's attempt to attribute any kind of ulterior motive to the Applicant is clearly groundless, frivolous, and serves the sole purpose of creating prejudice against the Applicant.

The reasons for the Applicant's decision to file the present complaint are set out in the Applicant's complaint of April 24, 2013. The Applicant finds Air Transat's attempt to attribute to him reasons other than those set out in the complaint objectionable and prejudicial.

While the Applicant did attempt to resolve his concerns informally, without involving the Agency, in communications with Air Transat, this attempt was not successful. Indeed, Air Transat chose to carbon copy Agency officers to the email exchange without the Applicant's consent. This was also a practical concern for the Applicant, because this might have created a conflict of interest for the Agency officers due to s. 85.1(4) of the *Canada Transportation Act*.

The Applicant was entitled to file a complaint with the Agency, and any documents related to settlement discussions ought not be part of the record as a matter of public policy.

III. Scandalous materials

As part of its efforts to attack the Applicant personally (instead of disputing his position and/or arguments), Air Transat included in its May 21, 2013 answer a copy of an email sent by Mr. Petsikas of Air Transat to the Applicant on April 24, 2013, which was carbon copied to at least two Agency officers, namely, Mr. Greg Danylchenko and Ms. Hilary Percival.

This April 24, 2013 email of Mr. Petsikas contains false and defamatory allegations about the Applicant's conduct and past employment, and thus it is scandalous. For example, contrary to what is stated in the email, the Applicant had an immaculate record as an employee at his previous employment (Exhibit "A").

Shortly after the receipt of this scandalous email, the Applicant wrote to Mr. Petsikas (Exhibit "B"), and a few hours later, Mr. Petsikas admitted that his former defamatory email was inappropriate (Exhibit "C"):

With respect to the exchanges hereunder, I declare as follows:

My statements and allegations against Mr. Lukacs regarding his personal agenda/career interests in this matter, as well as concerning his previous employment were inappropriate and are hereby withdrawn with my apologies.

In these circumstances, the Applicant is struggling to understand Air Transat's choice to include Mr. Petsikas's admittedly inappropriate and defamatory April 24, 2013 email in Air Transat's May 21, 2013 answer.

The Applicant submits that the sole reason for Air Transat having included the defamatory April 24, 2013 email in its May 21, 2013 answer was to abuse the Agency's process, and to misuse it as a forum to tarnish and injure the Applicant's spotless reputation as an academic, as a way of retaliating for the Applicant's having exercised his right to file a complaint with the Agency.

The Applicant submits that the Agency ought not allow Air Transat to abuse its processes as a forum for mud slinging and defaming a party by filing completely irrelevant and scandalous materials, causing them to be placed on public record, and thus giving them an air of truth.

Therefore, the Applicant respectfully submits that the April 24, 2013 email of Mr. Petsikas, which was attached as an exhibit to Air Transat's May 21, 2013 answer, ought to be struck from the record along with paragraphs 2, 3, 4 and 5 of Air Transat's answer.

All of which is most respectfully submitted.

Dr. Gábor Lukács
Applicant

Cc: Mr. George Petsikas, Air Transat



UNIVERSITY
OF MANITOBA

Office of the
Vice-President (Academic) & Provost

208 Administration Building
Winnipeg, Manitoba
Canada R3T 2N2
Telephone (204) 480-1408
Fax (204) 275-1160

November 10, 2011

Letter of Employment

To Whom It May Concern:

I am writing this letter of employment in my capacity as the Vice-President (Academic) and Provost of the University of Manitoba.

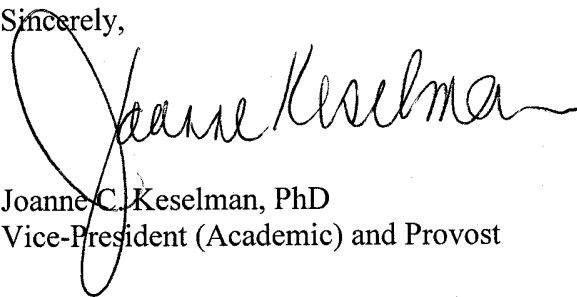
Dr. Gábor Lukács has been an Assistant Professor of Mathematics at the University of Manitoba since July 2006. Dr. Lukács is an extremely energetic, dedicated and successful scholar. He has published 14 peer reviewed research papers, as well as a monograph in his area of expertise, "Compact-Like Topological Groups." Eight of the papers and the monograph have been published since the year of his appointment here. He has also made 13 invited presentations in Canada, the USA and Europe, nearly 30 contributed conference presentations, and many colloquium and seminar presentations. He also holds a five-year Natural Sciences and Engineering Research Council of Canada (NSERC) Individual Discovery Grant, at the level of \$10,000 per year.

Dr. Lukács has taught a variety of undergraduate and graduate courses, and he has encouraged and facilitated the early research efforts of a number of our best students through supervision and mentoring. He has also organised annual two-day workshops to provide opportunities for students to be exposed to cutting-edge mathematical research. These efforts have inspired the interest of our students considering a career in mathematical research, with his supervisees attending international conferences, publishing work in refereed journals, and continuing higher studies in PhD programs at other universities in Canada and the United States.

Dr. Lukács was the recipient of the Students' Teacher Recognition Award in two consecutive years. Awardees are nominated by the students graduating in each faculty of the University of Manitoba, and selected as the teachers that have most influenced these students in their pre-secondary and university careers. The two students who nominated Dr. Lukács for this award have gone on to do graduate work in physics at the University of Waterloo and in mathematics at Cornell University.

In addition to scholarship and teaching, service is an essential pillar of academic life, and Dr. Lukács has put tremendous effort into this pillar. Among other contributions, he has served on a lengthy roster of comprehensive examination committees, on the Departmental Graduate Studies Committee, the Executive Committee of the Department of Mathematics, and numerous committees of St. John's College, which is an affiliated college of The University of Manitoba. Additionally, he coordinated the Mathematics Diagnostic Test for a number of years. This is an online test that first-year students are encouraged to take in order to assess their readiness for university-level mathematics courses.

Sincerely,

A handwritten signature in black ink that reads "Joanne Keselman". The signature is fluid and cursive, with a large loop at the beginning of the first name.

Joanne C. Keselman, PhD
Vice-President (Academic) and Provost

**Exhibit "B" to the reply
of Dr. Gábor Lukács**

May 26, 2013
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2013-04-24--Lukacs-to-Petsikas.txt

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From lukacs@AirPassengerRights.ca Wed Apr 24 12:28:47 2013
Date: Wed, 24 Apr 2013 12:28:43 -0300 (ADT)
From: Gabor Lukacs <lukacs@AirPassengerRights.ca>
To: George Petsikas <George.Petsikas@transat.com>
Subject: Request for an apology for defamatory comments made by you to officers of the Canadian Transportation Agency

Mr. Petsikas:

In your email of April 24, 2013 below, a copy of which you have caused to be sent to officers of the Canadian Transportation Agency, you have made numerous defamatory and false statements:

(a) an accusation of "chronic abuse of the complaints process and misuse of public resources";

(b) an allegation of "dismissal by your previous employer."

I note that given that at the time of publishing these defamatory comments to officers of the Agency there was no proceeding before the Agency involving Air Transat and myself, your comments are not protected by privilege.

Furthermore, your reference to my past employment is entirely unrelated to matters within the jurisdiction of the Agency, and it is my position that these comments was made with malice, and intention to hurt my reputation.

I am requesting that you apologize, in writing, for these defamatory comments, and provide copies of your apology to ALL recipients of your defamatory email.

Yours very truly,
Dr. Gabor Lukacs

On Wed, 24 Apr 2013, George Petsikas wrote:

> 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 Bussi eres; 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).

**Exhibit "B" to the reply
of Dr. Gábor Lukács**

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2013-04-24--Lukacs-to-Petsikas.txt

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>
> 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.
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> Yours very truly,
> Dr. Gabor Lukacs
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> On Wed, 24 Apr 2013, George Petsikas wrote:
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>> 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
>>
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>> 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.
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>>> -----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)
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>>> Dear Mr. Petsikas,
>>>
>>> I hope this message reaches you in good spirit and health.
>>>

**Exhibit "B" to the reply
of Dr. Gábor Lukács**

May 26, 2013
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2013-04-24--Lukacs-to-Petsikas.txt

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>>> 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.
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>>> Best wishes,
>>> Dr. Gabor Lukacs
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>>> On Mon, 20 Feb 2012, Gabor Lukacs wrote:
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>>>> Dear Mr. Petsikas,
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>>>> I am sure you are aware of the provisions of s. 116.1 of the ATR:
>>>>
>>>> 116.1 An air carrier that sells or offers for sale an
>>>> international service on its Internet site must also display on
>>>> the site the terms and conditions of carriage applicable to that
>>>> service and must post a notice to that effect in a prominent
>>>> place on the site.
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>>>> While Air Transat's website does seem to contain a page entitled "Terms &
>>>> Conditions", I was unable to find an up-to-date tariff for Air Transat on its
>>>> website.
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>>>> This strikes me as being contrary to s. 116.1, and certainly against what all
>>>> other major Canadian carriers do, namely, post their tariffs online.
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>>>> I was able to find a tariff using google search, but it appears to be some 3
>>>> years old:
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>>>> media.transattravel.com/Airtransat/_pdf/sched_EN_tarif.pdf
>>>>
>>>> Would you consider changing this state of affairs, and arranging for
>>>> up-to-date tariffs being posted on Air Transat's website in a prominent
>>>> place?
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>>>> Sincerely yours,
>>>> Gabor Lukacs
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>>>>
>>>>
>>>>> On Fri, 17 Feb 2012, Susan Gonsalves wrote:
>>>>>
>>>>>
>>>>>
>>>>> Your File: M4120-3/09-03570
>>>>>
>>>>> Our File: 300731
>>>>>
>>>>>
>>>>>
>>>>> Dear Madam Secretary:
>>>>>
>>>>>

2013-04-24--Lukacs-to-Petsikas.txt

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vous n'etes pas le destinataire, vous n'etes pas autorise(e) a utiliser, a copier ou a divulguer a un tiers le contenu de ce courrier electronique ni des fichiers joints. Si vous avez recu ce courrier electronique par erreur, veuillez en aviser l'expediteur immediatement par courrier electronique et detruire ce message ainsi que les fichiers en an nexe.

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>>> This electronic mail message, and any attachments, may contain privileged/confidential information, intended only for the use of the addressee. If you are not the addressee, you may not use, copy or disclose to a third party the content of this message or its attachments. If you have received this message by mistake, please notify us immediately by e-mail and destroy this message, along with all attachments.

>>>

>>>

>> Ce courrier electronique et les fichiers qui y sont annexes peuvent renfermer des renseignements privilegies et confidentiels a l'intention exclusive du destinataire. Si vous n'etes pas le destinataire, vous n'etes pas autorise(e) a utiliser, a copier ou a divulguer a un tiers le contenu de ce courrier electronique ni des fichiers joints. Si vous avez recu ce courrier electronique par erreur, veuillez en aviser l'expediteur immediatement par courrier electronique et detruire ce message ainsi que les fichiers en an nexe.

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**Exhibit "C" to the reply
of Dr. Gábor Lukács**

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From George.Petsikas@transat.com Wed Apr 24 15:28:53 2013
Date: Wed, 24 Apr 2013 14:28:19 -0400
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To: Gabor Lukacs <lukacs@AirPassengerRights.ca>
Cc: Bernard Bussi eres <Bernard.Bussieres@transat.com>, Greg Danylchenko <Greg.Danylchenko@otc-cta.gc.ca>, "hilary.percival@otc-cta.gc.ca" <hilary.percival@otc-cta.gc.ca>, Ben Bedard <bbedard@conlinbedard.com>
Subject: RE: Air Transat's Rule 5.2 (a) and (b)

With respect to the exchanges hereunder, I declare as follows:

My statements and allegations against Mr. Lukacs regarding his personal agenda/career interests in this matter, as well as concerning his previous employment were inappropriate and are hereby withdrawn with my apologies.

George Petsikas

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

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

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I wish you a delightful rest of the day!

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of Dr. Gábor Lukács**

May 26, 2013
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May 26, 2013
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>>>> Dear Madam Secretary:
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>>>> Please see attachment from Gerard Chouest with respect to the above
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>>>>
>>>> Thank you.
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>>>> Kind regards,
>>>>
>>>>
>>>> BERSENAS

2013-04-24--Petsikas-to-Lukacs_and_others.txt

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