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March 9, 2014

**VIA EMAIL**

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

Dear Madam Secretary:

**Re: Dr. Gábor Lukács v. Porter Airlines**
**Complaint concerning Domestic Tariff Rule 18 (Denied Boarding Compensation)**

Please accept the following submissions as a formal complaint pursuant to subsection 67.2(1) of the *Canada Transportation Act*, S.C. 1996, c. 10 and Rule 40 of the *Canadian Transportation Agency General Rules*, S.O.R./2005-35, concerning Porter Airlines' Domestic Tariff Rule 18.

## OVERVIEW

The Complainant submits that Porter Airlines' Domestic Tariff Rule 18 (Exhibit "A") is both unreasonable within the meaning of s. 67.2(1) of the *Canada Transportation Act* and unclear within the meaning of s. 107(1)(n) of the *Air Transportation Regulations*, S.O.R./88-58.

The Complainant is asking the Agency to disallow Porter Airlines' Domestic Tariff Rule 18, and to substitute it with the denied boarding policies established in Decision No. 31-C-A-2014, or alternatively, the policies set out in the Agency's Notice to the Industry dated July 3, 2013 (Exhibit "B") and in Decision No. 342-C-A-2013.

**ISSUES**



**EXHIBITS**

## ARGUMENT

### I. Is Domestic Tariff Rule 18 clear?

#### (a) Applicable legal principles

Section 107(1) of the *ATR* states that:

> Every tariff shall contain
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> (n) the terms and conditions of carriage, clearly stating the air carrier's policy in respect of at least the following matters, namely,
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> [Emphasis added.]

The legal test for clarity has been established by the Agency in *H. v. Air Canada*, 2-C-A-2001, and has been applied more recently in *Lukács v. WestJet*, 418-C-A-2011, *Lukács v. WestJet*, 252-C-A-2012, and *Lukács v. Porter Airlines*, 344-C-A-2013:

> [...] the Agency is of the opinion that an air carrier's tariff meets its obligations of clarity when, in the opinion of a reasonable person, the rights and obligations of both the carrier and passengers are stated in such a way as to exclude any reasonable doubt, ambiguity or uncertain meaning.

#### (b) Lack of clarity in the present case

Porter Airlines' Domestic Tariff Rule 18 (Exhibit "A") states that:

> In the case of an oversold flight, if a passenger has been denied a reserved seat and has checked in prior to the posted check-in cutoff time, the carrier will:
>
> (a) refund the total fare paid for each unused segment; or
>
> (b) arrange to provide reasonable alternate transportation on its own services.
>
> [Emphasis added.]

#### (i) Where does the choice lie?

The Agency considered a similar provision in Air Canada's tariff in Decision No. LET-A-82-2009, and raised serious concerns about its clarity as to where the choice lies with respect to

the aforementioned two options. Subsequently, Air Canada amended its tariffs to clarify that it retained the choice between a refund and alternate transportation. In Decision No. 479-A-2009, the Agency accepted this amendment for the limited purpose of its concerns about clarity; however, subsequently, in *Lukács v. Air Canada*, LET-C-A-80-2011, the Agency held that:

> [108] Air Canada's Tariff does allow the passenger to opt for a refund of the unused portion of their ticket. However, Air Canada also retains the right to provide a refund if it is unable to fulfill the first two options, consisting of finding alternative transportation on its own aircraft or on a carrier with which Air Canada has an interline agreement, within a reasonable time. This means that the passenger still remains subject to the decision of Air Canada regardless of what might work best for the passenger. In the event that a passenger would not want a refund of the unused portion of their ticket, Air Canada could still opt to provide this instead of securing alternative transportation for the passenger. In other words, Air Canada still retains some discretion over whether the passenger will continue travelling or receive a refund. By retaining some discretion over the selection of the choice of options from its Tariff provision, Air Canada may be limiting or avoiding the actual damage incurred by a passenger as a result of delay. The Agency also notes that with respect to this Issue, Air Canada has not demonstrated to the satisfaction of the Agency why, from an operational and commercial perspective, the choice of option could not lie exclusively with the passenger.

Following this finding of the Agency, Air Canada amended its tariffs to ensure that the choice lies exclusively with the passenger (see *Lukács v. Air Canada*, 250-C-A-2012, paras. 121-124).

Therefore, the Complainant submits that Rule 18 is unclear in its current form, because it fails to specify with whom the choice lies between a refund and alternate transportation. Furthermore, it is submitted that the choice between a refund and alternate transportation ought to lie exclusively with the passenger.

### (ii) What does "posted check-in cutoff time" mean?

Rule 18 refers to the "posted check-in cutoff time" as a precondition for the passenger to receive a refund or alternative transportation. It is unclear, however, whether this refers to the cut-off time set out in Rule 20, or something else.

## (c) Conclusion

Therefore, the Complainant submits that Porter Airlines' Domestic Tariff Rule 18 fails to be clear, contrary to subsection 107(1)(n) of the *Air Transportation Regulations*, because it fails to specify where the choice lies between a refund and alternative transportation, and fails to specify the meaning of "posted check-in cutoff time."

## II. Is Domestic Tariff Rule 18 reasonable?

### (a) The legal test for reasonableness

Subsection 67.2(1) of the *Canada Transportation Act* provides that:

> If, on complaint in writing to the Agency by any person, the Agency finds that the holder of a domestic licence has applied terms or conditions of carriage applicable to the domestic service it offers that are unreasonable or unduly discriminatory, the Agency may suspend or disallow those terms or conditions and substitute other terms or conditions in their place.

Since neither the *Canada Transportation Act* (the "*CTA*") nor the *Air Transportation Regulations* (the "*ATR*") define the meaning of the phrase "unreasonable," a term appearing both in s. 67.2(1) of the *CTA* and in s. 111(1) of the *ATR*, the Agency defined it in *Anderson v. Air Canada*, 666-C-A-2001, as follows:

> The Agency is, therefore, of the opinion that, in order to determine whether a term or condition of carriage applied by a domestic carrier is "unreasonable" within the meaning of subsection 67.2(1) of the CTA, a balance must be struck between the rights of the passengers to be subject to reasonable terms and conditions of carriage, and the particular air carrier's statutory, commercial and operational obligations.

The balancing test was strongly endorsed by the Federal Court of Appeal in *Air Canada v. Canadian Transportation Agency*, 2009 FCA 95.

A key element of the balancing test is that tariffs are not presumed to be reasonable, because tariffs are established by airlines unilaterally, and not through free contractual negotiations with passengers. In *Griffiths v. Air Canada*, 287-C-A-2009, the Agency underscored this crucial element of the balancing test:

> [25] The terms and conditions of carriage are set by an air carrier unilaterally without any input from future passengers. The air carrier sets its terms and conditions of carriage on the basis of its own interests, which may have their basis in statutory or purely commercial requirements. There is no presumption that a tariff is reasonable. Therefore, a mere declaration or submission by the carrier that a term or condition of carriage is preferable is not sufficient to lead to a determination that the term or condition of carriage is reasonable.
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> [Emphasis added.]

Since tariffs are not presumed to be reasonable, the failure of an airline to lead evidence to substantiate that amending its tariff would have negative financial consequences for the airline, or would otherwise affect the airline's ability to meet its statutory, commercial, and operational obligations,

will lead to a finding that the tariff or tariff provision is unreasonable (see, for example, *Lukács v. WestJet*, 313-C-A-2010, paras. 37-38).

The Agency applied these principles in *Lukács v. WestJet*, 483-C-A-2010 (leave to appeal denied by the Federal Court of Appeal; 10-A-42) and *Lukács v. Air Canada*, 291-C-A-2011, and more recently in *Lukács v. Air Canada*, 251-C-A-2012, *Lukács v. Air Canada*, 204-C-A-2013, *Lukács v. WestJet*, 227-C-A-2013, and *Lukács v. Porter Airlines*, 344-C-A-2013.

**(b) Rule 18 does not provide for denied boarding compensation**

Porter Airlines' Domestic Tariff Rule 18 is labelled as "Denied Boarding Compensation;" this, however, is a misnomer, because Rule 18 contains no provision requiring Porter Airlines to tender denied boarding compensation to passengers who are involuntarily denied boarding. Instead, Rule 18 is confined to reprotection of these passengers. Reprotection of passengers (i.e., alternate transportation) is not a form of compensation, but rather the belated fulfillment of the contract of carriage and the obligation to transport passengers.

In *Anderson v. Air Canada*, 666-C-A-2001, the Agency considered the principles governing the amount of denied boarding compensation payable to passengers, and held that:

> Contrary to an air carrier's policies on refunds for services purchased but not used, whereby the fare paid by a passenger is inherently linked to the design and implementation of the compensation, the fare paid by a passenger is unrelated to the amount of compensation that the passenger is entitled to receive upon being denied boarding. Further, any passenger who is denied boarding is entitled to compensation; evidence of specific damages suffered need not be provided.
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> [Emphasis added.]

Thus, it is submitted that compensation of victims of denied boarding has two components:

(1) reimbursement for out-of-pocket expenses, including refunds; and
(2) denied boarding compensation (lump sum, no evidence of specific damage is required).

This principle is recognized, for example, in *Kirkham v. Air Canada*, 268-C-A-2007, where the Agency ordered Air Canada to both reimburse the passenger for his out-of-pocket expenses, and in addition to pay the passenger denied boarding compensation.

In *Lukács v. WestJet*, 227-C-A-2013, the Agency considered the lack of tariff provisions requiring the payment of denied boarding compensation in WestJet's tariff, and held:

> [21] As pointed out by Mr. Lukács, the Agency, in Decision No. 666-C-A-2001, held, in part, that any passenger who is denied boarding is entitled to compensation.

> Given that Existing Tariff Rule 110(E) does not provide for that compensation for flights to and from Canada, it is inconsistent with Decision No. 666-C-A-2001. The Agency finds, therefore, that Existing Tariff Rule 110(E) is unreasonable.
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> [39] Although WestJet proposes to revise Existing Tariff Rule 110(E) by deleting text that provides that denied boarding compensation will not be tendered for flights to and from Canada, Proposed Tariff Rule 110(E) only sets out compensation due to passengers who are denied boarding for flights from the United States of America. The failure to establish conditions governing denied boarding compensation for flights to and from Canada is contrary to Decision No. 666-C-A-2001. Therefore, the Agency finds that if Proposed Tariff Rule 110(E) were to be filed with the Agency, it would be considered unreasonable.
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> [Emphasis added.]

Recently, in *Lukács v. Porter Airlines*, 31-C-A-2014, the Agency considered the lack of tariff provisions requiring the payment of denied boarding compensation in Porter Airlines' International Tariff, and held:

> [65] The Agency finds that Existing Tariff Rule 20 is unreasonable within the meaning of subsection 111(1) of the ATR because the Rule does not require Porter to tender denied boarding compensation to passengers departing from Canada, contrary to the Agency's findings in Decision No. 666-C-A-2001. The Agency therefore finds that Existing Tariff Rule 20 fails to strike a balance between the passengers' rights to be subject to reasonable terms and conditions of carriage and Porter's statutory, commercial and operational obligations.

Therefore, it is submitted that Rule 18 is unreasonable, because it fails to impose any obligation of paying denied boarding compensation to passengers, contrary to the Agency's findings in *Anderson v. Air Canada*, 666-C-A-2001.

**(c) Failure to conform to the principles set out in the Agency's Notice to Industry**

In 2012, the Agency made five landmark decisions concerning the obligations of carriers in the case of flight cancellation that is within the carrier's control and overbooking: *Lukács v. Air Transat*, 248-C-A-2012, *Lukács v. WestJet*, 249-C-A-2012, *Lukács v. Air Canada*, 250-C-A-2012, *Lukács v. Air Canada*, 251-C-A-2012, and *Lukács v. WestJet*, 252-C-A-2012.

These five decisions clarified that in the case of flight cancellation or overbooking, in certain circumstances, the carrier is required to purchase seats for stranded passengers on flights of competitors; furthermore, passengers may also request to be transported to their point of origin and to be provided with a full refund of their fares.

The aforementioned three airlines have all incorporated provisions giving effect to these rights into their domestic and international tariffs. In 2013, Sunwing Airlines joined these three airlines, and incorporated similar provisions into its international tariff.

On July 3, 2013, the Agency issued a "Notice to Industry: Initiative to level the playing field among air carriers and increase rights and remedies for passengers delayed because of overbooking and cancellation of flights"[1], urging carriers to amend their tariffs to reflect the principles laid down by the Agency in the aforementioned five decisions (Exhibit "B"). These principles require the carrier, at the discretion of the passenger, to:

> 1. rebook the passenger on alternate transportation to the passenger's intended destination, at no additional cost to the passenger and within a reasonable time, using:
>
> a. its own service;
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> b. the services of carriers with which it has an interline agreement; or
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> c. where possible and necessary, the services of carriers where no interline agreement exists, or:
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> 2. if the purpose of the passenger's travel is no longer valid because of the delay incurred, provide the passenger with a full refund [Footnote: The passenger is entitled to a full refund even if travel has commenced, if the passenger has suffered a loss of purpose for the travel.], and, when travel has already commenced, return the passenger to their point of origin, within a reasonable time at no additional cost.

For reasons known only to Porter Airlines, it chose to ignore the Notice to Industry (Exhibit "B"), and did not amend its Domestic Tariff to conform to these principles at all. The absence of conformity to these principles is particularly apparent in Domestic Tariff Rule 18, which explicitly limits reprotection of victims of denied boarding to Porter Airlines' own flights, and excludes the possibility of reprotecting such passengers on any other carrier.

[1] http://www.cta-otc.gc.ca/eng/publication/notice-industry-remedies-overbooking-cancellation

**(i) Carrier cannot exclude reprotecting passengers on other carriers**

Porter Airlines' Domestic Tariff Rule 18 (Exhibit "A") states that:

> In the case of an oversold flight, if a passenger has been denied a reserved seat and has checked in prior to the posted check-in cutoff time, the carrier will:
>
> (a) refund the total fare paid for each unused segment; or
>
> (b) arrange to provide reasonable alternate transportation on its own services.
>
> [Emphasis added.]

In *Lukács v. Air Canada*, LET-C-A-129-2011, the Agency considered the reasonableness of Air Canada's domestic tariff provisions governing reprotection of passengers affected by cancellation and denied boarding, and held that:

> [123] As set out in Issue 2 above, the Agency is of the preliminary opinion that overbooking and cancellation that are within Air Canada's control constitute delay which falls within the purview of Article 19 of the Convention, and, as set out above in Issue 1, the Agency has determined that the principles of Article 19 can be considered by the Agency when examining the issue of reasonableness in the domestic context. As such, the Agency will consider how the courts have approached the issue of reprotection when an action is brought pursuant to Article 19 of the Convention.
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> [126] This provision imposes on a carrier an obligation, namely to transport a passenger as contracted, without delay, failing which there will be a presumption of liability for damage arising from any such delay. With a presumption of liability for delay against a carrier, the Agency is of the preliminary opinion that there is a concomitant obligation for a carrier to mitigate such liability and address the damage which has or may be suffered by a passenger as a result of the delay. [...]
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> [136] On the one hand, in reviewing Air Canada's Tariff from the passenger's perspective, the provision does not leave open the possibility of reprotection on flights of carriers with which there is no interline agreement in situations of overbooking and cancellation.
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> [137] This is despite the fact that case law suggests, as set out in paragraphs 130 and 131, that in the appropriate circumstances, reprotection on flights of carriers with

> which no interline agreement exists might be necessary to establish that a carrier has taken all measures that could reasonably be required to avoid the damages caused by delay.
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> [157] Accordingly, the Agency is of the preliminary opinion that Air Canada has not shown why requiring it to amend its Tariff provision to provide for reprotection on flights of carriers with which it does not have an interline agreement would be unreasonable.
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> [Emphasis added.]

In *Lukács v. Air Canada*, 251-C-A-2012, the Agency affirmed these findings, and held that:

> [134] The Agency has determined that Air Canada has not shown cause as to why Tariff Rule 37(B)(2) should not be found unreasonable as per subsection 67.2(1) of the CTA for being too restrictive in dealing with issues of overbooking and cancellation and be drafted in a more open manner that allows for reprotection, in certain circumstances, on carriers with which there is no interline agreement. The Agency therefore finds that Tariff Rule 37(B)(2) is unreasonable.
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> [Emphasis added.]

As noted in the Agency's Notice to the Industry (Exhibit "B"), these principles are applicable to all airlines, not only Air Canada; in particular, they apply to Porter Airlines.

It is worth noting that following the Agency's decision in *Lukács v. Porter Airlines*, 31-C-A-2014, Porter Airlines' International Tariff Rule 15(b) does incorporate these principles set out in the Agency's Notice to the Industry.

Thus, it is submitted that incorporating the same provision(s) in Porter Airlines' Domestic Tariff would not affect Porter Airlines' ability to meet its statutory, commercial, and operational abilities.

Therefore, it is submitted that Porter Airlines' Domestic Tariff Rule 18 is unreasonable in that it does not leave open the possibility of reprotection on flights of other carriers.

**(ii) In certain circumstances, passengers are entitled to transportation to their point of origin without a charge in addition to a full refund**

Porter Airlines' Domestic Tariff Rule 18 (Exhibit "A") states that:

> In the case of an oversold flight, if a passenger has been denied a reserved seat and has checked in prior to the posted check-in cutoff time, the carrier will:
>
> (a) refund the total fare paid for each unused segment; or
>
> (b) arrange to provide reasonable alternate transportation on its own services.
>
> [Emphasis added.]

In *Lukács v. Air Canada*, LET-C-A-129-2011, the Agency considered the reasonableness of refunding passengers only for the unused portions of tickets in the case of flight cancellation or overbooking, as well as the right of passengers to transportation to their point of origin free of charge, and held that:

> [192] As the Agency has set out above under Issue 1, when considering the reasonableness of a tariff provision pursuant to subsection 67.2(1), it may, among other matters, refer to the principles of the Convention for guidance.
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> [193] Article 19 of the Convention does not specify exactly what type of damage would be compensated for in the case of delay, but some examples from the jurisprudence include expenses for accommodation and meals or the additional transportation costs that would be incurred as a result of overbooking or cancellation.22
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> [194] There is therefore a possibility that compensation for damages under the Convention would extend beyond a mere refund of the unused portion of the ticket. In fact, it is reasonable to assume that in many situations of overbooking or cancellation, a passenger would expect more than a refund for the unused portion of the ticket. However, the restrictive wording in the impugned Tariff provisions does not allow for broader remedies than a refund for the unused portion of a ticket.
>
> [195] From a practical perspective, the subject Tariff provision may operate to leave a passenger without a flight to or from their destination and with nothing but a refund for the unused portion of the ticket and, in the case of overbooking, $100 cash or a $200 voucher applicable to future travel as denied boarding compensation. As Mr. Lukács submits, payment of a partial refund may force a passenger to absorb some of the costs directly associated with their delayed travel. Mr. Lukács points out, for example, that as flight costs rise the closer one comes to one's departure date, refunding the unused portion of a ticket purchased long before might not cover the cost of buying a ticket from another carrier on that day if Air Canada was unable to make alternate travel arrangements that met the needs of the passenger.

[196] Mr. Lukács also submits that where delay or cancellation occurs at a connecting point during a trip, with the result that a passenger's travel no longer serves the passenger's purpose, the passenger could be required to pay the cost of returning to the point of origin.

[197] Another example of potential additional expenses could arise where a passenger pays, say, $500 for a flight from point A to C but only makes it as far as point B because the flight is cancelled for a reason within Air Canada's control. In such a case, even if the passenger is returned to point A because they determine that there is no point in continuing their journey, they will not receive a $500 refund; they will receive a refund less the portion travelled between points A and B. The trip between points A and B served no useful purpose for the passenger and yet, through no fault of their own and for reasons within the control of the carrier, the passenger must pay for a portion of a trip that serves no purpose.

[198] In that example, the passenger travels to a connecting point but never reaches their intended destination. This transportation is not the service contracted for. Although Air Canada maintains that this is a service rendered, travel to a connecting point cannot be considered a service rendered if overbooking or cancellation at that point causes a passenger to decide their trip no longer serves a purpose and they would prefer to return to their point of departure. Transportation to a connecting point is a means of getting to the passenger's destination; the actual service is to transport the passenger from their point of departure to their intended point of destination.

[199] All of the above examples are practical examples of what a passenger may face in instances of overbooking or cancellation within the control of a carrier. Accordingly, the Agency accepts Mr. Lukács' submission that the actual costs, or damages, incurred by a passenger may exceed the mere refund of the unused portion of a ticket. This is not reasonable and does not reflect the principles of Article 19 of the Convention.

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[202] Accordingly, the Agency is of the preliminary opinion that the parts of the Tariff that allow for a refund of the unused portion of the ticket only is unreasonable. Air Canada has not demonstrated why, given its commercial and operational obligations, it cannot refund the entire ticket cost. Furthermore, Air Canada has not addressed the question of returning a passenger to their point of origin, within a reasonable time and at no extra cost, in cases where delay or cancellation occurs at a connecting point during travel, with the result that a passenger's travel no longer serves the passenger's purpose. As Mr. Lukács argues, many situations can be envisioned in which a passenger could be forced to absorb the cost of a flight that does not meet their needs, fulfil their purpose of travel, and does not coincide with the transportation for which the passenger contracted.

In *Lukács v. Air Canada*, 251-C-A-2012, the Agency affirmed these findings (paras. 156-163), and as noted in the Agency Notice to the Industry (Exhibit "B"), these principles are applicable to all airlines, not only to Air Canada; in particular, they apply to Porter Airlines.

In *Lukács v. Porter Airlines*, 31-C-A-2014, the Agency considered the same issue in the context of Porter Airlines' International Tariff, and held that:

> [40] The Agency finds that Existing Tariff Rules 3.4 and 15 are unreasonable within the meaning of subsection 111(1) of the ATR because they do not provide for the return of a passenger to their point of origin, within a reasonable time and at no cost, when a delay or cancellation occurs at a connecting point during travel, with the result that a passenger's travel no longer serves the passenger's purpose. The Agency finds that the absence of such a provision in Existing Tariff Rules 3.4 and 15 fails to strike a balance between the passengers' rights to be subject to reasonable terms and conditions of carriage and Porter's statutory, commercial and operational obligations.

It is worth noting that following the Agency's decision, Porter Airlines' International Tariff Rules 15(a)(ii)-(iii) do incorporate these principles set out in the Agency's Notice to the Industry.

Thus, it is submitted that incorporating the same provision(s) in Porter Airlines' Domestic Tariff would not affect Porter Airlines' ability to meet its statutory, commercial, and operational abilities.

Therefore, it is submitted that Porter Airlines' Domestic Tariff Rule 18 is unreasonable in that it limits refunds to the unused portion of the ticket and does not provide for return transportation to the passenger's point of origin within a reasonable time and without additional charge, regardless of the circumstances.

**(d) Conclusion**

It is submitted that Porter Airlines' Domestic Tariff Rule 18 is unreasonable because:

(i) it fails to impose any obligation of tendering denied boarding compensation to passengers;

(ii) it does not leave open the possibility of reprotecting passengers on flights of other carriers;

(iii) it limits refunds to the unused portion of the ticket, regardless of the circumstances;

(iv) it does not provide for return transportation to the passenger's potion of origin within a reasonable time and without additional charge, regardless of the circumstances.

Therefore it is submitted that Porter Airlines' Domestic Tariff Rule 18 ought to be disallowed and substituted with a new tariff rule that is reasonable and conforms to the aforementioned principles.

The Complainant puts forward two proposals for substituting Rule 18:

($\alpha$) the policies that were established and imposed upon Porter Airlines in Decision No. 31-C-A-2014, that is, Rules 15 and 20, including the changes ordered by the Agency at paragraph 181 of that decision; or

($\beta$) the combination of the policies set out in the Agency's Notice to the Industry (Exhibit "B") and the denied boarding compensation policy that was imposed on Air Canada in Decision No. 342-C-A-2013.

The Complainant is asking the Agency to order Porter Airlines to revise its Domestic Tariff to implement one of these two options.

**RELIEF SOUGHT**

The Complainant is asking the Agency that:

A. the Agency disallow Porter Airlines' Domestic Tariff Rule 18; and

B. the Agency substitute Porter Airlines' Domestic Tariff Rule 18 with:

   (i) Rules 15 and 20 established by the Agency in Decision No. 31-C-A-2014; or alternatively

   (ii) the combination of the policies set out in the Agency's Notice to the Industry dated July 3, 2013 (Exhibit "B") and in Decision No. 342-C-A-2013.

All of which is most respectfully submitted.

Dr. Gábor Lukács
Complainant

Cc: Mr. Robert Deluce, President and CEO, Porter Airlines
Mr. Greg Sheahan, Counsel, Porter Airlines

## LIST OF AUTHORITIES

### Legislation

1. *Air Transportation Regulations*, S.O.R./88-58.
2. *Canada Transportation Act*, S.C. 1996, c. 10.
3. *Canadian Transportation Agency General Rules*, S.O.R./2005-35.

### Case law

4. *Air Canada v. Canadian Transportation Agency*, 2009 FCA 95.
5. *Anderson v. Air Canada*, Canadian Transportation Agency, 666-C-A-2001.
6. *Griffiths v. Air Canada*, Canadian Transportation Agency, 287-C-A-2009.
7. *H. v. Air Canada*, Canadian Transportation Agency, 2-C-A-2001.
8. *Kirkham v. Air Canada*, Canadian Transportation Agency, 268-C-A-2007.
9. *Lukács v. Air Canada*, Canadian Transportation Agency, LET-C-A-80-2011.
10. *Lukács v. Air Canada*, Canadian Transportation Agency, 250-C-A-2012.
11. *Lukács v. Air Canada*, Canadian Transportation Agency, 251-C-A-2012.
12. *Lukács v. Air Canada*, Canadian Transportation Agency, 204-C-A-2013.
13. *Lukács v. Air Canada*, Canadian Transportation Agency, 342-C-A-2013.
14. *Lukács v. Air Transat*, Canadian Transportation Agency, 248-C-A-2012.
15. *Lukács v. Air Transat*, Canadian Transportation Agency, 327-C-A-2013.
16. *Lukács v. Porter Airlines*, Canadian Transportation Agency, 344-C-A-2013.
17. *Lukács v. WestJet*, Canadian Transportation Agency, 483-C-A-2010.
18. *Lukács v. WestJet*, Federal Court of Appeal, 10-A-42.
19. *Lukács v. WestJet*, Canadian Transportation Agency, 249-C-A-2012.
20. *Lukács v. WestJet*, Canadian Transportation Agency, 252-C-A-2012.

21. *Lukács v. WestJet*, Canadian Transportation Agency, 227-C-A-2013.

22. *Re: Air Canada*, Canadian Transportation Agency, LET-A-82-2009.

23. *Re: Air Canada*, Canadian Transportation Agency, 479-A-2009.

PORTER AIRLINES INC.

CTA (A) No. 1
1st Revised Page 34 Cancels
Original Page 34

DOMESTIC TARIFF

## RULE 18. DENIED BOARDING COMPENSATION

In case of an oversold flight, if a passenger has been denied a reserved seat and has checked in prior to the posted check-in cutoff time, the carrier will:

(a) refund the total fare paid for each unused segment; or

(b) arrange to provide reasonable alternate transportation on its own services.

## RULE 19. CURRENCY

Fares and charges are published in the lawful currency of Canada.

## RULE 20. CHECK-IN REQUIREMENTS

In addition to any other check in requirements set out in this tariff, the following check-in requirements must be complied with:

(a) a passenger must have obtained his/her boarding pass and checked any baggage by the check-in deadline below and must be available for boarding at the boarding gate by the deadline shown below. Failure to meet these deadlines may result in the loss of the passenger's assigned seat or the cancellation of the passenger's reservation.

| DESTINATION | CHECK-IN DEADLINE | BOARDING GATE DEADLINE |
|---|---|---|
| Toronto City Airport | 20 minutes | 15 minutes |
| Other | 30 minutes | 20 minutes |

For explanation of abbreviations, reference marks and symbols used but not explained hereon, see Page 4.

Canadian Transportation Agency | Office des transports du Canada

Canada

Canadian Transportation Agency
www.cta.gc.ca





# Notice to Industry: Initiative to level the playing field among air carriers and increase rights and remedies for passengers delayed because of overbooking and cancellation of flights

Air carriers are required by law to have and apply a tariff[1], and their terms and conditions of carriage in the tariff must be clear, just and reasonable. The Agency has the authority to suspend, disallow or substitute a term or condition of carriage it deems unclear, unjust or unreasonable.

Based on this authority, the Agency, in June, 2012, issued five final decisions on the reasonableness of international and domestic tariff provisions of some carriers about overbooking and cancellation of flights[2]. The rulings significantly increased the rights and remedies of the passengers travelling with the air carriers named in the decisions. However, as these rulings do not apply to all air carriers, not all passengers can benefit from the same rights and remedies.

The Agency is of the opinion that if all air carriers were to apply the rulings on overbooking and cancellation, it would further enhance consumer protection while ensuring a level playing field among air carriers.

Accordingly, the Agency will take measures to encourage carriers to voluntarily amend their tariffs to reflect the following two principles.

If a passenger is delayed due to the overbooking or cancellation of a flight **within the carrier's control**[3], at the passenger's discretion, the carrier will:

1. **rebook the passenger on alternate transportation**to the passenger's intended destination, at no additional cost to the passenger and within a reasonable time, using:
    a. its own service;
    b. the services of carriers with which it has an interline agreement; or
    c. where possible and necessary, the services of carriers where no interline agreement exists, or:

2. if the purpose of the passenger's travel is no longer valid because of the delay incurred,

**provide the passenger with a full refund**[4], and, when travel has already commenced, **return the passenger to their point of origin**, within a reasonable time at no additional cost.

In addition, the Agency considers it good practice for carriers to always assessthe needs of the passengers on a case-by-case basis, and take into account all known circumstances to avoid or mitigate the disruptions caused by the overbooking or the cancellation of flights.

Agency staff is available to work with carriers and provide guidance to help them incorporate these principles into their tariffs. Rules 90, 95 and 125 of the Agency's Sample Tariff reflect these principles and provide carriers with text that they can choose to add to their terms and conditions of carriage.

The Canadian Transportation Agency is an independent, quasi-judicial tribunal and economic regulator of the Government of Canada. It makes decisions and determinations on a wide range of matters involving air, rail and marine modes of transportation under the authority of Parliament, as set out in the *Canada Transportation Act* and other legislation.

**For further information:**

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## Notes

1 A tariff is a schedule of fares, rates, charges and terms and conditions of carriage applicable to an air service.

2 The Agency ruled that overbooking and cancellation that are within the control of the carrier constitute a delay.

3 The Montreal Convention (Article 19) states that an air carrier is always liable for damage occasioned by delay in the carriage of passengers and their baggage. However, for delays outside the control of the carrier, the Montreal Convention provides that the carrier cannot be held liable if it proves that it took all measures that could reasonably be required to avoid the damage or if the carrier proves that it was impossible to take such measures.

4 The passenger is entitled to a full refund even if travel has commenced, if the passenger has suffered a loss of purpose for the travel.