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September 10, 2015

VIA EMAIL

The Secretary
Canadian Transportation Agency
Ottawa, ON K1A 0N9

Dear Madam Secretary:

Re: Dr. Gábor Lukács v. Porter Airlines
Application concerning misrepresentation, application of terms and conditions not set out in the tariff, and failure to apply the tariff with respect to compensation for baggage delay
Case No.: 15-03657
Notice of Written Questions and Production of Documents

The Applicant directs the questions and requests for production of documents set out below to Porter Airlines pursuant to Rule 24(1) of the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, SOR/2014-104 (“*Dispute Rules*”).

The Applicant relies on the documents that were attached to the Application, the affidavit of Mr. Luis Gonzalez, and the attached Baggage Irregularity Report of Ms. Bambury. Copies of the former two have already been provided to the Agency and Porter Airlines.

I. Porter Airlines' alleged failure to retain records for six (6) years

Mr. Gonzalez stated at paragraph 11 of his affidavit that:

Porter's records detailing compensation amounts paid in relation to passengers claims from 2013 are not available, as they have been disposed of in accordance with Porter's document retention policies.

[Emphasis added.]

- Q1. Porter Airlines is requested to produce a copy of its document retention policy.
- Q2. Does Porter Airlines admit that it is subject to the provisions of the *Income Tax Act*, RSC 1985, c 1 (5th Supp)?
- Q3. Has Porter Airlines been granted an exemption, pursuant to section 230(8) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp)? If so, Porter Airlines is requested to produce a copy of the exemption.
- Q4. Does Porter Airlines acknowledge that section 230 of the *Income Tax Act* requires Porter Airlines to keep records and books of account for six (6) years?
- Q5. How does Porter Airlines record compensations paid to passengers in its books?
- Q6. Does Porter Airlines have any records and/or indication in its books of account that it paid compensation for passengers' claims from 2013?

Relevance: Given that Porter Airlines has a statutory obligation to keep records and books of account and that compensation paid out to passengers may affect the amount owed by Porter Airlines for taxes, it is highly improbable that Porter Airlines would have no records of the compensation that it did pay out (if any). Thus, complete absence of the records is capable of demonstrating that Porter Airlines paid no compensation at all in 2013.

II. Compensation paid vs. number of passengers carried vs. delayed bags

- Q7. With respect to each one of the following periods:
- February 19, 2013 to December 31, 2013;
 - January 1, 2014 to December 31, 2014; and
 - January 1, 2015 to August 6, 2015,
- (1) how many passengers did Porter Airlines transport?
- (2) how many incidents of baggage delay did Porter Airlines have?

- (3) how many claims for expenses related to baggage delay did Porter Airlines receive?
- (4) how many claims for expenses related to baggage delay did Porter Airlines pay out in cash or equivalent (i.e., not travel vouchers)?
- (5) how much compensation did Porter Airlines pay in cash or equivalent (i.e., not travel vouchers) to passengers for expenses related to baggage delay?

Relevance: Mr. Gonzalez stated at paragraph 11 of his affidavit that between 2014 and 2015, Porter Airlines paid out \$46,777.40 in compensation for reasonable expenses associated with delayed baggage. This figure does not accord with the estimated 5000 baggage delays per year that Porter Airlines is likely to have based on what is common in the industry and its own public statement on the number of passengers transported.

Answers to these questions are capable of demonstrating that a large portion of passengers were dissuaded from making claims by Porter Airlines' unlawful conduct and/or that only a small portion of passengers were compensated for expenses they incurred as a result of baggage delay.

Although paragraphs 2-4 of the Application contain specific allegations concerning the number of passengers carried by Porter Airlines per year and the number of delayed bags per year, Porter Airlines neither admitted nor denied these allegations.

Pursuant to paragraph 5 of Schedule 6 of the Agency's *Dispute Rules*, Porter Airlines was required to set out in its answer "the elements that the respondent agrees with or disagrees with in the application" and "a full description of the facts."

III. Google search: Porter Airlines' web page on baggage delay vs. tariff

Q8. When searching on Google for the combination 'Porter Airlines baggage delay':

- (1) does Porter Airlines admit that there are approximately 361,000 results?
- (2) does Porter Airlines admit that the impugned web page, concerning baggage delay, appears on the first page of the results, and at the top?
- (3) on what page of the search results does Porter Airlines' tariff appear?

Relevance: At paragraph 21 of its Answer, Porter Airlines disputes the significance of the false and/or misleading information on the web page from the point of view of consumers, and argues that correct information is found in its tariff. Due to the widespread use of Google by consumers, answers to these questions are capable of damaging Porter Airlines' argument.

IV. The role of outstations with respect to baggage delay

- Q9. Does Porter Airlines admit the authenticity of the attached Baggage Irregularity Report, which was completed by Ms. Natalie Bambury and agent no. 3541 on July 22, 2015 at 16:43?
- Q10. Does Porter Airlines admit that the phone number “902-873-2581” shown on the Baggage Irregularity Report belongs to its office in Halifax?
- Q11. What is the reason that Ms. Bambury was provided with the number 902-873-2581, and not the phone number of Porter Airlines’ Baggage Department, as her point of contact?
- Q12. In the August 1, 2015 email that was sent to Ms. Bambury (Document No. 11 to the Application):
- (1) What does “YHZ Leads” mean?
 - (2) Why was ‘YHZ Leads’ communicating with Ms. Bambury and not Porter Airlines’ Baggage Department?

Relevance: Paragraph 4 of the affidavit of Mr. Gonzalez.

V. Porter Airlines’ policy with respect to loss and delay of baggage

- Q13. Does Porter Airlines allege that the policy set out at paragraph 5 of Mr. Gonzalez’s affidavit has been in place since 2006?

Relevance: Clarification of paragraph 12 of Mr. Gonzalez’s affidavit.

- Q14. Porter Airlines is requested to produce portions of all its training and/or policy and/or operation manuals for staff, dating between 2006 and 2015, which address compensation of passengers for delay or loss of baggage.

Relevance: Inability to produce such manuals supports the finding that Mr. Gonzalez exaggerates or misstates the facts in paragraph 12 of his affidavit.

- Q15. In the August 1, 2015 email that was sent to Ms. Bambury (Document No. 11 to the Application), Porter Airlines wrote to Ms. Bambury that:

As for right now, I would suggest beginning an inventory of the items that were in your bag, as well as the value per item. After 25-30 days if your bag has not been found, you can submit your list to Customer Relations to begin the process of being compensated.

- (1) What is the purpose of making an “inventory of the items that were” in the bag of a passenger in relation to compensation for expenses associated with delay (as opposed to loss)?
- (2) Why should a passenger wait for “25-30 days” before submitting a claim for expenses associated with baggage delay (as opposed to loss)?
- (3) Does Porter Airlines admit that there is no reference in the email to compensation for expenses associated with delay (as opposed to loss)?
- (4) What is the reason that the email makes no reference to compensation for expenses associated with delay?

Relevance: The email in question appears to be consistent with the information on the impugned web page of Porter Airlines, which also included a statement that: “If your bag has not been located after 30 days, a list of contents along with receipts will be forwarded to our head office. [...]” (Document No. 7 to the Application). Answers to these questions are capable of showing that Sarah Dudley, YHZ Leads, was also following the practice set out on the impugned page, instead of applying the terms and conditions set out in the tariff.

VI. Porter Agents Darryl and Britney

Q16. Does Porter Airlines admit that Darryl and Britney, whose voices are heard on the recordings that the Applicant submitted in support of the Application, are agents of Porter Airlines?

Q17. For how long have Agent Darryl and Agent Britney been working with Porter Airlines, and in what role(s)?

Relevance: Porter Airlines disputes the reliability of the statements of its own agents (paragraph 62(a) of the Answer.) The experience of these agents speaks to the reliability of their knowledge as to how Porter Airlines compensates passengers for baggage delay in practice (regardless of what is written in the tariff).

Q18. Are there any extenuating circumstances to explain Porter Airlines’ failure to obtain affidavits from Agent Darryl and Agent Britney?

Relevance: The Agency may draw adverse inference about the failure of Porter Airlines to obtain affidavits from its own agents.

Q19. What are the full names of Darryl and Britney?

Relevance: Both of these agents had knowledge about Porter Airlines’ practices with respect to compensation for baggage delay. The Applicant may solicit witness statements from them and/or

may ask the Agency to subpoena them as witnesses pursuant to s. 25 of the *Canada Transportation Act*. (See also Rule 240(b) of the *Federal Courts Rules*, S.O.R./98-106.)

VII. Email sent or would be sent to passengers

The following questions seek to clarify paragraph 15(c) of the affidavit of Mr. Gonzalez.

Q20. What method did Porter Airlines use for identifying passengers with delayed baggage?

Q21. How many passengers were identified?

Q22. How was Porter Airlines able to identify passengers with delayed baggage who travelled in 2013? (See paragraph 11 of Mr. Gonzalez's affidavit with respect to the year 2013.)

Q23. Mr. Gonzalez stated on page 4 at the bottom that "The following communication was sent to these passengers by email on September 3, 2015" but stated on page 6 at the top that "An English and French version of the form of email that will be sent to passengers is attached as Exhibit G." [Emphasis added.]

Which of these two statements of Mr. Gonzalez is true, "was sent" or "will be sent"?

Q24. Porter Airlines is requested to produce computer logs showing the exact date and time when the email referenced in paragraph 15(c) was sent to each recipient.

Relevance: Answers to these questions are capable of demonstrating that the remedial actions taken by Porter Airlines are inadequate or insufficient.

VIII. Conversations between Ms. Bambury and Porter Airlines' agents

Q25. According to the transcript of the conversation between Ms. Bambury and Porter Agent Floreen, which appears to have taken place on July 23, 2015, Ms. Bambury stated, in reference to Porter Airlines' Baggage Department, that:

Now, I went through them last night, and they told me because they're in Toronto that they could not help me.

[Emphasis added.]

Gonzalez Affidavit, Exhibit "J", p. 4, lines 4-6

Porter Airlines is requested to produce the recording of all telephone conversations that took place between Ms. Natalie Bambury and any Porter Airlines agent, including those at Porter Airlines' Baggage Department, on July 22-23, 2015.

Relevance: Porter Airlines disputes that Porter Airlines' Baggage Department told Ms. Bambury that it was unable to help her (paragraph 19 of Mr. Gonzalez's affidavit, and paragraph 45 of Porter Airlines' Answer).

Porter Airlines has produced the recording and transcript of only two hand-picked conversations between Ms. Bambury and a Porter agent; however, it is clear from the July 23, 2015 recording that this was not the first call made by Ms. Bambury to seek assistance.

It would be inappropriate and unfair to allow Porter Airlines to produce recordings selectively, while withholding those that may be unfavourable to its position.

IX. Necessity of the present Application

Q26. Does Porter Airlines admit that the Applicant made a clear and unambiguous demand that Porter Airlines take corrective measures by way of Porter Airlines inviting passengers who had baggage delays to make claims?

Q27. Did Porter Airlines indicate to the Applicant in any way that Porter Airlines would be taking the corrective measures that the Applicant requested?

Q28. Did Porter Airlines indicate to the Applicant at any time before filing its Answer that:

- (1) Porter Airlines would or has issued a bulletin to address compensation for delayed or lost baggage?
- (2) Porter Airlines would send a communication to passengers who had baggage delays in the form of Exhibit "G" to the affidavit of Mr. Gonzalez?

Q29. Why did Porter Airlines wait until the day of filing its Answer to the Agency to send out emails as paragraph 15(c) of Mr. Gonzalez's affidavit seems to suggest?

Q30. Does Porter Airlines admit that on August 5, 2015, the Applicant also expressed concern about misleading information on Porter Airlines' website concerning liability for damaged baggage?

Q31. Does Porter Airlines admit that as of September 10, 2015, it has not addressed the Applicant's concerns relating to the information on Porter Airlines' website about liability for damaged baggage?

Relevance: Porter Airlines alleges, at paragraphs 2, 83, and 84 of its Answer, that it had already taken steps to address the issues raised in the Application before the Application was filed and/or that the Application was unnecessary.

Answers to these questions are capable of showing that there was no alternative to making the Application, because: Porter Airlines did not inform the Applicant about the steps it has taken; Porter Airlines did not take substantial corrective measures before it was served with the Application; and furthermore, Porter Airlines continues to ignore the Applicant's concerns that are not yet before the Agency.

All of which is most respectfully submitted.

Dr. Gábor Lukács
Applicant

Cc: Mr. Orestes Pasparakis, counsel for Porter Airlines
Mr. Rahool P. Agarwal, counsel for Porter Airlines