



September 1, 2015

Case No. 15-03912

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SkyGreece Airlines S.A.
c/o Paliare Roland Rosenberg Rothstein LLP

Dr. Gábor Lukács

Dear Sir/Madam:

Re: Request by Dr. Gábor Lukács for an expedited process for his application, dated August 28, 2015, against SkyGreece Airlines, S.A.

BACKGROUND

On Friday, August 28, 2015, Dr. Gábor Lukács (Dr. Lukács) filed an application with the Canadian Transportation Agency (the Agency). He alleges that SkyGreece Airlines, S.A. (SkyGreece) ceased operations, stranding several hundred passengers, and that it has failed to apply the terms and conditions set out in Rules 85(E) and 85(F) of its International Tariff, governing the rights of passengers stranded as a result of flight cancellations. Dr. Lukács is requesting that the Agency order SkyGreece, pursuant to paragraph 113.1(a) of the *Air Transportation Regulations*, SOR/88-58 (ATR), to rebook all its stranded passengers on flights of other air carriers forthwith, and to provide security in the amount of CAD\$8,700,000 for anticipated claims of passengers.

Along with his application, Dr. Lukács filed a requested for an expedited process, pursuant to subsection 28(1) of the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, SOR/2014-10 (Dispute Adjudication Rules).

On Friday, August 28, 2015, the Agency issued Decision LET-C-A-53-2015 (the Decision), which required SkyGreece to file a response to Dr. Lukács's request for an expedited process by 5 p.m. Gatineau time on Monday, August 31, 2015, failing which an expedited process would automatically be applied.

On Monday, August 31, 2015, SkyGreece filed a response to Dr. Lukács's request for an expedited process.

On Monday, August 31, 2015, Dr. Lukács filed a reply to SkyGreece's response.

On Monday, August 31, 2015, Dr. Lukács also filed a request for written questions and production of documents, pursuant to section 24 of the Dispute Adjudication Rules, and a request that the Agency vary section 24 to require SkyGreece to answer by 5 p.m. Gatineau time on Wednesday September 2, 2015.

POSITIONS OF THE PARTIES

Application by Dr. Lukács

Dr. Lukács requests that the Agency apply an expedited process for the following reasons. First, he argues that neither the application nor the applicable law or the remedies sought are complex. Second, he submits that his application is urgent: stranded passengers will suffer further losses if SkyGreece continues to ignore its obligation to reprotect stranded passengers on other air carriers, and SkyGreece may pre-empt any attempt of the travelling public to enforce its rights pursuant to the Montreal Convention, paragraph 113.1(b) of the ATR, and the contract of carriage by disposing of its assets.

Response by SkyGreece

SkyGreece objects to the application of an expedited process for the following reasons.

First, SkyGreece submits that its decision to temporarily suspend its operations was a difficult one and that it appreciates the tremendous impact its operational difficulties have had on passengers. SkyGreece also submits that it is in the process of consulting with its stakeholders with a view to restructuring its business and operations in a way that will most benefit passengers and other stakeholders.

Second, SkyGreece disputes Dr. Lukács's assertions and argues that a substantive response to the issues raised in the application is complex and will be a time-consuming process, particularly given the context of Greece's broader economic crisis, the impact of that crisis on SkyGreece's operations, and the voluminous request for information sought by Dr. Lukács.

Third, SkyGreece asserts that Dr. Lukács has raised no safety concerns, and that there is no compelling argument in favour of an expedited process. In particular, SkyGreece disputes that Dr. Lukács has provided any evidence in support of his allegation that SkyGreece will deal with its assets in a manner that is unfairly prejudicial to its stakeholders, including passengers. Rather, SkyGreece submits that it is committed to resolving its current operational difficulties in a manner that is consistent with all applicable laws.

Finally, SkyGreece argues that resolution of the application and its operational difficulties will require careful analysis, consultation with all of its stakeholders, and proceeding in a manner that

allows a full response by all stakeholders in accordance with principles of natural justice and the objects of the governing legislation.

Reply by Dr. Lukács

With respect to procedure, Dr. Lukács argues that SkyGreece did not file a proper response for the following reasons. First, counsel for SkyGreece was not duly retained, but rather in the process of being retained, when he submitted SkyGreece's response. Second, Dr. Lukács was not provided with a copy of SkyGreece's response by 5 p.m. Gatineau time on Monday, August 31, 2015. Therefore, as no proper response was filed within the time lines set out in the Decision, Dr. Lukács asserts that an expedited process has been automatically applied.

With respect to substance, Dr. Lukács argues that SkyGreece's response does not indicate that it would suffer any prejudice if an expedited process were granted. Furthermore, he submits that the interests of SkyGreece's shareholders and/or creditors is not relevant to his application, as paragraph 113.1(a) of the ATR only protects the interests of the traveling public. In addition, Dr. Lukács submits that SkyGreece has an obligation under subsection 110(4) of the ATR to apply its tariff, irrespective of consultations with stakeholders or the economic crisis in Greece. Dr. Lukács also contends that his written questions and request for production are extremely simple; can easily be answered within 24 hours; and SkyGreece has not explained why it would face any difficulty in answering.

By contrast, Dr. Lukács argues that the traveling public would suffer significant and/or irreparable prejudice if an expedited process were not granted. He submits that the obvious and undisputed facts, of which the Agency may take judicial notice, are that more than a thousand passengers have been stranded so far as a result of SkyGreece Airlines' cessation of operations; the number of stranded passengers will continue to grow daily until the Agency orders SkyGreece to apply its tariff; and, ensuring that stranded passengers can return to their homes is of paramount urgency. Dr. Lukács submits that the Agency must make a decision before SkyGreece Airlines takes steps that render the application moot in part or in its entirety by disposing of its assets: a possibility supported by SkyGreece's murky corporate structure and lack of transparency. Finally, Dr. Lukács submits that SkyGreece's conduct towards its stranded passengers demonstrates that SkyGreece is not committed to fulfilling its obligations and is blatantly disregarding the law.

ANALYSIS

Objection to SkyGreece's response

With respect to Dr. Lukács's argument that a proper reply was not filed within the timelines set out in the Decision, the Agency accepts that, given the extremely short deadlines imposed by the Decision, it was reasonable for counsel for SkyGreece to respond while in the process of being retained.

Furthermore, although Dr. Lukács was not provided with a copy of SkyGreece's response by 5 p.m. Gatineau time on Monday, August 31, 2015, as required by the Decision, SkyGreece did

file a copy with the Agency before 5 p.m. Gatineau time on Monday, August 31, 2015, and Dr. Lukács was forwarded a copy on the same day at 7:16 p.m. Furthermore, the Agency notes that Dr. Lukács was still able to file his reply by 10:37 p.m. that day. Accordingly, it does not appear that Dr. Lukács experienced any prejudice as a result of the delay.

Therefore, given that the delay was minor and that Dr. Lukács suffered no prejudice, and in the interests of the most expeditious determination of this proceeding and the promotion of justice, the Agency grants SkyGreece an extension of time to file its response, pursuant to sections 4, 5, and 6 of the Dispute Adjudication Rules, such that its response is considered to have been filed on time.

Standing

In its response, SkyGreece identified that the standing of Dr. Lukács to bring the application may be a live issue for the Agency to consider. Dr. Lukács also made submissions that may be relevant to the issue of standing in his reply.

However, the current matter before the Agency is whether an expedited process should be applied to Dr. Lukács's application. Therefore, the Agency will not address the issue of standing at this time. Rather, the Agency will consider the submissions of the parties on the issue of standing, as well as any submissions the parties may make on this issue in the future, in the context of the main application.

Whether to apply an expedited process

Pursuant to subsection 28(2) of the Dispute Adjudication Rules:

The party filing the request must demonstrate to the satisfaction of the Agency that adherence to the time limits set out in these Rules would cause them financial or other prejudice.

Therefore, the burden is on Dr. Lukács to justify that an expedited process is required in this matter. He has not met this burden.

As SkyGreece points out, Dr. Lukács has provided no evidence that there is an imminent risk that SkyGreece will deal with its assets in a manner that would deprive passengers of their rights to recourse.

Moreover, despite requesting an expedited process, Dr. Lukács has introduced substantial complexity into an already complex matter by requiring SkyGreece to provide responses to extensive written questions and to produce documents. The Agency agrees with SkyGreece that this will prove to be a time-consuming endeavour, particularly in view of the context in which it is now operating. In order to satisfy Dr. Lukács's request for more information, and to ensure that the issues before the Agency are fully and fairly adjudicated, an expedited process, as described in the Decision, is not possible.

For these same reasons, the Agency denies Dr. Lukács's request that the Agency vary section 24 of the Dispute Adjudication Rules to require SkyGreece to answer his request for written questions and production of documents by 5 p.m. Gatineau time on Wednesday September 2, 2015.

However, in view of the importance of ensuring that SkyGreece is properly applying its tariff for passengers affected by its temporary suspension of operations, the Agency will abridge the standard timelines for dispute proceedings.

Accordingly, SkyGreece will have until September 16, 2015 to provide its answer. Dr. Lukács will then have until September 21, 2015 to provide his reply.

With respect to the written questions and production of documents filed by Dr. Lukács, SkyGreece will have until September 8, 2015 to file a complete response to each question or the requested documents, or object to a question or producing a document.

Obligation to apply tariff

Although Dr. Lukács did not justify the application of an expedited process in this case, the Agency considers this matter to be very serious and reminds SkyGreece that it must apply the terms and conditions of its tariff at all times. SkyGreece has a statutory obligation, pursuant to subsection 110(4) and section 113.1 of the ATR, to apply the fares, rates, charges or terms and conditions of carriage set out in its tariff:

110.(4) Where a tariff is filed containing the date of publication and the effective date and is consistent with these Regulations and any orders of the Agency, the tolls and terms and conditions of carriage in the tariff shall, unless they are rejected, disallowed or suspended by the Agency or unless they are replaced by a new tariff, take effect on the date stated in the tariff, and the air carrier shall on and after that date charge the tolls and apply the terms and conditions of carriage specified in the tariff.

...

113.1 If an air carrier that offers an international service fails to apply the fares, rates, charges or terms and conditions of carriage set out in the tariff that applies to that service, the Agency may direct it to

- (a) take the corrective measures that the Agency considers appropriate; and
- (b) pay compensation for any expense incurred by a person adversely affected by its failure to apply the fares, rates, charges or terms and conditions set out in the tariff.

The terms and conditions of carriage of SkyGreece's tariff on file with the Agency and applicable to this case are set out in the Appendix to this decision.

ORDER

SkyGreece has until September 16, 2015 to provide its answer and Dr. Lukács will then have until September 21, 2015 to provide his reply.

With respect to the written questions and production of documents filed by Dr. Lukács, SkyGreece has until September 8, 2015 to file a complete response to each question or the requested documents, or object to a question or producing a document.

Any questions or other correspondence in regards to this matter should refer to Case No. 15-03912 and be filed through the Agency's Secretariat e-mail address: secretariat@otc-cta.gc.ca

BY THE AGENCY:

(signed)

Raymon J. Kaduck
Member

(signed)

Stephen Campbell
Member

Documents must be sent to the Secretary of the Canadian Transportation Agency.

By e-mail

secretariat@otc-cta.gc.ca

By fax

819-953-5253

By courier or hand delivery

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