



April 24, 2013

VIA EMAIL (Judy.OHeare@otc-cta.gc.ca)

**THE SECRETARY
CANADIAN TRANSPORTATION AGENCY
RAIL, AIR AND MARINE DISPUTES DIRECTORATE
DISPUTE RESOLUTION BRANCH**

15, rue Eddy/15 Eddy Street
Gatineau, QC K1A 0N9

Attention: Ms. Judy O’Heare

Dear Madam Secretary:

**Re: Complaint by Gabor Lukács against Sunwing Airlines Inc.
Your File: M 4120-3/13-01289; Complaint dated February 28, 2013
Our File: 100-006
Motion of Sunwing Airlines Inc. (“Sunwing Airlines”) dated April 18, 2013**

Please accept this as Sunwing Airlines’ reply to Dr. Lukács’ submissions dated April 20, 2013 in the above-noted motion.

The applicant’s reply raises new issues

1. Sunwing Airlines maintains its position as set out in its Notice of Motion that Dr. Lukács’ reply seeks to introduce new issues into the current proceeding, and obtain a ruling on those issues with the Agency in the absence of Sunwing Airlines having been afforded the opportunity to make submissions thereon. Such a ruling, if rendered, would be contrary to the principles of natural justice, as further described in our Notice of Motion. As such, Sunwing Airlines respectfully requests that the Agency deny the addition of these new issues to the current proceeding.
2. Sunwing Airlines further submits that Dr. Lukács’ blanket submission in his initial complaint that “Rule 10(iv) ought to be disallowed” does not constitute the filing with the Agency of the new issues raised in Dr. Lukács’ reply. Dr. Lukács’ general submission must be interpreted in light of the more specific issue set out in his initial complaint with respect to Rule 10(iv), being that the maximum amounts of liability set out in Rule 10(iv) are unreasonable. Accordingly, the argument cannot reasonably be made that Dr. Lukács’ other concerns with Rule 10(iv), which were



first brought to the attention of the Agency in his reply of April 10, 2013, are not new issues.

The Agency's guidelines with respect to additional filings after the close of proceedings are not applicable in the current proceeding

3. Sunwing Airlines submits that the Agency's guidelines with respect to "Requests for Additional Filings after the Close of Pleadings" (the "Guidelines") are not relevant to Sunwing Airlines' motion, and, consequently, Dr. Lukács' contention that Sunwing Airlines has not addressed the factors set out in the Guidelines must be dismissed. Sunwing Airlines is not requesting leave to file *additional* pleadings on the new issues; indeed, its position is that *new* issues have been raised to which Sunwing Airlines has been afforded *no* opportunity to file pleadings. Thus, since there has been no opportunity to submit pleadings on the new issues, there can be no "additional" filings to be submitted. The Guidelines, therefore, are therefore not applicable.

Prejudice to Sunwing Airlines

4. In the alternative, if the Agency determines that the Guidelines are applicable to Sunwing Airlines' motion, it submits that its Notice of Motion clearly demonstrates that Sunwing Airlines ought to be afforded the opportunity to make filings under the Guidelines. Any filings with respect to the new issues made by Sunwing would clearly be relevant, and moreover, the inability of Sunwing Airlines to make submissions with respect to the new issues could conceivably result in a miscarriage of justice, and in great prejudice being suffered by Sunwing Airlines, in that a decision could be rendered on issues without Sunwing Airlines having had the ability to make submissions thereon.
5. Should the Agency determine to include the new issues in the current proceeding, Sunwing Airlines' maintains its position that a reasonable period of time in which to file submissions would be twenty (20) days from the date the Agency determines to add the new issues to the current proceeding. Accordingly, Sunwing Airlines submits that the Agency ought to reject Dr. Lukács' contention that the filing of his Reply on April 10, 2013 should set the timeline for Sunwing Airlines' response to the new issues. A complaint filed with the Agency, prior to the Agency determining whether it will accept the complaint for handling under its dispute resolution process, should not trigger an obligation on a party to commence the



preparing of submissions to the Agency. Moreover, it is the Agency that has the requisite legislated authority to determine the appropriate timelines in a dispute falling within its jurisdiction, and not a complainant.

All of which is most respectfully submitted.

Yours truly,

SUNWING AIRLINES INC.