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April 10, 2013

VIA EMAIL

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

Attention: Ms. Judy O’Heare, Senior Analyst

Dear Madam Secretary:

**Re: Dr. Gábor Lukács v. Sunwing Airlines
Complaint concerning Sunwing Airlines’ domestic baggage liability policy (Rule 10)
File No.: M 4120-3/13-01289
Reply to Sunwing Airlines’ answer of April 3, 2013
[revised and refiled as per Decision No. LET-C-A-68-2013]**

Please accept the following submissions in relation to the above-noted matter as a reply pursuant to Rule 44 to Sunwing Airlines’ answer of April 3, 2013.

In its answer, Sunwing Airlines has made no submissions concerning the reasonableness of the Existing Rule 10, but instead it put forward proposed amendments (“Proposed Rule 10”). In these circumstances, the Applicant is asking that the Agency make a finding that the Existing Rule 10 is unreasonable.

The remainder of the present reply concerns the Proposed Rule 10. The Applicant acknowledges that Sunwing Airlines’ intention to increase its domestic baggage liability from \$250 to \$1,750 is a very positive change.

Nevertheless, the Applicant submits that Proposed Rule 10 is still unreasonable, and substantial portions of Proposed Rule 10 ought to be disallowed.

ISSUES

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I. Proposed Rule 10(iv) is unreasonable

Proposed 10(iv) significantly limits the rights of passengers for compensation in relation to delay of baggage in three ways: [deleted as per Decision No. LET-C-A-68-2013]; it focuses only on the activity of passengers in the 24 hours following the purchase; [deleted as per Decision No. LET-C-A-68-2013]. The Applicant submits that these three restrictions ought to be disallowed and deleted from Proposed Rule (iv).

(a) [deleted as per Decision No. LET-C-A-68-2013]

(b) [deleted as per Decision No. LET-C-A-68-2013]

(c) It is unreasonable to consider only the 24-hour period following the purchase

Proposed Rule 10(iv) states, among other things, that:

the carrier shall only reimburse expenses incurred for the purchase of necessary items, having regard to the intended activities of the passenger in the next 24-hour time period following the purchase of the replacement items.

As a preliminary matter, the Applicant notes that this provision is an unfortunate instance of attempting to micromanage the criteria for reasonableness of expenses. As the Agency explained in *Shetty*, a far more circumstance-focused approach is necessary.

From a practical point of view, the implication of this provision is that a passenger whose baggage is delayed for 5 days would need to go back to the stores every day, and each time purchase clothing only for the next 24 hours, or else the passenger may risk not being reimbursed for some of the purchases. For example, passengers travelling for the purpose of vacation could not go for a full day of activity until their baggage arrives, because every day they would have to go back to the stores to purchase more clothing. Moreover, this provision would have devastating effects for

passengers travelling for the purpose of hiking. Indeed, if their equipment is delayed, they could not purchase replacement items that are relevant for their activities beyond the next 24 hours, and perhaps the entire trip.

To summarize, with utmost respect to Sunwing Airlines, the proposed provision is unreasonable, because it would substantially aggravate the stress and inconvenience suffered by passengers as a result of delay of their baggage, and would have the *effect* of depriving passengers of being adequately compensated for reasonable expenses they incur in relation to delay of their baggage. It is further submitted that there is nothing in the *Montreal Convention* to allow a carrier to limit its liability to purchases of replacement items that relate only to the intended activities of the passenger in the next 24 hours.

(d) Conclusion

Proposed Rule 10(iv) in its present form contains a blanket exclusion of liability and substantially limits the ability of passengers to recover from Sunwing Airlines the expenses they incur as a result of the delay of their baggage. Hence, it is submitted that Proposed Rule 10(iv) ought to be disallowed and substituted with a circumstance-focused language that requires Sunwing Airlines to compensate passengers for expenses that are *reasonable in the circumstances*.

II. [deleted as per Decision No. LET-C-A-68-2013]

All of which is most respectfully submitted.

Dr. Gábor Lukács
Applicant

Cc: Mr. Mark Williams, President of Sunwing Airlines

LIST OF AUTHORITIES

Legislation

1. *Canada Transportation Act*, S.C. 1996, c. 10.
2. *Canadian Transportation Agency General Rules*, S.O.R./2005-35.
3. *Carriage by Air Act*, R.S.C. 1985, c. C-26.

International instruments

4. *Montreal Convention: Convention for the Unification of Certain Rules for International Carriage by Air* (Montreal, 28 May 1999).

Case law

5. *Connaught Laboratories Ltd. v. British Airways*, 2002 CanLII 4642 (ON SC).
6. *Connaught Laboratories Ltd v. British Airways*, 2005 CanLII 16576 (ON CA).
7. *Lukács v. Air Canada*, Canadian Transportation Agency, LET-C-A-29-2011.
8. *Pinksen v. Air Canada*, Canadian Transportation Agency, 181-C-A-2007.
9. *Shetty v. Air Canada*, Canadian Transportation Agency, 353-C-A-2012.