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April 22, 2013

VIA EMAIL

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

Dear Madam Secretary:

Re: Dr. Gábor Lukács v. Sunwing Airlines
Complaint concerning International Tariff Rules 3.4, 15, 18(c), 18(e), and 18(f)

Please accept the following submissions as a formal complaint pursuant to ss. 111, 113, and 122(c) of the *Air Transportation Regulations*, S.O.R./88-58 (the “ATR”), and Rule 40 of the *Canadian Transportation Agency General Rules* concerning Sunwing Airlines’ International Tariff Rules 3.4, 15, 18(c), 18(e), and 18(f).

The Applicant submits that the aforementioned tariff rules are unclear, contrary to s. 122(c) of the *ATR*, and unreasonable within the meaning of s. 111 of the *ATR*, because:

1. they are inconsistent with the *Code of Conduct of Canada’s Airlines*;
2. they deprive passengers of the right to be provided with notice about schedule changes;
3. they contain blanket exclusions that exonerate Sunwing Airlines from liability for failure to operate, failure to operate on schedule, and sudden changes to its flight schedule;
4. they are inconsistent with the legal principles of the *Montreal Convention* (and the *Warsaw Convention*).

The Applicant is asking that the Agency disallow Sunwing Airlines’ International Tariff Rules 3.4, 15, 18(c), 18(e), and 18(f) in their entirety, or in part, and substitute them with language that incorporates the principles of the *Montreal Convention*, the *Code of Conduct of Canada’s Airlines*, and the Agency’s jurisprudence.

ISSUES

| | | |
|-------|---|----|
| I. | Applicable legal principles | 4 |
| | (a) Tariff provisions must be just and reasonable: s. 111(1) of the <i>ATR</i> | 4 |
| | (b) There is no presumption of reasonableness | 4 |
| | (c) Tariff provisions must be clear: s. 122(c) of the <i>ATR</i> | 5 |
| | (d) Provisions that are inconsistent with the legal principles of the <i>Montreal Convention</i> cannot be just and reasonable | 5 |
| II. | Questions directed to Sunwing Airlines | 7 |
| III. | Rules 3.4, 15, and 18(c): it is unreasonable to deprive passengers of notice about schedule changes | 9 |
| IV. | Rules 18(e) and 18(f) are unclear. | 11 |
| | (a) The Agency held that such and similar tariff provisions are unclear. | 11 |
| | (b) Questions directed to Sunwing Airlines | 12 |
| V. | Rules 18(c) and 18(e): blanket exclusions of liability for failure to make connections, to operate any flight according to schedule, or for changing the schedule of any flight . . | 13 |
| | (a) The Agency held that such and similar provisions are unreasonable | 13 |
| | (b) Passengers whose flight was advanced are entitled to the same protection. | 14 |
| VI. | Rule 18(f): blanket exclusions of liability based solely on occurrence of events are unreasonable | 15 |
| | (a) In the case of failure to operate, passengers are entitled to a refund | 16 |
| | (b) Legal principles of the <i>Montreal Convention</i> in the case of delay. | 17 |
| | (c) Conclusions | 17 |
| VII. | Rules 3.4 and 15: blanket exclusions of liability are unreasonable | 18 |
| | (a) Liability for delay under the <i>Montreal Convention</i> | 19 |
| | (b) Concomitant obligation of carriers to reprotect passengers. | 20 |
| | (c) Passengers may choose to receive a refund if Sunwing Airlines is unable to transport them in reasonable period of time, and the choice lies with the passengers. | 21 |
| | (d) In certain circumstances, passengers are entitled to transportation to their point of origin without a charge in addition to a full refund. | 22 |
| | (e) Conclusion | 23 |
| VIII. | Relief sought | 24 |

EXHIBITS

| | | |
|----|---|----|
| A. | Air Canada’s International Tariff Rule 80(C) | 27 |
| B. | Air Transat’s International Tariff Rule 5.2..... | 28 |
| C. | Air Transat’s International Tariff Rule 21 | 29 |
| D. | WestJet’s International Tariff Rule 75 | 31 |
| E. | WestJet’s International Tariff Rule 100 | 32 |
| F. | Sunwing Airlines’ International Tariff Rule 3.4 | 33 |
| G. | Sunwing Airlines’ International Tariff Rule 15..... | 34 |
| H. | Sunwing Airlines’ International Tariff Rule 18..... | 35 |
| I. | Printout from FlightAware: Sunwing Airlines’ Flight 420 | 38 |

I. Applicable legal principles

(a) Tariff provisions must be just and reasonable: s. 111(1) of the ATR

Section 111(1) of the *ATR* provides that:

All tolls and terms and conditions of carriage, including free and reduced rate transportation, that are established by an air carrier shall be just and reasonable and shall, under substantially similar circumstances and conditions and with respect to all traffic of the same description, be applied equally to all that traffic.

Since neither the *Canada Transportation Act*, S.C. 1996, c. 10 (the “*CTA*”) nor 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. The test was applied in *Lukács v. WestJet*, 483-C-A-2010 (leave to appeal denied by the Federal Court of Appeal; 10-A-42), and more recently in *Lukács v. Air Canada*, 291-C-A-2011.

(b) There is no presumption of reasonableness

In *Griffiths v. Air Canada*, 287-C-A-2009, the Agency underscored the importance of applying the balancing test due to the unilateral nature of terms and conditions set by carriers, which often are based only on the carrier’s commercial interests:

[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.

The Agency applied this principle in *Lukács v. WestJet*, 483-C-A-2010 (leave to appeal denied by the Federal Court of Appeal; 10-A-42), and more recently in *Lukács v. Air Canada*, 291-C-A-2011 and *Lukács v. Air Canada*, 250-C-A-2012.

(c) Tariff provisions must be clear: s. 122(c) of the ATR

Section 122 of the ATR states that:

Every tariff shall contain

⋮

(c) the terms and conditions of carriage, clearly stating the air carrier's policy in respect of at least the following matters, namely,

[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*, 249-C-A-2012, and *Lukács v. Porter Airlines*, 16-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.

(d) Provisions that are inconsistent with the legal principles of the Montreal Convention cannot be just and reasonable

The *Montreal Convention* is an international treaty that has the force of law in Canada by virtue of the *Carriage by Air Act*, R.S.C. 1985, c. C-26. It governs, among other things, the liability of air carriers in the case of delay of passengers and their baggage in international carriage.

Article 26 prevents carriers from contracting out or altering the liability provisions of the *Montreal Convention* to the passengers' detriment:

Article 26 - Invalidity of contractual provisions

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

In *McCabe v. Air Canada*, 227-C-A-2008, the Agency held (at para. 29) that a tariff provision that is null and void by Article 26 of the *Montreal Convention* is not just and reasonable as required by s. 111(1) of the ATR. This principle was applied by the Agency in *Lukács v. Air Canada*, 208-C-A-2009 (at paras. 38-39), in *Lukács v. WestJet*, 477-C-A-2010 (at para. 43; leave to appeal denied by the Federal Court of Appeal; 10-A-41), and most recently in *Lukács v. Porter Airlines*, 16-C-A-2013.

In *Pinksen v. Air Canada*, 181-C-A-2007, the Agency recognized that international instruments in general, and the *Montreal Convention* in particular, are persuasive authorities in interpreting domestic rules and determining their reasonableness. The same reasoning was affirmed by the Agency in *Kipper v. WestJet*, 309-C-A-2010.

In *Lukács v. WestJet*, 483-C-A-2010, the Agency used the *Montreal Convention* as a persuasive authority for determining the reasonableness of WestJet's domestic tariff provisions, and ordered WestJet to revise its tariff to provide for a limit of liability equivalent to that set out in the *Montreal Convention* (leave to appeal denied by the Federal Court of Appeal; 10-A-42).

In *Lukács v. Air Canada*, 291-C-A-2011, the Agency considered Air Canada's Rule 55(C)(7), which stated that "[s]ubject to the Convention, where applicable, carrier is not liable for loss, damage to, or delay in delivery of...". The Agency held that passengers ought to be afforded the same protection against loss, damage or delay of baggage as in the *Montreal Convention*, regardless of whether the convention applies, and disallowed the provision.

In *Lukács v. Air Canada*, 250-C-A-2012, the Agency explained the dual role of the *Montreal Convention* in determining the reasonableness of a tariff provision:

[23] [...] Past Agency decisions reflect the two distinct ways in which the Convention might be considered: by looking at whether a tariff is in direct contravention of the Convention, thereby rendering the provision null and void and unreasonable [Footnote: See for example: *Balakrishnan v. Aeroflot*, Decision No. 328-C-A-2007 at para. 20 and *Lukács v. WestJet*, Decision No. 477-C-A-2010 at paras. 39-40 (Leave to appeal to Federal Court of Appeal denied, FCA 10-A-41).]; or by referring to the principles of the Convention when considering the reasonableness of a tariff provision. [Footnote: See for example: *Lukács v. WestJet*, Decision No. 313-C-A-2010 and Decision No. LET-C-A-51-2010 .]

Therefore, it is settled law that a tariff provision that is inconsistent with the legal principles of the *Montreal Convention* cannot be just and reasonable within the meaning of s. 111(1) of the *ATR*.

II. Questions directed to Sunwing Airlines

In 2008, the Government of Canada and the three major Canadian airlines (Air Canada, Air Transat, and WestJet) agreed on a voluntary code of conduct, entitled *Code of Conduct of Canada's Airlines*. The key points of this code are:

- Passengers have a right to information on flight times and schedule changes. Airlines must make reasonable efforts to inform passengers of delays and schedule changes and to the extent possible, the reason for the delay or change.
- Passengers have a right to punctuality.
 - (a) If a flight is delayed and the delay between the scheduled departure of the flight and the actual departure of the flight exceeds 4 hours, the airline will provide the passenger with a meal voucher.
 - (b) If a flight is delayed by more than 8 hours and the delay involves an overnight stay, the airline will pay for overnight hotel stay and airport transfers for passengers who did not start their travel at that airport.
 - (c) If the passenger is already on the aircraft when a delay occurs, the airline will offer drinks and snacks if it is safe, practical and timely to do so. If the delay exceeds 90 minutes and circumstances permit, the airline will offer passengers the option of disembarking from the aircraft until it is time to depart.
- Passengers have a right to take the flight they paid for. If the flight is overbooked or cancelled, the airline must offer passengers a choice between transportation to their destination or a refund of the unused portion of the ticket.

In the trilogy of decisions *Lukács v. Air Transat*, 248-C-A-2012, *Lukács v. WestJet*, 249-C-A-2012, and *Lukács v. Air Canada*, 250-C-A-2012, the Agency clarified the obligations of carriers in the case of flight cancellation that is within the carrier's control and 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 incorporated provisions giving effect to these rights into their international tariffs:

- Air Canada's International Tariff Rule 80(C) (Exhibit "A");
- Air Transat's International Tariff Rules 5.2(d) and 21 (Exhibits "B" and "C");
- WestJet's International Tariff Rules 75 and 100 (Exhibits "D" and "E").

Pursuant to Rule 19 of the *Canadian Transportation Agency General Rules*, the Applicant directs the following questions to Sunwing Airlines:

- Q1. What is the reason that Sunwing Airlines has not incorporated such and/or similar provisions into its International Tariff?
- Q2. Would it affect Sunwing Airlines' ability to meet its statutory obligations if such and/or similar provisions were incorporated into its International Tariff? If so, please elaborate.
- Q3. Would it affect Sunwing Airlines' ability to meet its commercial obligations if such and/or similar provisions were incorporated into its International Tariff? If so, please elaborate.
- Q4. Would Sunwing Airlines suffer any competitive disadvantage by incorporating such and/or similar provisions into its International Tariff? If so, please elaborate.
- Q5. Would it affect Sunwing Airlines' ability to meet its operational obligations if such and/or similar provisions were incorporated into its International Tariff? If so, please elaborate.

Rationale: These questions are relevant to the balancing test for reasonableness of tariff provisions established by the Agency, and are seeking answers with respect to Sunwing Airlines' statutory, commercial, and operational obligations.

The Applicant is asking the Agency to direct Sunwing Airlines, pursuant to Rule 20(1), to answer these questions at the same time Sunwing Airlines files its answer pursuant to Rule 42.

III. Rules 3.4, 15, and 18(c): it is unreasonable to deprive passengers of notice about schedule changes

Sunwing Airlines' International Tariff Rule 18(g) (Exhibit "H") provides for certain cut-off times, namely, passengers must arrive for check-in at least 60 minutes before the scheduled departure, and must be available at the gate for boarding at least 30 minutes prior to the scheduled departure. Passengers who fail to comply with this requirement forfeit their reservation, lose the entire benefit of the itinerary they paid for, and are not entitled to any compensation.

This underscores the importance of Sunwing Airlines providing adequate and accurate information to its passengers about the scheduled departure time of their flights, because passengers can reasonably be expected to comply with the requirements of Rule 18(g) only if they are informed by Sunwing Airlines of the time they must present themselves for check-in and/or boarding, which in turn is defined in reference to the scheduled departure time.

Thus, it is plain and clear that passengers have a vital interest in being informed by Sunwing Airlines about the scheduled departure time of their flights, and any schedule changes affecting their flights.

Oddly, however, Sunwing Airlines' International Tariff clearly relieves the airline from any obligation to inform passengers about schedule changes. Indeed, Sunwing Airlines' International Tariff Rule 3.4 (Exhibit "F") states that:

The Carrier reserves the right to cancel or change the planned departure, schedule, route, aircraft or stopping places of any flight for which fares in respect of a International Service have been paid, at any time and from time to time, for any reason, without notice to any passengers affected thereby and, in connection therewith, the Carrier shall not be liable to any passenger in respect of such cancellation or change, whether or not resulting from an Event of Force Majeure; provided that, the Carrier may and reserves the right, at its sole discretion, to provide any passengers affected by such cancellation or change with: [...]

[Emphasis added.]

Similarly, Sunwing Airlines' International Tariff Rule 15 (Exhibit "G") states that:

The Carrier reserves the right to cancel or change the planned departure, schedule, route, aircraft or stopping places of any flight for which fares have been paid, at any time and from time to time, for any reason, without notice to any passengers affected thereby and, in connection therewith, the Carrier shall not be liable to any passenger in respect of such cancellation or change, whether or not resulting from an Event of Force Majeure; provided that, the Carrier may and reserves the right, at its sole discretion, to provide any passengers affected by such cancellation or change with: [...]

[Emphasis added.]

Furthermore, Sunwing Airlines' International Tariff Rule 18(c) (Exhibit "H") states that:

Schedules are subject to change without notice. [...]

[Emphasis added.]

The Applicant challenges the reasonableness of these tariff provision, because they deprive passengers of their right to be notified about schedule changes affecting their travels.

The right of passengers to be informed about delays and schedule changes was recognized by the Agency in *Lukács v. Porter Airlines*, 16-C-A-2013, in the context of Porter Airlines' International Tariff, where the Agency held (at para. 87) that:

In this regard, the Agency notes that some Canadian carriers, including Air Canada, have tariff provisions that provide that passengers have a right to information on flight times and schedule changes, and that carriers must make reasonable efforts to inform passengers of delays and schedule changes, and the reasons for them. The Agency finds that such provisions are reasonable, and that, in this regard, the rights of passengers to be subject to reasonable terms and conditions of carriage outweigh any of the carrier's statutory, commercial or operational obligations. The Agency therefore finds that the absence of similar provisions in Porter's Existing Tariff Rules would render Proposed Tariff Rule 18(a) unreasonable, if filed with the Agency.

The Applicant notes that the Agency's decision in *Lukács v. Porter Airlines* is consistent with Decision No. LET-A-112-2003 of the Agency in relation to Air Transat's international tariff, where the Agency held that:

The Agency notes that Rule 5.2(b) of the tariff is devoid of any provision relating to the notification of passengers in the event of a flight delay. As such, the Agency is of the view that this provision may not be just and reasonable. The Agency is of the opinion that Air Transat should undertake to notify passengers of all schedule irregularities, not just flight advancements.

[Emphasis added.]

Therefore, it is submitted that both the importance and the obligation of carriers to provide passengers with notice about schedule changes have long been recognized by the Agency. Indeed, in the absence of such a notice, passengers are at risk of losing the entire benefit of the itinerary for which they have paid.

Hence, it is submitted that it is unreasonable to deprive passengers of notice about schedule changes, and any provision exempting Sunwing Airlines from the obligation to notify passengers ought to be disallowed as unreasonable. It is further submitted that these provisions ought to be substituted with an undertaking of Sunwing Airlines to notify passengers of all schedule irregularities.

IV. Rules 18(e) and 18(f) are unclear

Sunwing Airlines' International Tariff Rules 18(e) and 18(f) (Exhibit "H") read as follows:

- (e) Subject to the Warsaw Convention, or the Montreal Convention as the case may be, the carrier will not provide or reimburse passengers for expenses incurred due to delays or cancellations of flights.
- (f) Notwithstanding any other terms or conditions contained herein, but subject to the Montreal convention or the Warsaw Convention, as the case may be, the Carrier shall not be liable for failure in the performance of any of its obligations due to: [...]

[Emphasis added.]

The Applicant submits that these rules fail to be clear, contrary to s. 122(c) of the ATR.

(a) The Agency held that such and similar tariff provisions are unclear

Sunwing Airlines' Rule 18(e) is identical to what used to be Porter Airlines' Existing Tariff Rule 18(e), which was considered by the Agency in *Lukács v. Porter Airlines*, 16-C-A-2003, where the Agency held that:

[62] The Agency is of the opinion that the wording appearing in Existing Tariff Rule 18(e) is likely to confuse passengers, rather than clearly inform them of the applicability of Porter's limit of liability. As such, that Rule fails to satisfy the clarity test set out earlier in this Decision that provides that an air carrier meets its tariff obligation of clarity when the rights and obligations of both the carrier and the passenger are stated in such a way as to exclude any reasonable doubt, ambiguity or uncertain meaning. Accordingly, the Agency finds Existing Tariff Rule 18(e) to be unclear, contrary to section 122 of the ATR.

The Agency reached the same conclusion in *Lukács v. Air Canada*, LET-C-A-29-2011 (para. 65) with respect to the phrase "Subject to the Convention, where Applicable" that was found in Air Canada's International Tariff Rule 55(C)(7):

The substantive wording of Rule 55(C)(7), on its face, indicates that Air Canada has no liability for loss, damage or delay of baggage and only in exceptional situations (i.e., "Subject to the Convention") will some other provisions concerning Air Canada liability apply and provide compensation rights to passengers. In fact, it is the reverse which applies, namely Air Canada does have liability for loss, damage or delay of baggage and only in exceptional circumstances is Air Canada able to raise a defence to a claim for liability or invoke damage limitations. The wording of the existing and proposed Rule 55(C)(7) is more likely to confuse passengers, rather

than clearly inform passengers, regarding the applicability of Air Canada's limit of liability. Accordingly, the Agency finds Rule 55(C)(7) in itself is unclear and that the phrase "Subject to the Convention where applicable" renders the application of Rule 55(C)(7) unclear.

The Applicant submits that these findings of the Agency equally apply to Sunwing Airlines' International Tariff Rules 18(e) and 18(f), and thus these rules fail to be clear.

(b) Questions directed to Sunwing Airlines

Pursuant to Rule 19 of the *Canadian Transportation Agency General Rules*, the Applicant directs the following questions to Sunwing Airlines:

- Q6. Does Sunwing Airlines operate on any route that would be subject to its International Tariff, but would nevertheless not be subject to the *Montreal Convention*?
- Q7. Does Sunwing Airlines operate on any route where itineraries may be subject to the *Warsaw Convention*?

Rationale: It is the Applicant's understanding that Sunwing Airlines operates international routes only on itineraries that are subject to the *Montreal Convention*, or possibly the *Warsaw Convention*. Thus, it appears that falling within the scope of the conventions is not the exception (as suggested by Rules 18(e) and 18(f)), but rather the rule. This, in turn, speaks to the clarity of these rules.

The Applicant is asking the Agency to direct Sunwing Airlines, pursuant to Rule 20(1), to answer these questions at the same time Sunwing Airlines files its answer pursuant to Rule 42.

The Applicant reserves his right to make further submissions concerning Rules 18(e) and 18(f) after the receipt of Sunwing Airlines' answers to the aforementioned questions.

V. Rules 18(c) and 18(e): blanket exclusions of liability for failure to make connections, to operate any flight according to schedule, or for changing the schedule of any flight

Sunwing Airlines' International Tariff Rules 18(c) and 18(e) (Exhibit "H") read as follows:

- (c) Schedules are subject to change without notice. The carrier is not responsible or liable for failure to make connections or for failure to operate any flight according to schedule, or for a change to the schedule of any flight. The Carrier is not liable for any special, incidental or consequential damages arising from the foregoing.
- (e) Subject to the Warsaw Convention, or the Montreal Convention as the case may be, the carrier will not provide or reimburse passengers for expenses incurred due to delays or cancellations of flights.

The Applicant submits that these are blanket exclusions of liability that are inconsistent with the legal principles of the *Montreal Convention* and they are also unreasonable, because they fail to provide any protection to passengers affected by flight advancement.

(a) The Agency held that such and similar provisions are unreasonable

Sunwing Airlines' Rule 18(c) is virtually identical to what used to be Porter Airlines' Existing Tariff Rule 18(c), which was considered by the Agency in *Lukács v. Porter Airlines*, 16-C-A-2003, where the Agency held that:

[50] Article 19 of the Convention provides that:

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

[51] Existing Tariff Rule 18(c) is silent on the matter of the liability assumed by Porter should a flight be delayed, and Porter is unable to provide the proof required by Article 19 of the Convention to relieve itself from such liability. The Agency finds that the absence of a provision to this effect renders Existing Tariff Rule 18(c) inconsistent with Article 19 of the Convention, and that Rule is therefore unreasonable.

Sunwing Airlines' Rule 18(e) is identical to what used to be Porter Airlines' Existing Tariff Rule 18(e), which was considered by the Agency in *Lukács v. Porter Airlines*, 16-C-A-2003, where the Agency held that:

[65] In Decision No. 291-C-A-2011 (*Lukács v. Air Canada*), the Agency considered whether a baggage liability provision appearing in Air Canada's international tariff was inconsistent with the Convention and the Warsaw Convention. In that Decision, the Agency noted that the effect of the provision was to create a blanket exclusion of liability which relieves Air Canada from all liability regarding loss, damage and delay of baggage containing certain items. The Agency concluded that the provision was inconsistent with the principles of the Convention, and as a result, disallowed that provision.

[66] Given the foregoing, the Agency finds that Existing Tariff Rule 18(e) is inconsistent with the Convention, and that the Rule is therefore unreasonable.

The Applicant submits that these conclusions are equally applicable to Sunwing Airlines' Rules 18(c) and 18(e), and these provisions are equally unreasonable. Therefore, it is submitted that Sunwing Airlines' International Tariff Rules 18(c) and 18(e) ought to be disallowed, and substituted with a wording that reflects the principles of the *Montreal Convention*.

(b) Passengers whose flight was advanced are entitled to the same protection

While most carriers usually only defer the departure time of their flights, this is not the case for Sunwing Airlines. For example, on March 14, 2013, the departure time of Flight SWG 420 from Toronto (YYZ) to Punta Cana (PUJ) was advanced from 10:00 am to 6:00 am (Exhibit "I").

In Decision No. LET-A-112-2003, the Agency considered the issue of flight advancement, and held that:

The Agency is of the opinion that, in the event of a flight advancement, the consumer should be offered alternate travel options immediately. In addition, the Agency feels it would be beneficial if Air Transat includes a tariff provision that provides for a refund, at the request of the passenger, if such passenger should wish to cancel a reservation for a flight that has been advanced.

[Emphasis added.]

The Agency reached the same conclusion in *Lipson v. Air Transat*, LET-C-A-59-2013.

Therefore, it is submitted that Sunwing Airlines' International Tariff is also unreasonable because of the absence of tariff provisions concerning advancement of flight times, and protection of passengers affected by such events.

It is further submitted that Sunwing Airlines ought to be directed to amend its tariff to offer the same protection to passengers whose flight was advanced as to victims of delays.

VI. Rule 18(f): blanket exclusions of liability based solely on occurrence of events are unreasonable

Sunwing Airlines' International Tariff Rule 18(f) (Exhibit "H") contains a long list of exclusions of liability with a preamble and conclusion that read as follows:

Notwithstanding any other terms or conditions contained herein, but subject to the Montreal convention or the Warsaw Convention, as the case may be, the Carrier shall not be liable for failure in the performance of any of its obligations due to:

[...]

Upon the happening of any of the foregoing events, the Carrier may without notice cancel, terminate, divert, postpone or delay any flight whether before departure or enroute. If the flight, having commenced is terminated, the carrier shall refund the unused portion of the fare and shall use its best effort to provide alternate transportation to the destination for the passengers and baggage at the expense and risk of the passenger or shipper. If the flight has not commenced prior to termination, the carrier will provide a credit equal to the paid fare which will be available for use in the purchase of a new ticket on the same terms for a period of one year from the date of termination. No refund will be available.

[Emphasis added.]

The list of events that Sunwing Airlines purports to exonerate itself from any liability for performance of any of its obligations includes, for example:

- v) Accidents to or failure of the aircraft or equipment used in connection therewith including, in particular, mechanical failure.
- vi) Non-availability of fuel at the airport of origin, destination or enroute stop.
- vii) Others upon whom the Carrier relies for the performance of the whole or any part of any charter contract or flight.
- (xvii) Any other causes beyond the reasonable control of the carrier and any other event not reasonably to be foreseen, anticipated or predicted, whether actual, threatened or reported, which may interfere with the operations of the Carrier.

The Applicant submits that Sunwing Airlines' International Tariff Rule 18(f) is unreasonable because it contains blanket exclusions of liability that are inconsistent with the legal principles of the *Montreal Convention*, and it relieves Sunwing Airlines from the obligation to provide a refund in any event.

(a) In the case of failure to operate, passengers are entitled to a refund

In Decision No. 28-A-2004, the Agency considered in great detail the rights of passengers for protection in the case of events that are beyond the passengers' control:

By Decision No. LET-A-166-2003 dated August 7, 2003, the Agency advised Air Transat that it was not satisfied that Air Transat had shown cause as to why the Agency should not, pursuant to paragraph 113(b) of the ATR, substitute another tariff or portion thereof to make the tariff acceptable to the Agency. The Agency advised Air Transat that Rule 6.3 of Air Transat's tariff was not just and reasonable within the meaning of subsection 111(1) of the ATR, in that it does not provide adequate options to passengers affected by a schedule irregularity, and does not protect passengers from events that are beyond the passengers' control, and, therefore, does not allow passengers any recourse if they are unable to connect to other air carriers or alternate modes of transportation such as cruise ships or trains. [...]

With respect to involuntary rerouting and passenger notification, the Agency advised Air Transat that the Agency found paragraphs (b) and (e) of Rule 5.2 to be not just and reasonable, as they do not provide the passenger with any recourse if the carrier can not arrange any reasonable transportation in the event of an involuntary rerouting. [...]

[...]

On September 30, 2003, Air Transat further advised the Agency that it was prepared to accept the principle of refunding the unused portion of a ticket in the event of a delay exceeding a certain amount of time, i.e., 36 hours.

[...] the Agency is of the opinion that Air Transat has not proven to the Agency's satisfaction, that it is reasonable to have a time limit in the event of a delay of 36 hours or more, after which Air Transat would refund the unused ticket or portion thereof.

Finally, the Agency substituted Air Transat's International Tariff Rule 6.3(d) with the following provision:

6.3(d) If the Carrier is unable to provide reasonable alternative transportation on its services or on the services of other carrier(s) within a reasonable period of time, then it will refund the unused ticket or portions thereof.

As this decision of the Agency demonstrates, passengers do have a fundamental right to a refund of their fares if the carrier is unable to transport them for any reason that is outside the passengers' control. In particular, the carrier cannot keep the fare paid by passengers and refuse to provide a refund on the basis that its inability to provide transportation was due to certain events.

(b) Legal principles of the *Montreal Convention* in the case of delay

Article 19 of the *Montreal Convention* provides that the carrier is liable for delay, and it can exonerate itself from liability only if it demonstrates the presence of an affirmative defense, namely, that it and its servants and agents have taken all reasonable steps necessary to avoid the delay.

As the Agency explained in *Lukács v. Porter Airlines*, 16-C-A-2013, what determines liability for delay is not the cause of the delay, but rather how the airline reacts to the delay:

[105] Accordingly, what is at issue, in terms of avoiding liability for delay, is not who caused the delay but, rather, how the carrier reacts to a delay. In short, did the carrier's servants and agents do everything they reasonably could in the face of air traffic control delays, security delays on releasing baggage, delays caused by late delivery of catered supplies or fuel to the aircraft and so forth, even though these may have been caused by third parties who are not directed by the carrier?

[Emphasis added.]

(c) Conclusions

Any provision tending to relieve Sunwing Airlines from its liability under the *Montreal Convention* is null and void by Article 26.

Liability for delay under Article 19 of the *Montreal Convention* depends not on the cause of the delay, but rather on how the carrier responds and reacts to events that may well be caused by third parties. Thus, Sunwing Airlines cannot exonerate itself from liability under Article 19 based on the cause of the delay. Whatever the cause of the delay is, Sunwing Airlines has a concomitant obligation to take all reasonable measures necessary to prevent the delay.

Thus, any provision tending to relieve Sunwing Airlines from liability for delay on the basis of the cause instead of Sunwing Airlines' actions is contrary to Article 19, and is null and void by Article 26 of the *Montreal Convention*.

Furthermore, while Article 19 of the *Montreal Convention* may exonerate a carrier from liability for delay, it certainly does not exonerate the carrier from the obligation to provide a full refund in case it is unable to provide transportation.

Therefore, Sunwing Airlines' International Tariff Rule 18(f) is unreasonable in that it allows Sunwing Airlines to keep fares for transportation that it did not provide.

Hence, it is submitted that Sunwing Airlines' International Tariff Rule 18(f) ought to be disallowed.

VII. Rules 3.4 and 15: blanket exclusions of liability are unreasonable

Sunwing Airlines' International Tariff Rule 3.4 (Exhibit "F") states that:

The Carrier reserves the right to cancel or change the planned departure, schedule, route, aircraft or stopping places of any flight for which fares in respect of a International Service have been paid, at any time and from time to time, for any reason, without notice to any passengers affected thereby and, in connection therewith, the Carrier shall not be liable to any passenger in respect of such cancellation or change, whether or not resulting from an Event of Force Majeure; provided that, the Carrier may and reserves the right, at its sole discretion, to provide any passengers affected by such cancellation or change with:

- (a) a credit, valid for one year from the cancellation date, towards the provision of a fare relating to a future flight or flights if booked as a round trip and the originating sector is cancelled, which credit shall be equal to the original fare (s) which was/were cancelled; or
- (b) to otherwise refund to such passenger, an amount which shall not be greater than the fare paid by that passenger in respect of that flight or flights if booked as a round trip and the originating sector is cancelled.

Sunwing Airlines' International Tariff Rule 15 (Exhibit "G") states that:

The Carrier reserves the right to cancel or change the planned departure, schedule, route, aircraft or stopping places of any flight for which fares have been paid, at any time and from time to time, for any reason, without notice to any passengers affected thereby and, in connection therewith, the Carrier shall not be liable to any passenger in respect of such cancellation or change, whether or not resulting from an Event of Force Majeure; provided that, the Carrier may and reserves the right, at its sole discretion, to provide any passengers affected by such cancellation or change with:

- (a) a credit, valid for one year from the cancellation date, towards the provision of a fare relating to a future flight, which credit shall be equal to the original fare which was cancelled; or
- (b) to otherwise refund to such passenger, an amount which shall not be greater than the fare paid by that passenger in respect of that flight.

The Applicant submits that these provisions are unreasonable, because: (i) they are blanket exclusions of liability that relieve Sunwing Airlines from virtually any liability with respect to delays and/or failure to operate on schedule; moreover (ii) they deprive passengers of the choice of whether they wish to continue their travel or to receive a refund; and (iii) they deprive passengers of the right to be refunded if Sunwing Airlines is unable to transport them within a reasonable amount of time.

(a) Liability for delay under the *Montreal Convention*

The *Montreal Convention* is an international treaty that has the force of law in Canada by virtue of the *Carriage by Air Act*, R.S.C. 1985, c. C-26. The *Montreal Convention* governs the liability limitations for delay of passengers applicable to international carriage by air.

The regime of strict liability for delay imposed upon carriers by Article 19 is one of the cornerstones of the *Montreal Convention*:

Article 19 - Delay

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

In particular, carriers are liable for out-of-pocket expenses related to delays, such as meals, accommodation, and transportation. Article 26 protects the liability provisions of the *Montreal Convention* from being contractually altered to the passengers' detriment by rendering any such provision null and void:

Article 26 - Invalidity of contractual provisions

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

The *effect* of Sunwing Airlines' Rules 3.4 and 15 is that they relieve Sunwing Airlines from virtually every liability in the case of delay and/or failure to operate on schedule, regardless of whether Sunwing Airlines and its servants and agents have taken all reasonable measures necessary to avoid the delay. In other words, these provisions are blanket exclusions of liability.

The impugned provisions effectively limit Sunwing Airlines' liability in the case of delay to providing passengers, at Sunwing Airlines' sole discretion, a credit that is valid for one year or otherwise a refund of the fare paid by the passengers; in other words, the impugned provisions allow Sunwing Airlines to walk away from the contract of carriage without offering any protection to passengers.

Thus, it is submitted that Sunwing Airlines' Rules 3.4 and 15 are provisions tending to relieve Sunwing Airlines from liability set out in Article 19 of the *Montreal Convention* and/or tending to fix a lower limit of liability than what is set out in the convention.

Therefore, by Article 26, Rules 3.4 and 15 are null and void, and they are unreasonable. Hence, these rules ought to be disallowed.

(b) Concomitant obligation of carriers to reprotect passengers

In *Lukács v. Air Canada*, 250-C-A-2012, one of the landmark decisions of the Agency on passenger rights, the Agency held that:

[25] It is clear that Article 19 of the Convention imposes on a carrier liability for damage occasioned by delay in the carriage of, amongst other matters, passengers, but a carrier will not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or it was impossible for them to take such measures. As the Agency stated in the Show Cause Decision, with a presumption of liability for delay against a carrier, 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 delay. [...]

⋮

[65] In both *Mohammad* and *McMurry v. Capitol Intern. Airways*, 102 Misc. 2d 720 at 722, which was also cited by the Agency in the Show Cause Decision, passengers made alternative arrangements themselves and the carrier was found liable to pay for those arrangements. In other words, the Court considered the passenger's own ability to find a flight on another carrier to be a determining factor as to whether or not the carrier had taken all reasonable measures to avoid delay pursuant to Article 19 of the Convention. The Agency finds this aspect of the cases to be relevant to the issue of reprotection.

[Emphasis added.]

Indeed, in *Mohammad c. Air Canada*, 2010 QCCQ 6858, in a case brought against Air Canada and Kuwait Airlines for joint carriage between Canada and Kuwait, it was held that:

[27] The fact that Kuwait Airways airplanes were fully booked does not in anyway, limit its obligation to transport the passengers to their destination. Kuwait Airways should have transferred the unused portion of the passengers' tickets to another carrier and rerouted them to their final destination. It was obliged to do so according to sections 19 and 40 of the Montreal Convention.

Similarly, in *Caron c. Vacances Sunwing*, 2012 QCCQ 2050, a passenger sought compensation in relation to the cancellation of his return flight from Haiti to Canada. Sunwing Airlines offered to either transport the passenger seven days later or provide the passenger a full refund. The passenger was unable to accept the offer to postpone his return to Canada by a week due to his obligations in Canada, and he eventually purchased a one-way ticket on American Airlines. The court ordered Sunwing Airlines to compensate the passenger for all of his out-of-pocket expenses, including the costs of his alternative transportation.

Therefore, a carrier cannot avoid liability under Article 19 of the *Montreal Convention* by merely stating that its flights were fully booked. Instead, the carrier must take steps to mitigate the damage suffered by passengers as a result of the delay, and must attempt to secure seats on other carriers.

(c) Passengers may choose to receive a refund if Sunwing Airlines is unable to transport them in reasonable period of time, and the choice lies with the passengers

More than 9 years ago, in Decision No. 28-C-A-2004, the Agency recognized the fundamental right of passengers to be refunded for the unused portions of their tickets if the carrier is unable to provide transportation on its services or on the services of other carrier(s) within a reasonable period of time.

In *Lukács v. Air Canada*, LET-C-A-80-2011, the Agency expressed the preliminary opinion that it is unreasonable for a carrier to retain the choice between reprotecting passengers and providing a refund, and that the choice ought to lie with the passengers:

[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.

[109] Accordingly, the Agency is of the preliminary opinion that the subject Tariff provision is unreasonable.

In *Lukács v. Air Canada*, 250-C-A-2012, the Agency affirmed this finding, and held that:

[123] [...] the Agency finds that Tariff Rule 91(B)(3), as currently drafted, is unreasonable for failing to give the passenger sole discretion to choose to obtain a refund.

[124] The Agency also determines that Air Canada's proposal to leave the choice of option with the passenger is reasonable.

Thus, it is submitted that the choice of whether to obtain a refund or be reprotected ought to lie solely with the passenger, and any provision purporting to allow the carrier to retain that choice is unreasonable.

Therefore, Sunwing Airlines' International Tariff Rules 3.4 and 15 are unreasonable by failing to give the passenger sole discretion to choose to obtain a refund.

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

In *Lukács v. Air Canada*, LET-C-A-80-2011, the Agency held that:

[102] 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. [Footnote: See for example *Balogun v. Air Canada*, [2010] O.J. No. 663 (S.C.J.); *Lukács v. United Airlines Inc.*, *supra* note 5.]

[103] 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.

[104] The subject Tariff provision in this case indicates that the Tariff 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. In cases where a 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 their point of origin. 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. The Agency accepts Mr. Lukács' submission that the actual costs, or damages, incurred by a passenger may exceed the mere refund of the unused ticket.

[105] Accordingly, the Agency is of the preliminary opinion that the part of Tariff Rule 91(B) that allows 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, nor fulfil their purpose of travel, and does not coincide with the transportation for which the passenger contracted.

In the final decision in *Lukács v. Air Canada*, 250-C-A-2012, the Agency affirmed these preliminary findings (paras. 107-114).

The Applicant notes that Air Canada, Air Transat, and WestJet have all incorporated provisions in their tariffs that give effect to these findings of the Agency. Thus, Sunwing Airlines will suffer no competitive disadvantage by doing the same.

Therefore, it is submitted that Sunwing Airlines' International Tariff Rules 3.4 and 15 are unreasonable in that they fail to address the question of returning a passenger to their point of origin, within a reasonable time and at no 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, and they also fail to provide for a refund of the full fare in such situations.

(e) Conclusion

Sunwing Airlines' International Tariff Rules 3.4 and 15 are blanket exclusions of liability tending to relieve Sunwing Airlines from liability under the *Montreal Convention*. As such, they are null and void by Article 26, and thus they are unreasonable.

Sunwing Airlines' International Tariff Rules 3.4 and 15 are also unreasonable based on a wealth of past decisions of the Agency concerning the rights of passengers in the case of flight cancellation and denied boarding.

Furthermore, Sunwing Airlines' International Tariff Rules 3.4 and 15 are also inconsistent with the *Code of Conduct of Canada's Airlines*, and fail to incorporate the "right for care" provisions (meal voucher, overnight hotel, and drinks and snacks) that the three major Canadian airlines have long ago adopted.

Therefore, it is submitted that Sunwing Airlines' International Tariff Rules 3.4 and 15 ought to be disallowed, and substituted with provisions that incorporate the key points of the *Code of Conduct of Canada's Airlines*, the *Montreal Convention*, and the findings of the Agency in the trilogy of decisions *Lukács v. Air Transat*, 248-C-A-2012, *Lukács v. WestJet*, 249-C-A-2012, and *Lukács v. Air Canada*, 250-C-A-2012.

VIII. Relief sought

The Applicant prays the Agency that the Agency:

- A. disallow Sunwing Airlines' International Tariff Rules 3.4, 15, 18(c), 18(e), and 18(f);
- B. direct Sunwing Airlines to amend its International Tariff to contain an undertaking to notify passengers about schedule changes;
- C. substitute International Tariff Rules 3.4 and/or 15 with provisions that incorporate the key points of the *Code of Conduct of Canada's Airlines*, the *Montreal Convention*, and the findings of the Agency in the trilogy of decisions *Lukács v. Air Transat*, 248-C-A-2012, *Lukács v. WestJet*, 249-C-A-2012, and *Lukács v. Air Canada*, 250-C-A-2012;
- D. substitute International Tariff Rules 18(c), 18(e), and 18(f) with provisions that incorporate Article 19 of the *Montreal Convention* and provide similar protection to passengers whose flight departure time was advanced by Sunwing Airlines.

All of which is most respectfully submitted.

Dr. Gábor Lukács
Applicant

Cc: Mr. Clay Hunter, counsel for Sunwing Airlines
Mr. Stephen White, Sunwing Airlines
Mr. Mark Williams, President of Sunwing 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.
4. *Carriage by Air Act*, R.S.C. 1985, c. C-26.

International instruments

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

Case law

6. *Air Canada v. Canadian Transportation Agency*, 2009 FCA 95.
7. *Anderson v. Air Canada*, Canadian Transportation Agency, 666-C-A-2001.
8. *Caron c. Vacances Sunwing*, 2012 QCCQ 2050.
9. *Griffiths v. Air Canada*, Canadian Transportation Agency, 287-C-A-2009.
10. *H. v. Air Canada*, Canadian Transportation Agency, 2-C-A-2001.
11. *Kipper v. WestJet*, Canadian Transportation Agency, 309-C-A-2010.
12. *Lipson v. Air Transat*, Canadian Transportation Agency, LET-C-A-59-2013.
13. *Lukács v. Air Canada*, Canadian Transportation Agency, LET-C-A-29-2011.
14. *Lukács v. Air Canada*, Canadian Transportation Agency, LET-C-A-80-2011.
15. *Lukács v. Air Canada*, Canadian Transportation Agency, LET-C-A-129-2011.
16. *Lukács v. Air Canada*, Canadian Transportation Agency, 291-C-A-2011.
17. *Lukács v. Air Canada*, Canadian Transportation Agency, 250-C-A-2012.
18. *Lukács v. Air Canada*, Canadian Transportation Agency, 251-C-A-2012.

19. *Lukács v. Air Transat*, Canadian Transportation Agency, 248-C-A-2012.
20. *Lukács v. Porter Airlines*, Canadian Transportation Agency, 16-C-A-2013.
21. *Lukács v. WestJet*, Canadian Transportation Agency, 477-C-A-2010.
22. *Lukács v. WestJet*, Canadian Transportation Agency, 483-C-A-2010.
23. *Lukács v. WestJet*, Federal Court of Appeal, 10-A-41.
24. *Lukács v. WestJet*, Federal Court of Appeal, 10-A-42.
25. *Lukács v. WestJet*, Canadian Transportation Agency, 418-C-A-2011.
26. *Lukács v. WestJet*, Canadian Transportation Agency, 249-C-A-2012.
27. *McCabe v. Air Canada*, Canadian Transportation Agency, 227-C-A-2008.
28. *Mohammad c. Air Canada*, 2010 QCCQ 6858.
29. *Pinksen v. Air Canada*, Canadian Transportation Agency, 181-C-A-2007.
30. *Re: Air Transat*, Canadian Transportation Agency, LET-A-112-2003.
31. *Re: Air Transat*, Canadian Transportation Agency, 28-A-2004.

**Exhibit "A" to the complaint
of Dr. Gábor Lukács**

April 22, 2013
Page 27 of 42

NTA(A) No. 458 TC.A.B. No. 696

Airline Tariff Publishing Company, Agent
**INTERNATIONAL PASSENGER RULES AND FARES TARIFF
NO. AC-2**

10th Revised Page AC-22-A
Cancels 9th Revised Page AC-22-A

| | |
|-------------|---|
| RULE | AIR CANADA SECTION I - GENERAL RULES |
|-------------|---|

80 REVISED ROUTINGS, FAILURE TO CARRY AND MISSED CONNECTIONS (Continued)

(B) CHANGES REQUESTED BY PASSENGER (Continued)

(3) Applicable Fare (Continued)

(b) Any difference between the fare and charges applicable under subparagraph (A) above, and the fare and charges paid by the passenger will be collected from the passenger by the carrier accomplishing the rerouting, who will also pay to the original form of payment any amounts due on account of refunds or arrange for the applicable refund by the carrier that issued the original ticket. (See also Rule 60.)

(4) Expiration Date

The expiration date of any new ticket issued for a change in routing, destination, carrier(s), class of service or validity will be limited to the expiration date that would have been applicable if the new ticket had been issued on the date of sale of the original ticket or Miscellaneous Charges Order.

(C) SCHEDULE IRREGULARITY

- | | |
|---|--|
| C | †[C](1) Given that passengers have a right to information on flight times and schedule changes, Air Canada will make reasonable efforts to inform passengers of delays, cancellations and scheduled changes and to the extent possible, the reason for the delay or change. |
| C | †[C](2) In the event of a scheduled irregularity, Carrier will either: |
| C | (a) carry the passenger on another of its passenger aircraft †[N]or class of service on which space is available without additional charge regardless of the class of service; or, at carrier's option; |
| C | (b) endorse to another air carrier with which Air Canada has an agreement for such transportation, the unused portion of the ticket for purposes of rerouting; or at carrier's option; |
| C | (c) reroute the passenger to the destination named on the ticket or applicable portion thereof by its own or other transportation services; and if the fare for the revised routing or class of service is higher than the refund value of the ticket or applicable portion thereof as determined from Rule 90(D), carrier will require no additional payment from the passenger but will refund the difference if it is lower or. |
| C | †[C](d) If the passenger chooses to no longer travel or if Carrier is unable to perform the option stated in (a) above within a reasonable amount time, make involuntary refund in accordance with Rule 90(D) or, |
| C | †[C](e) upon request, for cancellations within Air Canada's control, return passenger to point of origin and refund in accordance with rule 90(D) (2)(a), as if no portion of the trip had been made (irrespective of applicable fare rules), or subject to passenger's agreement, offer a travel voucher for future travel in the same amount; or, upon passenger request. |
| C | †[C](f) For cancellations within Air Canada's control, if passenger provides credible verbal assurance to Air Canada of certain circumstances that require his/her arrival at destination earlier than options set out in subparagraph (a) above, Air Canada will, if it is reasonable to do so, taking all circumstances known to it into account, and subject to availability, buy passenger a seat on another carrier whose flight is schedule to arrive appreciably earlier than the options proposed in (a) above. Nothing in the above shall limit or reduce the passenger's right, if any, to claim damages, if any, under the applicable Convention, or under the law when neither Convention applies. |
| C | (3) Except as otherwise provided in applicable local law, in addition to the provisions of this rule, in case of scheduled irregularity within its control Air Canada will offer: |
| C | (a) For a schedule irregularity lasting longer than 4 hours, a meal voucher for use, where available, at an airport restaurant or our on board cafe, of an amount dependant on the time of day. |
| C | (b) for a schedule irregularity lasting overnight †[N]or over 8 hours, hotel accommodation subject to availability and ground transportation between the airport and the hotel. This service is only available for out of town passengers. |
| C | (c) If passengers are already on the aircraft when a delay occurs, Air Canada will offer drinks and snacks if it is safe, practical and timely to do so. If the delay exceeds 90 minutes and circumstances permit, Air Canada will offer passengers the option of disembarking from the aircraft until it is time to depart. |

(Continued on next page)

† - Effective August 16 per CTA decision 250 - C - A - 2012

For unexplained abbreviations, reference marks and symbols see IPGT-1, C.A.B. NO. 581, NTA(A) NO. 373.

ISSUED: August 15, 2012

EFFECTIVE: September 29, 2012

(Except as Noted)

Air Transat A.T. Inc.

CTA(A) No. 4
Seventh Revised Page 10
Cancels Sixth Revised Page 10

RULE 3. CURRENCY

All monetary amounts published in this tariff are stated in the lawful currency of Canada unless otherwise specified.

RULE 4. CAPACITY LIMITATIONS

The Carrier shall limit the number of passengers carried on any one flight at fares governed by rules making reference hereto and such fares will not necessarily be available on all flights operated by the Carrier. The number of seats which the Carrier shall make available on a given flight will be determined by the Carrier's best judgment as to the anticipated total passenger load on each flight.

(C) RULE 5. CONDITIONS OF CARRIAGE

5.1 Substitution of Aircraft:

The Carrier may without notice, and subject to any necessary approval of the CTA or government authority, substitute an aircraft of the same or any other appropriate type for the aircraft agreed upon for a flight.

5.2 (C) Responsibility for schedules and operations (Subject to Rule 21):

- a) The Carrier will endeavor to transport passengers and baggage with reasonable dispatch. Times shown in schedules, scheduled contracts, tickets, air waybills or elsewhere are not guaranteed. Flight times are subject to change without notice. The Carrier assumes no responsibility for making connections.
- b) Schedules are subject to change without notice. The Carrier is not responsible or liable for failure to make connections, or for failure to operate any flight according to schedule, or for a change to the schedule of any flight. However, where a routing modification subsequent to the purchase of travel results in a change from a direct service to a connecting service, the Carrier will, upon request by the passenger, provide a full refund of the unused portion of the fare paid. Under no circumstances shall the Carrier be liable for any special, incidental or consequential damages arising directly or indirectly from the foregoing (including the carriage of baggage) whether or not the Carrier had knowledge that such damages might be incurred. Notwithstanding, the Carrier will make reasonable efforts to inform passengers of delays and schedule changes and, to the extent possible, the reason for the delay or change.
- c) Without limiting the generality of the foregoing, the Carrier cannot guarantee that a passenger's baggage will be carried on the flight if sufficient space is not available as determined by the Carrier. Notwithstanding, if the baggage does not arrive on the same flight, the Carrier will take steps to deliver the baggage to the passenger's residence/hotel as soon as possible. The Carrier will take steps to inform the passenger on the status of delivery and will provide the passenger with an overnight kit, as required.
- d) If a flight is delayed for more than four (4) hours beyond scheduled departure time, the Carrier will provide the passenger with a meal voucher. If the flight is delayed more than eight (8) hours and requires an overnight stay, the Carrier will pay for an overnight hotel stay and airport transfers for passengers who did not originate their travel at that airport. If the delay occurs while onboard, the Carrier will offer drinks and snacks, where it is safe to do so. If the delay exceeds 90 minutes and if the aircraft commander permits, the Carrier will offer passengers the option of disembarking until it is time to depart.

Air Transat A.T. Inc.

CTA(A) No. 4
Third Revised Page 47
Cancels Second Revised Page 47

RULE 21 – ADDITIONAL PASSENGER SERVICE COMMITMENTS

1. Given that passengers have a right to information on flight times and schedule changes, the Carrier will make reasonable efforts to inform passengers of delays and schedule changes and to the extent possible, the reason for the delay or change.
2. (i) Given that passengers have a right to take the flight they paid for, if the passenger's journey is interrupted by a flight cancellation or overbooking, the Carrier will take into account all the circumstances of the case as known to it and will provide the passenger with the option of accepting one or more of the following remedial choices:
 - a) transportation to the passenger's intended destination within a reasonable time at no additional cost ;
 - b) return transportation to the passenger's point of origin within a reasonable time at no additional cost;
 - c) **(C)** where no reasonable transportation option is available and upon surrendering of the unused portion of the ticket, a cash amount or travel credit (at the passenger's discretion) in an amount equal to the fare and charges paid will be refunded or provided as a credit where no portion of the ticket has been used. Where a portion of the ticket has been used, an amount equal to the lowest comparable one-way fare for the class of service paid for shall be refunded or provided as a credit in the event of a one-way booking/itinerary, and for round-trip, circle trip or open jaw bookings/itineraries, an amount equal to fifty percent of the round-trip fare and charges for the class of service paid for, for the unused flight segment(s), shall be refunded or provided as a credit.
- (ii) When determining the transportation service to be offered, the Carrier will consider:
 - (a) available transportation services, including services offered by interline, code sharing and other affiliated partners and, if necessary, other non-affiliated carriers;
 - (b) the circumstances of the passenger, as known to it, including any factors which impact upon the importance of timely arrival at destination.
- (iii) **(C)** Having taken all the known circumstances into consideration, the Carrier will take all measures that can reasonably be required to avoid or mitigate the damages caused by the overbooking or cancellation. Where a passenger who accepts option (a) or option (b) or option (c) nevertheless incurs expense as a result of the overbooking or cancellation, the Carrier will in addition offer a cash payment or travel credit, the choice of which will be at the passenger's discretion.
- (iv) When determining the amount of the offered cash payment or travel credit, the Carrier will consider all circumstances of the case, including any expenses which the passenger, acting reasonably, may have incurred as a result of the overbooking or cancellation, as for example, costs incurred for accommodation, meals or additional transportation. The Carrier will set the amount of compensation offered with a view to reimbursing the passenger for all such reasonable expenses.

Air Transat A.T. Inc.

CTA(A) No. 4
First Revised Page 47a
Cancels Original Page 47a

(v) The rights of a passenger against the Carrier in the event of overbooking or cancellation are, in most cases of international carriage, governed by an international convention known as the Montreal Convention, 1999. Article 19 of that Convention provides that an air carrier is liable for damage caused by delay in the carriage of passengers and goods unless it proves that it did everything it could be reasonably expected to do to avoid the damage. There are some exceptional cases of international carriage in which the rights of the passengers are not governed by an international convention. In such cases only, a court of competent jurisdiction can determine which system of laws must be consulted to determine what those rights are.

3. Given that passengers have a right to punctuality, the Carrier will do the following:
 - a) If a flight is delayed and the delay between the scheduled departure of the flight and the actual departure of the flight exceeds 4 hours, the Carrier will provide the passenger with a meal voucher;
 - b) If a flight is delayed by more than 8 hours and the delay involves an overnight stay, the Carrier will pay for an overnight hotel stay and airport transfers for passengers who did not start their travel at that airport;
 - c) If the passenger is already on the aircraft when a delay occurs, the Carrier will offer drinks and snacks if it is safe, practical and timely to do so. If the delay exceeds 90 minutes and the aircraft commander permits, the Carrier will offer passengers the option of disembarking from the aircraft until it is time to depart.
4. Given that passengers have a right to retrieve their luggage quickly, if the luggage does not arrive on the same flight as the passenger, the Carrier will take steps to deliver the luggage to the passenger's residence/hotel as soon as possible. The Carrier will take steps to inform the passenger on the status of the luggage and will provide the passenger with an over-night kit as required. Compensation will be provided as per the provisions of this tariff.
5. **(C)** Given that nothing in this tariff would make the Carrier responsible for acts of force majeure per Rule 5.3 or for the acts of third parties that are not deemed servants and/or agents of the Carrier per applicable law or international conventions, the Carrier will not be held responsible for inclement weather or for the actions of such third parties including governments, air traffic control service providers, airport authorities, security and law enforcement agencies, or border control management authorities.
6. In the event of a conflict between the provisions of this Rule and those of any other rule in this tariff, the provisions of this Rule shall prevail except with respect to Rule 5.3.

Airline Tariff Publishing Company, Agent
INTERNATIONAL PASSENGER RULES AND FARES TARIFF
NO. WS-1

Original Page MS-20

| RULE | SECTION I - GENERAL RULES |
|---|---|
| C75 | <p>[N]CARRIER CANCELLATION, CHANGE, AND REFUND TERMS (See Rules 60, 100, 105 and 110 for additional Information)</p> <p>(A) The provisions of this Rule are not intended to make the Carrier responsible in all cases for the acts of nature, or for the acts of third parties that are not deemed servants and/or agents of the Carrier per applicable law or international conventions and all the rights here described are subject to the following exception: The Carrier shall not be liable for damage occasioned by overbooking or cancellation if it, and its employees and agents, took all measures that could reasonably be reasonably be required to avoid the damage or if it was impossible for the Carrier, and its employees or agents, to take such measures.</p> <p>(B) Subject to the exception stated in (A), if a flight is overbooked or cancelled, with the result that a ticketed passenger is not transported on a flight for which he held confirmed space, the Carrier will define a remedy or remedies to mitigate the impact of the overbooking or cancellation upon the passenger. In defining the remedy or remedies appropriate in a particular case, the Carrier will consider the transportation needs of the passenger and any damages the passenger may have suffered by reason of the overbooking or cancellation. In cases where the passenger is offered alternative remedies, the choice among the alternatives shall rest with the passenger. In particular, the Carrier will offer one or more of the following remedies:</p> <ol style="list-style-type: none"> (1) Transportation, without further charge and within a reasonable time, to the passenger's intended destination on a transportation service which service will be identified by the Carrier; (2) Transportation, without further charge and within a reasonable time, to the passenger's point of origin on a transportation service which service will be identified by the Carrier; (3) A monetary payment in an amount to be defined by the Carrier which shall in no case be less than the value of the unused portion of the passenger's ticket; (4) A credit, to be defined by the Carrier, towards the purchase of future transportation on a service operated by the Carrier. <p>(C) In identifying the transportation service to be offered to the passenger, the Carrier will not limit itself to considering its own services or the services of carriers with which it has interline agreements.</p> <p>(D) In defining the alternative remedies to be offered, the Carrier will consider, to the extent they are known to the Carrier, the circumstances of the passenger affected by the overbooking or cancellation, including any expenses which the passenger, acting reasonably, may have incurred as a result of the overbooking or cancellation as, for example, costs incurred for accommodation, meals or additional transportation.</p> <p>(E) In defining the alternative remedies to be offered, the Carrier will make a good faith effort to fairly recognize, and appropriately mitigate, the impact of the overbooking or cancellation upon the passenger.</p> <p>(F) The rights of a passenger against the Carrier in the event of overbooking or cancellation are, in most cases of international carriage, governed by an international convention known as the Montreal Convention, 1999. Article 19 of that convention provides that an air carrier is liable for damage caused by delay in the carriage of passengers and goods unless it proves that it did everything it could be reasonable expected to do to avoid the damage. There are some exceptional cases of international carriage in which the rights of passengers are not governed by an international convention. In such cases only a court of competent jurisdiction can determine which system of laws must be consulted to determine what those rights are.</p> <p>(G) For the purpose of this Rule, a passenger whose journey is interrupted by a flight cancellation or overbooking, and to whom the Carrier is not able to present a reasonable transportation option which takes into account all known circumstances, may surrender the unused portion of his/her ticket. In such a case the value of that unused portion shall be calculated as follows:</p> <ol style="list-style-type: none"> (1) When no portion of the trip has been made, when due to a cancellation or denied boarding within the Carrier's control, if the passenger chooses to no longer travel and return to the point of origin, the amount of refund will be the fare and charges paid. (2) When a portion of the trip has been made, the refund will be calculated as follows: Either an amount equal to the one-way fare less the same rate of discount, if any, that was applied in calculating the original one-way fare, or on round-trip tickets, one half of the round-trip fare and charges applicable to the unused transportation from the point of termination to the destination or stopover point named on the ticket. |
| <p>For unexplained abbreviations, reference marks and symbols see IPGT-1, C.A.B. NO. 581, NTA(A) NO. 373.</p> | |
| <p>ISSUED: November 29, 2012</p> | <p>EFFECTIVE: January 13, 2013</p> |

Airline Tariff Publishing Company, Agent
INTERNATIONAL PASSENGER RULES AND FARES TARIFF
NO. WS-1

1st Revised Page MS-28
Cancels Original Page MS-28

| RULE | SECTION I - GENERAL RULES |
|---|---|
| <p>100</p> <p>C</p> <p>C</p> | <p>TRAVELLER'S RIGHT PROVISIONS</p> <p>(A) If a flight is delayed and the delay between the scheduled departure of the flight and the actual departure of the flight exceeds 4 hours, the Carrier will provide the passenger with a meal voucher.</p> <p>(B) If a flight is delayed by more than 8 hours and the delay involves an overnight stay, the Carrier will pay for overnight hotel stay and airport transfers for passengers who did not start their travel at that airport.</p> <p>(C) If the passenger is already on the aircraft when a delay occurs, the airline will offer drinks and snacks if it is safe, practical and timely to do so. If the delay exceeds 90 minutes and circumstances permit, WestJet will offer passengers the option of disembarking from the aircraft until it is time to depart if safe and practical to do so.</p> <p>(D) The Carrier will endeavor to transport the passenger and baggage with reasonable dispatch, but times shown in timetables or elsewhere are not guaranteed and form no part of this contract.</p> <p>(E) The agreed stopping places are those places shown in the Carrier's timetable as scheduled stopping places on the route. The Carrier may, without notice, substitute alternative carriers or aircraft and, if necessary, may alter or omit stopping places shown in the timetable.</p> <p>(F) [X]</p> <p>(G) [X]</p> |
| <p>105</p> | <p>REFUNDS</p> <p>(A) VOLUNTARY CANCELLATIONS If a passenger decides not to use the ticket and cancels the reservation, the passenger may not be entitled to a refund, depending on any refund condition attached to the particular fare.</p> <p>(B) INVOLUNTARY CANCELLATIONS In the event a refund is required because of the Carrier's failure to operate or refusal to transport, the refund will be made as follows: If the ticket is totally or partially unused, the total fare paid for each unused segment will be refunded.</p> |
| <p>For unexplained abbreviations, reference marks and symbols see IPGT-1, C.A.B. NO. 581, NTA(A) NO. 373.</p> | |
| <p>ISSUED: February 21, 2013</p> | <p>EFFECTIVE: April 7, 2013</p> |

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- (g) not withstanding the above, the Carrier reserves the right to waive, in whole or part, the payment by any passenger of a cancellation fee or a change fee.

3.4 Carrier Cancellation, Change and Refund Terms

The Carrier reserves the right to cancel or change the planned departure, schedule, route, aircraft or stopping places of any flight for which fares in respect of a International Service have been paid, at any time and from time to time, for any reason, without notice to any passengers affected thereby and, in connection therewith, the Carrier shall not be liable to any passenger in respect of such cancellation or change, whether or not resulting from an Event of Force Majeure; provided that, the Carrier may and reserves the right, at its sole discretion, to provide any passengers affected by such cancellation or change with:

- (a) a credit, valid for one year from the cancellation date, towards the provision of a fare relating to a future flight or flights if booked as a round trip and the originating sector is cancelled, which credit shall be equal to the original fare (s) which was/were cancelled; or
- (b) to otherwise refund to such passenger, an amount which shall not be greater than the fare paid by that passenger in respect of that flight or flights if booked as a round trip and the originating sector is cancelled.

RULE 4. RATES AND CHARGES – CARGO SERVICE

4.1 Cargo Service Rates and Charges

NO CARGO ACCEPTED

4.2 Bulk Cargo Service Agreement

Intentionally left blank

4.3 Payment Terms

Intentionally left blank

4.4 Refunds

Intentionally left blank

For example of abbreviations, reference marks and symbols used but not explained hereon, see page 2.

ISSUE DATE
December 04, 2006

EFFECTIVE DATE
December 05, 2006
Per CTA SP#19492

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CTA (A) No. 2
Original Page 29

SECTION III - RESERVATIONS

RULE 13. CONFIRMATION OF RESERVED SPACE

A reservation of space on a given flight is valid when the availability and allocation of such space is confirmed by the carrier to a person subject to payment or other satisfactory credit arrangements. A passenger with a valid confirmation number reflecting reservations for a specific flight and date on the carrier is considered confirmed, unless the reservation was cancelled due to one of the reasons indicated in Rule 14. The carrier does not guarantee to provide any particular seat on the aircraft.

RULE 14. CANCELLATION OF RESERVATIONS

Refer to **Rule 3.3 Passenger Cancellation, Change and Refund Terms** for applicable terms and conditions.

RULE 15. CARRIER CANCELLATION, CHANGE, AND REFUND TERMS

The Carrier reserves the right to cancel or change the planned departure, schedule, route, aircraft or stopping places of any flight for which fares have been paid, at any time and from time to time, for any reason, without notice to any passengers affected thereby and, in connection therewith, the Carrier shall not be liable to any passenger in respect of such cancellation or change, whether or not resulting from an Event of Force Majeure; provided that, the Carrier may and reserves the right, at its sole discretion, to provide any passengers affected by such cancellation or change with:

- (a) a credit, valid for one year from the cancellation date, towards the provision of a fare relating to a future flight, which credit shall be equal to the original fare which was cancelled; or
- (b) to otherwise refund to such passenger, an amount which shall not be greater than the fare paid by that passenger in respect of that flight.

SECTION VI - REFUNDS

RULE 18. RESPONSIBILITY FOR SCHEDULES AND OPERATIONS

- (a) The carrier will endeavour to transport the passenger and baggage with reasonable dispatch, but times shown in timetables or elsewhere are not guaranteed and form no part of this contract.
- (b) The agreed stopping places are those places shown in the carrier's timetable as scheduled stopping places on the route. The carrier may, without notice, substitute alternative carriers or aircraft and, if necessary, may alter or omit stopping places shown in the timetable.
- (c) Schedules are subject to change without notice. The carrier is not responsible or liable for failure to make connections or for failure to operate any flight according to schedule, or for a change to the schedule of any flight. The Carrier is not liable for any special, incidental or consequential damages arising from the foregoing.
- (d) Without limiting the generality of the foregoing, the carrier cannot guarantee that the passenger's baggage will be carried on the flight if sufficient space is not available as determined by the carrier.
- (e) Subject to the Warsaw Convention, or the Montreal Convention, as the case may be, the carrier will not provide or reimburse passengers for expenses incurred due to delays or cancellations of flights.
- (f) Notwithstanding any other terms or conditions contained herein, but subject to the Montreal convention or the Warsaw Convention, as the case may be, the Carrier shall not be liable for failure in the performance of any of its obligations due to:
 - i) Act of God.
 - ii) War, revolution, insurrection, riot, blockade or any other unlawful act against public order or authority including an act of terrorism involving the use or release or threat thereof, of any nuclear weapon or device or chemical or biological agent

SUNWING AIRLINE INC.

- iii) Strike, lock-out, labour dispute, or other industrial disturbance whether involving the Carrier's employees or others upon whom the Carrier relies.
- iv) Fire, flood, explosion, storm, lightning or adverse weather conditions generally.
- v) Accidents to or failure of the aircraft or equipment used in connection therewith including, in particular, mechanical failure.
- vi) Non-availability of fuel at the airport of origin, destination or enroute stop.
- vii) Others upon whom the Carrier relies for the performance of the whole or any part of any charter contract or flight.
- viii) Government order, regulation, action or inaction.
- ix) Unless caused by its negligence, any difference in weight or quantity of cargo from shrinkage, leakage or evaporation.
- x) The nature of the cargo or any defect in the cargo or any characteristic or inherent vice therein.
- xi) Violation by a consignee or any other party claiming an interest in the cargo of any of the terms and conditions contained in this tariff or in any other applicable tariff including, but without being limited to, failure to observe any of the terms and conditions relating to cargo not acceptable for transportation or cargo acceptable only under certain conditions.
- xii) Improper or insufficient packing, securing, marking or addressing.
- xiii) Acts or omissions of warehousemen, customs or quarantine officials or other persons other than the Carrier or its agents, in gaining lawful possession of the cargo.
- xiv) Compliance with delivery instructions from the consignor or consignee.
- xv) Failure to obtain the approval of any government agency, commission, board or other tribunal having jurisdiction in the circumstances as may be required to the conduct of operations hereunder or any government or legal restraint upon such operation.
- xvi) Loss of or hijacking of aircraft, or any shortage of or inability to provide labour, fuel or facilities.

SUNWING AIRLINES INC.

CTA (A) No. 2
1st Revised Page 37
Replaces Original Page 37

(xvii) Any other causes beyond the reasonable control of the carrier and any other event not reasonably to be foreseen, anticipated or predicted, whether actual, threatened or reported, which may interfere with the operations of the Carrier.

Upon the happening of any of the foregoing events, the Carrier may without notice cancel, terminate, divert, postpone or delay any flight whether before departure or enroute. If the flight, having commenced is terminated, the carrier shall refund the unused portion of the fare and shall use its best effort to provide alternate transportation to the destination for the passengers and baggage at the expense and risk of the passenger or shipper. If the flight has not commenced prior to termination, the carrier will provide a credit equal to the paid fare which will be available for use in the purchase of a new ticket on the same terms for a period of one year from the date of termination. No refund will be available.

(g) Cut-Off Times (C)

Check-in counters are open 3 hours prior to the scheduled departure, and will close 60 minutes before scheduled departure. Passenger(s) arriving for check-in after 60 minutes prior to the scheduled departure will not be accepted for travel.

After passenger(s) have checked in for their flight, they should be available at the gate not later than 30 minutes prior to the scheduled departure for boarding the aircraft. Passengers who arrive at the boarding gate after the gate has closed will not be accepted for travel.

Passenger(s) who arrive later than the recommended times for check-in or at the boarding gate will not be eligible for any denied boarding compensation or refund. (C)

Exhibit "T" to the complaint of Dr. Gábor Lukács

April 22, 2013
Page 38 of 42

History → Sunwing #420 → FlightAware

http://flightaware.com/live/flight/SWG420/history



LIVE FLIGHT TRACKING

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[My FlightAware](#)
[My Alerts](#)
English (Canada)

09:29PM ADT

3.1k

Live Flight Tracking

[FlightAware](#) → [Live Flight Tracker](#) → [History](#) → **Sunwing #420**

Aviation Photos

Flight Activity History (SWG420)

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ACTIVITY LOG

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LIVE FLIGHT TRACKER

PRIVATE FLIGHT TRACKER:

Flight/Tail#

TRACK FLIGHT

AIRLINE FLIGHT TRACKER:

Airline

Flight #

TRACK FLIGHT

FORGOT THE FLIGHT NUMBER?

AIRPORT TRACKER/INFO

Airport Code

-or-

Airport City

VIEW ACTIVITY

VIEW INFO

| Date | Aircraft | Origin | Destination | Departed | Arrival | Duration |
|-----------------------------|----------|------------------------------|-------------------------------|-------------|-----------------|----------|
| 2013-Mar-27 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:18AM EDT | 01:54PM AST | 3:36 |
| 2013-Mar-26 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:11AM EDT | 01:52PM AST | 3:41 |
| 2013-Mar-25 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:12AM EDT | 01:56PM AST | 3:44 |
| 2013-Mar-24 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:16AM EDT | 01:53PM AST | 3:37 |
| 2013-Mar-23 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:25AM EDT | 01:57PM AST | 3:32 |
| 2013-Mar-22 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:16AM EDT | 01:51PM AST | 3:35 |
| 2013-Mar-21 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:25AM EDT | 02:07PM AST | 3:42 |
| 2013-Mar-20 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:10AM EDT | 01:45PM AST | 3:35 |
| 2013-Mar-19 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:30AM EDT | 02:16PM AST | 3:46 |
| 2013-Mar-18 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:12AM EDT | 01:52PM AST | 3:40 |
| 2013-Mar-17 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:44AM EDT | 02:27PM AST (Z) | 3:43 |
| 2013-Mar-16 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:26AM EDT | 02:02PM AST | 3:36 |
| 2013-Mar-15 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:27AM EDT | 02:04PM AST | 3:37 |
| 2013-Mar-14 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 06:57AM EDT | 10:56AM AST | 3:59 |
| 2013-Mar-13 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:33AM EDT | 02:17PM AST | 3:44 |
| 2013-Mar-12 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:04AM EDT | 01:59PM AST (Z) | 3:55 |
| 2013-Mar-11 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:21AM EDT | 01:51PM AST | 3:30 |
| 2013-Mar-10 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:09AM EDT | 01:38PM AST | 3:29 |
| 2013-Mar-09 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:07AM EST | 02:40PM AST | 3:33 |
| 2013-Mar-08 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:24AM EST | 02:47PM AST | 3:23 |
| 2013-Mar-07 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 11:12AM EST | 03:42PM AST | 3:30 |
| 2013-Mar-06 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:05AM EST | 02:58PM AST | 3:52 |
| 2013-Mar-05 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:15AM EST | 03:01PM AST | 3:46 |
| 2013-Mar-04 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:08AM EST | 02:46PM AST | 3:38 |

**Exhibit "T" to the complaint
of Dr. Gábor Lukács**

April 22, 2013
Page 39 of 42

History → Sunwing #420 → FlightAware

<http://flightaware.com/live/flight/SWG420/history>

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Hosting Experts

Dedicated Servers

ASP.NET Hosting

Cloud Servers

24/7/365 US Based Support

Server Intellect™
800-317-8552

| Date | Aircraft | Origin | Destination | Departed | Arrival | Duration |
|-----------------------------|----------|------------------------------|-------------------------------|-------------|-----------------|----------|
| 2013-Mar-03 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:23AM EST | 03:33PM AST | 4:10 |
| 2013-Mar-02 | B738 | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:38AM EST | 03:33PM AST | 3:55 |
| 2013-Mar-01 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 05:28PM EST | 10:11PM AST | 3:43 |
| 2013-Feb-28 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:40AM EST | 03:24PM AST | 3:44 |
| 2013-Feb-27 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:46AM EST | 03:30PM AST | 3:44 |
| 2013-Feb-26 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:17AM EST | 03:00PM AST | 3:43 |
| 2013-Feb-25 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:08AM EST | 02:44PM AST | 3:36 |
| 2013-Feb-24 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:58AM EST | 03:48PM AST | 3:50 |
| 2013-Feb-23 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:23AM EST | 03:05PM AST | 3:42 |
| 2013-Feb-22 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:18AM EST | 02:54PM AST | 3:36 |
| 2013-Feb-21 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:06AM EST | 02:36PM AST | 3:30 |
| 2013-Feb-20 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:34AM EST | 03:02PM AST | 3:28 |
| 2013-Feb-19 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:35AM EST | 03:24PM AST (?) | 3:49 |
| 2013-Feb-18 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:28AM EST | 03:03PM AST | 3:35 |
| 2013-Feb-17 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 11:02AM EST | 03:56PM AST | 3:54 |
| 2013-Feb-16 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:36AM EST | 03:32PM AST | 3:56 |
| 2013-Feb-15 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:53AM EST | 03:55PM AST | 4:02 |
| 2013-Feb-14 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 09:53AM EST | 02:39PM AST | 3:46 |
| 2013-Feb-13 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 09:54AM EST | 02:43PM AST | 3:49 |
| 2013-Feb-12 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:20AM EST | 02:46PM AST | 3:26 |
| 2013-Feb-11 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:28AM EST | 02:51PM AST | 3:23 |
| 2013-Feb-10 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:38AM EST | 03:04PM AST | 3:26 |
| 2013-Feb-09 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 11:26AM EST | 03:53PM AST | 3:27 |
| 2013-Feb-08 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 01:40PM EST | 06:13PM AST | 3:33 |
| 2013-Feb-07 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:22AM EST | 03:01PM AST | 3:39 |
| 2013-Feb-06 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:50AM EST | 03:20PM AST | 3:30 |
| 2013-Feb-05 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:34AM EST | 03:39PM AST (?) | 4:05 |
| 2013-Feb-05 | B738/Q | 2955N | Punta Cana Int'l (MDPC / PUJ) | 03:34PM UTC | 03:39PM AST (?) | 4:05 |
| 2013-Feb-04 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:14AM EST | 02:47PM AST | 3:33 |
| 2013-Feb-03 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:26AM EST | 03:12PM AST | 3:46 |
| 2013-Feb-02 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:56AM EST | 03:34PM AST | 3:38 |
| 2013-Feb-01 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:09AM EST | 02:51PM AST | 3:42 |
| 2013-Jan-31 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 11:06AM EST | 03:51PM AST | 3:45 |

**Exhibit "T" to the complaint
of Dr. Gábor Lukács**

April 22, 2013
Page 40 of 42

History → Sunwing #420 → FlightAware

<http://flightaware.com/live/flight/SWG420/history>

| Date | Aircraft | Origin | Destination | Departed | Arrival | Duration |
|-----------------------------|-----------------|---|--|-----------------|--------------------|-----------------|
| 2013-Jan-30 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:23AM EST | 03:03PM AST | 3:40 |
| 2013-Jan-29 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:17AM EST | 02:54PM AST | 3:37 |
| 2013-Jan-28 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:58AM EST | 03:25PM AST | 3:27 |
| 2013-Jan-27 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:36AM EST | 03:13PM AST | 3:37 |
| 2013-Jan-26 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:17AM EST | 02:53PM AST | 3:36 |
| 2013-Jan-25 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:14AM EST | 02:51PM AST | 3:37 |
| 2013-Jan-24 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:17AM EST | 02:51PM AST | 3:34 |
| 2013-Jan-23 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:20AM EST | 03:05PM AST | 3:45 |
| 2013-Jan-22 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 11:40AM EST | 04:30PM AST | 3:50 |
| 2013-Jan-21 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:06AM EST | 02:40PM AST | 3:34 |
| 2013-Jan-20 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:44AM EST | 03:32PM AST | 3:48 |
| 2013-Jan-19 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:15AM EST | 02:59PM AST | 3:44 |
| 2013-Jan-18 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:26AM EST | 03:07PM AST | 3:41 |
| 2013-Jan-17 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:14AM EST | 03:29PM AST (?) | 4:15 |
| 2013-Jan-16 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:08AM EST | 03:00PM AST | 3:52 |
| 2013-Jan-15 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:10AM EST | 02:54PM AST | 3:44 |
| 2013-Jan-14 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:19AM EST | 02:56PM AST | 3:37 |
| 2013-Jan-13 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:11AM EST | 02:54PM AST | 3:43 |
| 2013-Jan-12 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:07AM EST | 02:45PM AST | 3:38 |
| 2013-Jan-11 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:11AM EST | 02:53PM AST | 3:42 |
| 2013-Jan-10 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:14AM EST | 02:52PM AST | 3:38 |
| 2013-Jan-09 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:33AM EST | 03:19PM AST | 3:46 |
| 2013-Jan-08 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:10AM EST | 02:46PM AST | 3:36 |
| 2013-Jan-07 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:36AM EST | 03:20PM AST | 3:44 |
| 2013-Jan-06 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:55AM EST | 03:36PM AST | 3:41 |
| 2013-Jan-05 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:33AM EST | 03:19PM AST | 3:46 |
| 2013-Jan-04 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:20AM EST | 03:10PM AST | 3:50 |
| 2013-Jan-03 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:49AM EST | 03:42PM AST | 3:53 |
| 2013-Jan-02 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:11AM EST | 02:50PM AST | 3:39 |
| 2013-Jan-01 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:17AM EST | 02:53PM AST | 3:36 |
| 2012-Dec-31 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:20AM EST | 02:49PM AST | 3:29 |
| 2012-Dec-30 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:45AM EST | 03:11PM AST | 3:26 |
| 2012-Dec-29 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 12:44PM EST | 05:23PM AST | 3:39 |

**Exhibit "T" to the complaint
of Dr. Gábor Lukács**

April 22, 2013
Page 41 of 42

History → Sunwing #420 → FlightAware

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| Date | Aircraft | Origin | Destination | Departed | Arrival | Duration |
|------------------------------------|---|------------------------------|-------------------------------|-------------|-----------------|----------|
| 2012-Dec-28 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 11:03AM EST | 03:34PM AST | 3:31 |
| 2012-Dec-27 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 12:03PM EST | 04:34PM AST | 3:31 |
| 2012-Dec-26 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:22AM EST | 03:14PM AST | 3:52 |
| 2012-Dec-25 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:30AM EST | 03:00PM AST (?) | 3:30 |
| 2012-Dec-24 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:42AM EST | 03:17PM AST | 3:35 |
| 2012-Dec-23 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:54AM EST | 03:25PM AST | 3:31 |
| 2012-Dec-22 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 11:06AM EST | 03:48PM AST | 3:42 |
| 2012-Dec-21 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:17AM EST | 03:12PM AST | 3:55 |
| 2012-Dec-20 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:14AM EST | 02:58PM AST | 3:44 |
| 2012-Dec-19 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:13AM EST | 02:40PM AST | 3:27 |
| 2012-Dec-18 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:28AM EST | 03:16PM AST | 3:48 |
| 2012-Dec-17 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:31AM EST | 03:10PM AST | 3:39 |
| 2012-Dec-16 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:10AM EST | 02:48PM AST | 3:38 |
| 2012-Dec-15 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:19AM EST | 02:45PM AST | 3:26 |
| 2012-Dec-13 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:21AM EST | 03:02PM AST | 3:41 |
| 2012-Dec-12 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:27AM EST | 03:26PM AST | 3:59 |
| 2012-Dec-11 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:20AM EST | 03:18PM AST | 3:58 |
| 2012-Dec-10 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:12AM EST | 02:53PM AST | 3:41 |
| 2012-Dec-09 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:15AM EST | 03:00PM AST | 3:45 |
| 2012-Dec-08 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:22AM EST | 03:01PM AST | 3:39 |
| 2012-Dec-06 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:22AM EST | 03:11PM AST | 3:49 |
| 2012-Dec-05 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:14AM EST | 03:00PM AST (?) | 3:46 |
| 2012-Dec-04 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:30AM EST | 03:20PM AST | 3:50 |
| 2012-Dec-03 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:12AM EST | 02:47PM AST | 3:34 |
| 2012-Dec-02 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:30AM EST | 03:03PM AST | 3:33 |
| 2012-Dec-01 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:29AM EST | 03:09PM AST | 3:40 |
| 2012-Nov-29 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:05AM EST | 02:45PM AST | 3:40 |
| 2012-Nov-28 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:40AM EST | 03:14PM AST | 3:34 |
| 2012-Nov-27 | B738/Q | Toronto Pearson Int'l (CYYZ) | Punta Cana Int'l (MDPC / PUJ) | 10:23AM EST | 03:10PM AST (?) | 3:47 |
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**Exhibit "T" to the complaint
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April 22, 2013
Page 42 of 42

History → Sunwing #420 → FlightAware

<http://flightaware.com/live/flight/SWG420/history>

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