

March 21, 2013

VIA EMAIL

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

Dear Madam Secretary:

**Re: The Nawrots v. Sunwing Airlines (our reference: 0575-Nawrot)
Complaint concerning denied boarding and/or failure to provide transportation
and/or delay on or around August 10, 2012**

I am counsel for Mr. Raymond Paul Nawrot, Ms. Kristina Marie Nawrot, and Ms. Karolyn Theresa Nawrot (the “Nawrots”) in this matter. Please accept the following formal complaint pursuant to ss. 111(1) and 113.1 of the *Air Transportation Regulations* (“ATR”), S.O.R./88-58 and Rule 40 of the *Canadian Transportation Agency General Rules*, S.O.R./2005-35.

OVERVIEW

The Nawrots purchased Toronto-London (Gatwick)-Toronto round trip tickets in Canada in summer 2012 on flights of Sunwing Airlines. Sunwing Airlines notified the Nawrots that their return flight, from London Gatwick to Toronto, was delayed by more than 14 hours, and would depart in the wee hours, at 2:25 am. The Nawrots presented themselves for check-in at or around 1:10 am, that is, more than 75 minutes before the departure of their flight, but found all check-in counters deserted, and the lights dimmed. Their request to check-in and board their flight was denied. Several hours later, Sunwing Airlines offered to transport the Nawrots to Toronto 6 days later. The Nawrots did not accept this unreasonable offer, and purchased one-way tickets on Air Canada.

Sunwing Airlines refuses to compensate the Nawrots for their substantial out-of-pocket expenses incurred as a result of Sunwing Airlines’ failure to transport the Nawrots as contracted, and claims that the Nawrots were simply “no shows”.

The Nawrots are asking the Agency to direct Sunwing Airlines to reimburse them for their out-of-pocket expenses as well as to pay them denied boarding compensation, and to substitute Sunwing Airlines’ denied boarding compensation policy for failing to be just and reasonable, contrary to ss. 111(1) of the *ATR*.

FACTS

1. On or around January 26, 2012, the Nawrots purchased the following itinerary on Sunwing Airlines:

| Flight | Date | Depart | Arrive |
|---------------|---------------|-------------------------------|------------------------------------|
| WG 200 | Jul. 29, 2012 | Toronto (YYZ) 11:00 pm | London Gatwick (LGW) 11:20 am (+1) |
| WG 201 | Aug. 10, 2012 | London Gatwick (LGW) 12:20 pm | Toronto (YYZ) 3:35 pm |

Affidavit of Mr. Nawrot (February 28, 2013), para. 1 and Exhibit “A”

2. The “Important Information” provided by Sunwing Airlines to the Nawrots as part of their electronic ticket states that:

It is strongly recommended that all passengers arrive 4 hours prior to departure to allow check-in and to ensure adequate time to pass through airport security. For all airports within Canada and overseas, the check-in desk will be open 4 hours prior to departure and close 1 hour prior to departure. All passengers arriving after the check-in desk closes will be denied boarding. Remember to check your flight itinerary for your departure airport / terminal and reconfirm your flight(s).

[Emphasis added.]

Affidavit of Mr. Nawrot (February 28, 2013), Exhibit “A”

3. The Nawrots’ outbound journey, from Toronto to London, was eventless.

Affidavit of Mr. Nawrot (February 28, 2013), para. 2

4. On August 9 and 10, 2012, the Nawrots received four email messages from Sunwing Airlines informing them about a “change” to the “flight schedule” of Flight WG 201, their return journey from London Gatwick to Toronto. The last of these emails stated that flight WG 201 would depart from London Gatwick at 2:25 am on the following day, that is, it would be delayed by more than 14 hours.

**Affidavit of Mr. Nawrot (February 28, 2013), paras. 3 & 5, Exhibits “B”, “C”, “D”, and “E”
Declaration of Karolyn Theresa Nawrot (March 4, 2013), para. 4**

5. When Mr. Nawrot received the first of these emails, he contacted a friend in Toronto, who inquired on his behalf about the departure time of Flight WG 201, and confirmed the accuracy of the information contained in the email.

Affidavit of Mr. Nawrot (February 28, 2013), para. 4

6. Given that Flight WG 201 was delayed by more than 14 hours, the Nawrots stayed at the Holiday Inn Express in North Acton during the day of August 10, 2012.

Affidavit of Mr. Nawrot (February 28, 2013), para. 6 and Exhibit "F"
Declaration of Karolyn Theresa Nawrot (March 4, 2013), para. 5

7. The Nawrots left the Holiday Inn Express on August 10, 2012 at approximately 11:00 pm, and headed to the Gatwick Airport. They first took the Underground, and then the train from Victoria Station.

Affidavit of Mr. Nawrot (February 28, 2013), para. 7
Declaration of Karolyn Theresa Nawrot (March 4, 2013), para. 6
Declaration of Kristina Marie Nawrot (March 4, 2013), para. 5

8. According to the credit card statement of Mr. Nawrot, their train tickets were purchased on August 10, 2012, and in particular, before midnight.

Affidavit of Mr. Nawrot (February 28, 2013), Exhibit "G"

9. The Nawrots' train ride to the airport lasted approximately 50 minutes, and they arrived at the Gatwick Airport shortly after 1:00 am on August 11, 2012.

Affidavit of Mr. Nawrot (February 28, 2013), para. 8
Declaration of Kristina Marie Nawrot (March 4, 2013), para. 5
Declaration of Karolyn Theresa Nawrot (March 4, 2013), para. 6

10. On August 11, 2013, at approximately 1:10 am, the Nawrots presented themselves for check-in at the London Gatwick Airport (North Terminal), but found all counters to be unattended and the lights dimmed.

Affidavit of Mr. Nawrot (February 28, 2013), para. 9
Declaration of Kristina Marie Nawrot (March 4, 2013), para. 6
Declaration of Karolyn Theresa Nawrot (March 4, 2013), para. 7

11. Mr. Nawrot sought the assistance of a flight attendant for another airline, who was passing through the departures hall, to speak to a supervisor.

Affidavit of Mr. Nawrot (February 28, 2013), para. 9
Declaration of Kristina Marie Nawrot (March 4, 2013), para. 6

12. Mr. Nawrot first spoke on the phone to an airport staff, who advised him that the captain of Flight WG 201 would not allow the Nawrots to board the flight.

Affidavit of Mr. Nawrot (February 28, 2013), para. 9

13. Subsequently, a supervisor attended the check-in area, and advised Mr. Nawrot that his family was supposed to check in three hours before the flight, and they would not be allowed to board the flight. The supervisor advised Mr. Nawrot that no representatives of Sunwing Airlines were present at the airport at that time.

**Affidavit of Mr. Nawrot (February 28, 2013), para. 10
Declaration of Kristina Marie Nawrot (March 4, 2013), paras. 6-7**

14. After the supervisor spoke to other travellers who were present, Mr. Nawrot made another attempt to persuade the supervisor to allow the Nawrot family to check in and board their flight. The supervisor, however, turned around and left.

Affidavit of Mr. Nawrot (February 28, 2013), paras. 11-12

15. After the supervisor left, Mr. Nawrot was informed by a caretaker that Sunwing Airlines had closed its check-in counters much earlier, and that in the caretaker's experience, the plane would remain at the gate for at least another 45 minutes.

Affidavit of Mr. Nawrot (February 28, 2013), para. 12

16. The Nawrots left the airport terminal shortly after 1:45 am, and headed to the London Gatwick Sofitel hotel on foot, which took them approximately 10 minutes.

Affidavit of Mr. Nawrot (February 28, 2013), para. 13

17. The Nawrots reached the London Gatwick Sofitel hotel at approximately 2:00 am on August 11, 2013. Mr. Nawrot's credit card was pre-authorized at the London Gatwick Sofitel at 2:05 am on August 11, 2012.

Affidavit of Mr. Nawrot (February 28, 2013), para. 14 and Exhibit "H"

18. On the morning of August 11, 2012, Mr. Nawrot returned to the terminal by himself to ask that the Nawrots be transported back to Toronto on Sunwing Airlines' next flight that day. His request was refused.

Affidavit of Mr. Nawrot (February 28, 2013), para. 15

19. On August 11, 2012, Mr. Nawrot sent an email to advise Sunwing Airlines that the Nawrots were stranded in London, and to seek assistance to be transported back to Toronto.

Affidavit of Mr. Nawrot (February 28, 2013), para. 16 and Exhibit "I"

20. On August 11, 2012, Sunwing Airlines offered to transport the Nawrots to Toronto six days later than originally scheduled, that is, on August 16, 2012.

Affidavit of Mr. Nawrot (February 28, 2013), para. 17 and Exhibit "J"

21. This offer was unreasonable and unacceptable for the Nawrots, because Ms. Kristina Marie Nawrot and Ms. Karolyn Theresa Nawrot were due to attend a sports camp near Toronto from August 12, 2012 until August 19, 2012.

**Affidavit of Mr. Nawrot (February 28, 2013), para. 18
Declaration of Kristina Marie Nawrot (March 4, 2013), paras. 2-3
Declaration of Karolyn Theresa Nawrot (March 4, 2013), paras. 2-3**

22. The refusal of Sunwing Airlines to transport the Nawrots back to Toronto as contracted in the first place, and its subsequent failure to offer a reasonable way for the Nawrots to return to Toronto in a timely manner, left the Nawrots with no choice but to purchase one-way tickets on Air Canada from London to Toronto at a substantial cost, and return to Toronto on August 12, 2012 using these tickets.

Affidavit of Mr. Nawrot (February 28, 2013), para. 19 and Exhibits “K” and “L”

23. The Nawrots also incurred out-of-pocket expenses with respect to their stay at the London Gatwick Sofitel hotel for two nights, and meals during their unplanned 2-day stay in London.

Affidavit of Mr. Nawrot (February 28, 2013), para. 20 and Exhibit “M”

24. The out-of-pocket expenses incurred by the Nawrots in relation to their delay and their being denied boarding on Flight WG 201 are summarized in the following table:

| Description | Amount | CAD\$ |
|--|---------------|-------------------|
| 3 one-way airfares from London (LHR) to Toronto (YYZ) | US\$3,858.93 | \$3,941.76 |
| plus travel agent fees/taxes | US\$35.85 | \$36.62 |
| 1 night at Holiday Inn Express North Acton | GBP 99.00 | \$157.99 |
| 2 nights at London Gatwick’s Sofitel | GBP 291.60 | \$466.95 |
| Meals for 3 people for 2 days (CAD\$60 per person per day) | | \$360.00 |
| TOTAL (in CAD\$): | | \$4,963.32 |

25. Since the Nawrots’ return to Toronto on August 12, 2012, Mr. Nawrot has made numerous attempts to seek compensation for these out-of-pocket expenses; however, Sunwing Airlines insists that the Nawrots were “no shows” who are not entitled to any compensation. Sunwing Airlines’ best offer was to refund the Nawrots a total of \$2,200.

Affidavit of Mr. Nawrot (February 28, 2013), paras. 23–33 and Exhibits “P”–“Y”

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ARGUMENT

I. Did the Nawrots present themselves for check-in on time?

A fundamental factual dispute between the Nawrots and Sunwing Airlines is whether the Nawrots presented themselves for check-in in time for boarding Flight WG 201. It is a common ground that the new departure time of Flight WG 201 was 2:25 am on August 11, 2012.

Affidavit of Mr. Nawrot (February 28, 2013), Exhibits “E” and “P”

It is also common ground that Sunwing Airlines’ had a cut-off/check-in deadline of 60 minutes before the departure of its flight.

Affidavit of Mr. Nawrot (February 28, 2013), Exhibit “P”

Thus, Sunwing Airlines was required to keep its check-in counters open at the London Gatwick Airport until 1:25 am on August 11, 2012.

The Nawrots’ consistent evidence is that they presented themselves for check-in at approximately 1:10 am on August 11, 2012, but found the check-in counters deserted and the lights dimmed.

**Affidavit of Mr. Nawrot (February 28, 2013), para. 9
Declaration of Karolyn Theresa Nawrot (March 4, 2013), para. 7
Declaration of Kristina Marie Nawrot (March 4, 2013), para. 6**

It is submitted that the Nawrots’ account of the events is corroborated both by documentary evidence and the subsequent actions of Sunwing Airlines.

(a) Documentary evidence: credit card statement and train schedule

According to Mr. Nawrot’s credit card statement, the transaction date of the Nawrots’ train ticket purchase at Victoria Station is August 10, 2012:

| | | | | | |
|---------------------------|--------|--------------------|---------------|---|-------|
| Aug 10 | Aug 13 | NEW SOUTHERN RAILW | LDN SW1V 5426 |  Foreign Currency Transactions | 24.26 |
| 15.20 GBP @ 1.596052632** | | | | | |

Affidavit of Mr. Nawrot (February 28, 2013), Exhibit “G”

In particular, the transaction occurred *before* midnight. Thus, the Nawrots were at the train station before midnight on August 10, 2012, that is, *no later than* 11:59 pm on August 10, 2012.

As the credit card statement shows, the Nawrots travelled on trains operated by Southern. According to the timetable for summer 2012 for trains between London and Gatwick Airport, there were two trains operated by Southern (marked with the symbol SN) departing from Victoria Station shortly after midnight on Saturday, August 11, 2012:

Saturdays London to Gatwick Airport

| Operator | | GX | SN | FC | SN | FC | GX | SN | FC | SN | |
|--------------------|-------|-----|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Facilities | | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | |
| Notes | | | A | B | | B | | C | B | D | |
| London Victoria | 10 Z1 | ⊖ d | 00 02 | 00 05 | | 00 14 | | 00 30 | 01 00 | | 02 00 |
| Clapham Junction | Z2 | d | | 00 11 | | 00 20 | | | 01 08 | | 02 08 |
| London Blackfriars | Z1 | d | | | 00 05 | | 00 35 | | | 01 05 | |
| London Bridge | Z1 | ⊖ d | | | 00 12 | | 00 42 | | | | |
| East Croydon | Z5 | ⊖ d | | 00 24 | 00 27 | 00 32 | 00 57 | | 01 22 | 01 32 | 02 22 |
| Gatwick Airport | ← | a | 00 37 | 00 41 | 00 48 | 00 59 | 01 18 | 01 20 | 01 46 | 01 51 | 02 44 |

Annex "A", p. 5 (page 40 of the present complaint)

Thus, the Nawrots took one of the following trains from London Victoria to Gatwick Airport:

1. departing London Victoria at 00:05 am, and arriving at Gatwick Airport at 00:41 am; or
2. departing London Victoria at 00:14 am, and arriving at Gatwick Airport at 00:59 am.

The Nawrots' evidence that they arrived at Gatwick Airport a few minutes after 1:00 am is corroborated by the train schedule, which confirms that the train departing London Victoria at 00:14 am on August 11, 2012 was expected to arrive at Gatwick Airport at 00:59 am.

(b) Documentary evidence: Pre-authorization slip

After the Nawrots were told by two different staff members that they would not be allowed to board Flight WG 201, they headed to the London Gatwick Sofitel hotel on foot. Their evidence that they left the terminal building shortly after 1:45 am and arrived at the hotel at approximately 2:00 am is corroborated by the pre-authorization slip of Mr. Nawrot's credit card, which displays 11-08-2012 as the date, and 02:05:23 as the time:

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Sofitel London Gatwick
North Terminal -
Gatwick Airport
West Sussex RH6 0PH
01293 567070

MID: 44661693
TID: 25012711

DATE: 11-08-2012
TIME: 02:05:23

PRE-AUTH
TRANS SEQ: 000007880
BATCH NUM: 0839
KEYED

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Affidavit of Mr. Nawrot (February 28, 2013), Exhibit "H"

(c) Sunwing Airlines' post-incident conduct

On August 11, 2012, Mr. Nawrot sent an email to advise Sunwing Airlines that the Nawrots were stranded in London, and to seek assistance to be transported back to Toronto.

Affidavit of Mr. Nawrot (February 28, 2013), Exhibit "I"

Sunwing Airlines' response of the same day (August 11, 2012) was to offer the Nawrots transportation to Toronto six days later than originally scheduled, that is, on August 16, 2012.

Affidavit of Mr. Nawrot (February 28, 2013), Exhibit "J"

At this point, Sunwing Airlines did not allege that the Nawrots were "no shows" or that they were late to check in for Flight WG 201. Even two days later, on August 13, 2012, no such allegations were levelled by Sunwing Airlines.

Affidavit of Mr. Nawrot (February 28, 2013), Exhibit "N"

Airlines do not typically offer free flights home to passengers who were "no shows" and did not present themselves for check-in on time. Thus, it is submitted that Sunwing Airlines' offer to transport the Nawrots' to Toronto free of charge at a later date, without any reference to it doing so as a goodwill gesture, demonstrates that Sunwing Airlines was fully aware of its failure to honour the contract of carriage on August 11, 2012. In particular, Sunwing Airlines knew perfectly well that the Nawrots did present themselves for check-in on time, before the 60-minute cut-off, and were nevertheless denied boarding and transportation.

Sunwing Airlines began to allege that the Nawrots failed to present themselves for check-in in time only on October 9, 2012, *in response* to Mr. Nawrot's request that Sunwing Airlines provide reimbursement for the Nawrots' out-of-pocket expenses occasioned by the incident.

Therefore, it is submitted that Sunwing Airlines' theory that the Nawrots did not present themselves for check-in at least 60 minutes before the departure of Flight WG 201 is highly improbable and not credible.

(d) Sunwing Airlines' documentation

Sunwing Airlines claims that the Nawrots were "no show" passengers based on a "Destinations QCM" report.

Affidavit of Mr. Nawrot (February 28, 2013), para. 34 and Exhibit "Z"

We submit that the reliability of this document is dubious. For example, it states that the Actual Time of Departure (ATD) of Flight WG 201 was 01:30 UTC (that is, 2:30 am local time). However, according to FlightTrack, Flight WG 201 departed only at 2:49 am.

Annex "B"

Even if the aircraft was pushed back at 2:30 am as this document claims, it is not probable that taxiing to the runway would take 19 minutes at a relatively small airport, in the middle of the night.

Even if one accepts the information contained in Sunwing Airlines' document as true, it does not prove that the Nawrots did not present themselves for check-in in time; it only proves that they *were not* checked-in, which is not disputed.

Indeed, the Nawrots were not checked in to Flight WG 201 because Sunwing Airlines failed to keep its check-in counters staffed until 01:25 am, that is, 60 minutes before the flight's departure. In other words, Sunwing Airlines prevented the Nawrots from checking in, even after they proactively sought help and called for a supervisor.

We note that according to the "Destinations QCM" report, the last passenger boarded Flight WG 201 at 01:05 UTC, that is, at 2:05 am local time, *precisely* the time that the Nawrots were checking in to the London Gatwick Sofitel hotel, after they were denied boarding.

Affidavit of Mr. Nawrot (February 28, 2013), Exhibit "H"

Therefore, it is submitted that there was more than enough time to check in the Nawrots and allow them to board their flight, and the only reason that the Nawrots were stranded was the failure of Sunwing Airlines' staff to remain at the airport and at their stations.

(e) Conclusion: The Nawrots presented themselves for check-in on time, and were denied transportation and denied boarding

The documentary evidence demonstrates that the Nawrots were at London Victoria train station before 11:59 pm on August 10, 2012. They took a train operated by Southern to Gatwick Airport. The train departed London Victoria at 00:14 am on August 11, 2012, and arrived at Gatwick Airport at 00:59 am or shortly thereafter.

On a balance of probabilities, the Nawrots did present themselves for check-in for flight WG 201 at approximately 1:10 am on August 11, 2012, that is, 75 minutes before the scheduled departure time of their flight.

Given that Sunwing Airlines' cut-off time for checking in to flights is 60 minutes before departure, Sunwing Airlines had an obligation to allow the Nawrots to check in. Sunwing Airlines failed to fulfill its obligation, and failed to staff its check-in counters up until 60 minutes before the departure.

The Nawrots were proactive, sought assistance, and explicitly requested to be checked in and board Flight WG 201. Their repeated requests were refused.

Therefore, it is submitted that the Nawrots were denied transportation and denied boarding by Sunwing Airlines.

II. Is Sunwing Airlines liable for the Nawrots' out-of-pocket expenses?

As a result of the initial delay of Flight WG 201 and the subsequent failure of Sunwing Airlines to allow the Nawrots to check in and board Flight WG 201, the Nawrots have incurred out-of-pocket expenses totalling \$4,963.32. With the exception of the meals, these expenses are supported by receipts.

Affidavit of Mr. Nawrot (February 28, 2013), Exhibits "F", "G", "K", "L", and "M"

As for the meals, since no receipts are available, we have used a conservative estimate of \$20.00 per person per meal, leading to \$60.00 per person per day. We note that, for example, the Travel Directive of the National Joint Council of the Public Service of Canada recognizes that \$83.85 per day (per person) constitutes reasonable expenses for meals in London, and \$67.08 per day is reasonable for meals outside London.

Annex C

A. The law

(a) Section 113.1 of the *Air Transportation Regulations*

Section 113.1 allows the Agency to direct a carrier to take corrective measures and to pay compensation for expenses incurred by passengers as a result of the carrier's failure to apply terms and conditions set out in the tariff:

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

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

In *Kirkham v. Air Canada*, 268-C-A-2007 the Agency considered the claim of a passenger with a confirmed reservation on a flight, who was not permitted to travel, nor provided with compensation for denied boarding, out-of-pocket expenses or alternate transportation. The passenger subsequently purchased a one-way ticket from WestJet to complete his travel. The Agency held that Air Canada failed to properly apply terms and conditions of the tariff, and ordered Air Canada to compensate the passenger for the out-of-pocket expenses, including the one-way ticket purchased from WestJet (para. 38).

(b) 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.

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 re-protection.

[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.

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) Caselaw specific to Sunwing Airlines

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 his out-of-pocket expenses, including the costs of his alternative transportation.

While this decision was not based on the *Montreal Convention*, it nevertheless demonstrates important principles of consumer protection that are equally applicable to the present case.

B. Application of the law to the case at bar

The Nawrots' return flight from London Gatwick to Toronto was first delayed by more than 14 hours. Although the Nawrots presented themselves in time for check-in, they were not allowed to check in and were denied boarding on Flight WG 201. Sunwing Airlines' only offer was to transport the Nawrots six days later than originally contracted.

(a) Initial delay of over 14 hours

The Nawrots held a confirmed booking for Flight WG 201 for August 10, 2012, which was supposed to depart at 12:20 pm. Flight WG 2012 was delayed by more than 14 hours, and its departure time was changed by Sunwing Airlines to 2:25 am on August 11, 2012.

Affidavit of Mr. Nawrot (February 28, 2013), Exhibits "A" and "E"

Sunwing Airlines' "Destinations QCM" report states that:

DELAY DUE TO LATE INBOUND AIRCRAFT: 14 hrs 10mins

Affidavit of Mr. Nawrot (February 28, 2013), Exhibit "Z" (p. 1 at the bottom)

Due to this initial delay, the Nawrots checked in to the Holiday Inn Express in North Acton, and incurred out-of-pocket expenses in the amount of \$157.99 (GBP 99.00).

Affidavit of Mr. Nawrot (February 28, 2013), para. 6, Exhibits "F" and "G"

Notwithstanding Sunwing Airlines labelling it as a "schedule change," the Nawrots were initially delayed by 14 hours within the meaning of the *Montreal Convention*. It is submitted that pursuant to Article 19 of the *Montreal Convention*, Sunwing Airlines is liable for expenses incurred by the Nawrots as a result of this initial delay.

(b) Sunwing Airlines failed to apply the terms and conditions set out in the tariff

Sunwing Airlines' International Tariff Rule 18(g) provides that:

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

Thus, Sunwing Airlines had an obligation to keep its check-in counter open until 60 minutes before the departure of Flight WG 201, that is, until 1:25 am on August 11, 2012.

The evidence clearly demonstrates that the Nawrots arrived at the Gatwick Airport at most a few minutes after 1:00 am, and presented themselves for check-in at 1:10 am, that is, more than 75 minutes before the scheduled departure of Flight WG 201. Nevertheless, the Nawrots found the check-in counters deserted, the lights dimmed, and their requests to be checked in to the flight and be allowed to board were denied.

Thus, it is submitted that Sunwing Airlines failed to apply the terms and conditions set out in its tariff in denying the Nawrots transportation on Flight WG 201. It is submitted that at that point, the Nawrots had every reason to book one-way flights on another carrier, and seek compensation for their out-of-pocket expenses pursuant to s. 113.1 of the *ATR*.

Nevertheless, the Nawrots gave Sunwing Airlines two more opportunities to transport them to Toronto. First, on August 11, 2012, Mr. Nawrot attended Sunwing Airlines' service counter at the Gatwick Airport, and requested assistance for the Nawrots to be transported back to Toronto as soon as possible. He was not provided with such assistance.

Affidavit of Mr. Nawrot (February 28, 2013), para. 15

On August 11, 2012, Mr. Nawrot also requested assistance from Sunwing Airlines by email. Mr. Nawrot clearly conveyed the urgency of the request, asked to have his family flown back to Toronto on the evening of the same day. He also provided his cell phone number to allow Sunwing Airlines to contact him and discuss arrangements for the Nawrots' return to Toronto.

Affidavit of Mr. Nawrot (February 28, 2013), Exhibit "I"

In spite of the urgency expressed by Mr. Nawrot, Sunwing Airlines' only offer was to transport the Nawrots to Toronto six days later than originally scheduled, on August 16, 2012.

Affidavit of Mr. Nawrot (February 28, 2013), Exhibit "J"

The Nawrots had specific reasons for wanting to return to Toronto by August 12, 2012 at the latest.

Affidavit of Mr. Nawrot (February 28, 2013), para. 18
Declaration of Kristina Marie Nawrot (March 4, 2013), para. 3
Declaration of Karolyn Theresa Nawrot (March 4, 2013), para. 3

Thus, the Nawrots had every reason to find this proposal unreasonable and unacceptable, especially since this was the third time that they were let down by Sunwing Airlines, after first being denied boarding on Flight WG 201, and then being refused assistance in person.

Therefore, the Nawrots had no choice but to purchase one-way tickets on Air Canada for August 12, 2012 and to incur substantial out-of-pocket expenses.

It is submitted that, similarly to *Kirkham v. Air Canada*, 268-C-A-2007, Sunwing Airlines ought to be ordered, pursuant to s. 113.1 of the *ATR*, to pay for these out-of-pocket expenses as well as the Nawrots' accommodation and meal expenses between August 10, 2012 and August 12, 2012.

It is worth noting that Sunwing Airlines' International Tariff Rule 20 requires Sunwing Airlines to also consider flights of other carriers in relation to re-protection of passengers:

If the carrier is unable to provide reasonable alternate transportation acceptable to the passenger on its own services, the carrier will try to arrange transportation on the services of another carrier or combination of carriers on a confirmed basis in the same comparable, or lower booking code.

It was clear from Mr. Nawrot's request for assistance of August 11, 2012 that he was seeking transportation to Toronto on the same day, or as soon as possible, and that transportation on August 16, 2012 would not be acceptable to the Nawrots.

Hence, it is submitted that Sunwing Airlines not only failed to apply Rule 18(g), but also Rule 20, and that this failure is an additional ground for ordering Sunwing Airlines to reimburse the Nawrots for their out-of-pocket expenses.

(c) Sunwing Airlines failed to take all reasonable measures to mitigate the Nawrots' delay

Although Sunwing Airlines offered the Nawrots transportation only on August 16, 2012, the Nawrots were able to book one-way Air Canada tickets from London to Toronto for August 12, 2012. Thus, earlier flights (on other carriers) were available, but Sunwing Airlines failed to transfer the unused portion of the Nawrots' tickets to another carrier, contrary to its obligation under Article 19 of the *Montreal Convention*.

Therefore, based on *Mohammad c. Air Canada*, 2010 QCCQ 6858 and the Agency's findings in *Lukács v. Air Canada*, 250-C-A-2012, Sunwing Airlines is also liable for the Nawrots' out-of-pocket expenses pursuant to Article 19 of the *Montreal Convention*.

III. Is Sunwing Airlines' denied boarding compensation policy reasonable and clear?

The powers of the Agency extend far beyond enforcement of the tariffs. Under s. 111(1) of the *ATR*, tariff provisions must be “just and reasonable”; s. 113 of the *ATR* confers power on the Agency to suspend, disallow, or substitute tariff provisions that fail to be just and reasonable. Section 122(c) of the *ATR* requires that tariff provisions be stated clearly.

The Nawrots challenge Rule 20 and the third paragraph of Rule 18(g) of Sunwing Airlines' International Tariff on the grounds that they fail to be just and reasonable and that they are unclear. The Nawrots wish to proceed with this part of the complaint in any event, even on an “on principle” basis, irrespective of the Agency's findings about other parts of their complaint. In light of the Agency's findings in *Black v. Air Canada*, 746-C-A-2005 (at paras. 7-8), the Agency has jurisdiction to hear such policy-based complaints. The Agency's decision in *Black* was cited with approval in *O'Toole v. Air Canada*, 215-C-A-2006, *Lukács v. Air Canada*, LET-C-A-155-2009, and most recently in *Lukács v. Air Canada*, LET-C-A-47-2012.

A. 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.

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.

(b) 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 most recently in *Lukács v. WestJet*, 418-C-A-2011:

[...] 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.

(c) 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*.

B. Application of the law to the case at bar

(a) Clarity and reasonableness of the third paragraph of Rule 18(g)

Sunwing Airlines' International Tariff Rule 18(g) states that:

Cut-Off Times (C)

Check-in counters are open 3 hours prior to the schedule departure, and will close 60 minutes before schedule 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)

[Emphasis added.]

The Nawrots are taking exception to the phrase “recommended times” in the third paragraph, which is not defined anywhere in the International Tariff, and moreover, it is inconsistent with Rule 19(c), which states that:

(c) A passenger will not be eligible for compensation or refund under the following condition:

(i) The passenger checked-in or presents himself/herself at the boarding gate after the carrier's minimum check-in time or gate time [Rule 18 (g)] for any reason including being delayed in security or customs. (N)

[Emphasis added.]

It is submitted that while Rule 19(c) is both clear and reasonable, the phrase “recommended times” renders Rule 18(g) unclear, and ought to be replaced with “cut-off times” or “minimum times.” It is further submitted that while it is reasonable to expect passengers to comply with minimum check-in times requirements, it is unreasonable to expect passengers to comply with “recommended times.”

(b) Rule 20: where does the choice lie?

Sunwing Airlines' Tariff Rule 20 states (in part) that:

If a passenger has been denied a reserved seat, in case of an oversold flight, the carrier will:

- (a) refund the total fare paid for each unused segment; or
- (b) arrange to provide reasonable alternate transportation on its own services.

Rule 20, however, fails to specify where the choice between these two options lies, with the passenger or Sunwing Airlines.

The Agency considered a similar provision in Air Canada's tariff in Decision No. LET-A-82-2009, and raised serious concerns about its clarity. Subsequently, Air Canada amended its tariffs to clarify that it retained the choice between a refund and alternate transportation. In Decision No. 479-A-2009, the Agency accepted this amendment for the limited purpose of its concerns about clarity; however, subsequently, in *Lukács v. Air Canada*, LET-C-A-80-2011, the Agency held that:

[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.

Following this finding of the Agency, Air Canada amended its tariffs to ensure that the choice lies exclusively with the passenger (see *Lukács v. Air Canada*, 250-C-A-2012, paras. 121-124).

Thus, it is submitted that Rule 20 is unclear in its current form, because it fails to specify where the choice lies. Furthermore, it is submitted the choice between a refund and alternate transportation ought to lie exclusively with the passenger.

(c) Rule 20: “will try” and “in the same comparable, or lower booking code”

Sunwing Airlines’ Tariff Rule 20 also states that:

If the carrier is unable to provide reasonable alternate transportation acceptable to the passenger on its own services, the carrier will try to arrange transportation on the services of another carrier or combination of carriers on a confirmed basis in the same comparable, or lower booking code.

[Emphasis added.]

It is submitted that the phrase “will try” renders Rule 20 unclear in that it does not impose a clear obligation upon Sunwing Airlines. It is submitted that “will try” ought to be replaced simply with “shall.”

Rule 20 also purports to limit Sunwing Airlines’ obligation to secure alternate transportation on flights “in the same comparable, or lower booking code.” First, it submitted that this phrase is unclear, because booking codes of Sunwing Airlines may not be comparable to booking codes of other airlines. Second, more importantly, it is submitted that this restriction is unreasonable.

It is a common practice of airlines to reprotect passengers who are denied boarding on booking codes higher than their original reservation (such as reprotecting an economy class passenger on business class), if doing so results in mitigation of the passenger’s delay. Reprotecting passengers, on a higher booking class if necessary, is the normal and ordinary consequence of overselling a flight, and it is consistent with the carrier’s concomitant obligation under Article 19 of the *Montreal Convention* to mitigate the delay of passengers (see *Lukács v. Air Canada*, 250-C-A-2012, paras. 25 and 90).

Therefore, it is submitted that excluding the possibility of reprotecting victims of denied boarding on a booking class higher than their original booking is inconsistent with the obligations of Sunwing Airlines under Article 19 of the *Montreal Convention*, and as such, it is unreasonable.

(d) Rule 20 fails to incorporate rights stemming from Article 19

In *Lukács v. Air Canada*, 250-C-A-2012, the Agency held (at para. 34) that denied boarding can be characterized as delay, and thus Article 19 of the *Montreal Convention* is relevant to determining the reasonableness of provisions governing denied boarding. 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.

While Sunwing Airlines' International Tariff Rule 20 does not explicitly exonerate Sunwing Airlines from liability for damages for delay in connection with denied boarding, Rule 20 is silent about compensation of victims of denied boarding for damages occasioned by delay, including meals, accommodation, and transportation.

It is submitted that this omission from Rule 20, especially when read in conjunction with Rule 18, creates uncertainty and unclarity about the rights of passengers who are denied boarding, and renders Rule 20 at least unclear, and (depending on its intended meaning) possibly also unreasonable by purporting to relieve Sunwing Airlines from liability under Article 19 of the *Montreal Convention*.

(e) Rule 20 is unreasonable, because it fails to provide for any compensation

Although Rule 20 is labeled as "Denied Boarding Compensation" it contains no provision of any compensation to passengers who are denied boarding, and it is confined to reprotection of passengers who are denied boarding. However, reprotecting passengers who were denied boarding is not a form of compensation, but rather the belated fulfillment of the contract of carriage.

In *Anderson v. Air Canada*, 666-C-A-2001, the Agency considered the principles governing the amount of denied boarding compensation payable to passengers, and held that:

Contrary to an air carrier's policies on refunds for services purchased but not used, whereby the fare paid by a passenger is inherently linked to the design and implementation of the compensation, the fare paid by a passenger is unrelated to the amount of compensation that the passenger is entitled to receive upon being denied boarding. Further, any passenger who is denied boarding is entitled to compensation; evidence of specific damages suffered need not be provided.

[Emphasis added.]

Thus, it is submitted that compensation of victims of denied boarding has two components:

- (1) reimbursement for out-of-pocket expenses, including refunds; and
- (2) denied boarding compensation (lump sum, no evidence of specific damage is required).

This principle is recognized, for example, in *Kirkham v. Air Canada*, 268-C-A-2007, where the Agency ordered Air Canada to both reimburse the passenger for his out-of-pocket expenses, and in addition to pay the passenger denied boarding compensation.

It is submitted that Rule 20 is unreasonable, because it provides neither for reimbursement of out-of-pocket expenses (other than a refund of the fare), nor for any monetary compensation for being denied boarding.

The failure of Sunwing Airlines to pay any denied boarding compensation to victims of denied boarding is of particular concern in light of the legal obligation to do so both pursuant to regulation 14 CFR 250.5(b) of the United States, as amended by final ruling 76 FR 23110 of the Department of Transportation, and *Regulation (EC) No 261/2004* of the European Parliament and of the Council.

While other airlines, such as Air Canada, do comply with these legal obligations, and have incorporated them into their tariffs (for example, Rule 89 of Air Canada), it appears that Sunwing Airlines refuses to comply with these obligations, and is attempting to benefit from an unfair competitive advantage compared to its main competitors.

In particular, it is submitted that Sunwing Airlines would suffer no competitive disadvantage if it adopted a denied boarding compensation policy similar to that of Air Canada or other major carriers (such as Lufthansa and Air France).

Therefore, it is submitted that Rule 20 is unreasonable, because it fails to impose any obligation of paying denied boarding compensation to passengers, contrary to the Agency's findings in *Anderson v. Air Canada*, 666-C-A-2001.

It is further submitted that Rule 20 ought to be substituted with a denied boarding compensation policy similar to that of major airlines, such as Air France or Lufthansa.

IV. Are the Nawrots entitled to denied boarding compensation?

The Nawrots had reserved seats on Flight WG 201. They presented themselves for check-in well before Sunwing Airlines' 60-minute cut-off time: the evidence clearly demonstrates that they arrived at the airport shortly after 1:00 am on August 11, 2012, and were at the check-in area in the North Terminal by 1:10 am, that is, 75 minutes before the departure of their flight.

Nevertheless, Sunwing Airlines did not check in the Nawrots to Flight WG 201, did not provide them with boarding passes, and prevented them from boarding Flight WG 201.

Thus, it is submitted that the Nawrots were denied boarding on Flight WG 201 by Sunwing Airlines without any justification, and contrary to the terms and conditions in Sunwing Airlines' International Tariff. In particular, according to the Agency's findings in *Anderson v. Air Canada*, 666-C-A-2001, the Nawrots are entitled to denied boarding compensation.

While Sunwing Airlines' current International Tariff provides for no denied boarding compensation, it is submitted that the Tariff is unreasonable in this respect, and that the Nawrots ought to be provided denied boarding compensation as if Sunwing Airlines had a reasonable denied boarding compensation policy.

The Nawrots were departing from an airport in the European Community, and they were delayed by 2 days as a result of their having been denied boarding. The standard compensation in such situations is 600.00 EUR per person (see, for example, Air Canada's Rule 89). This amount is uniform among airlines, and the reason is that the vast majority of airlines comply with *Regulation (EC) No 261/2004* with respect to flights departing from an airport within the European Community.

Therefore, it is submitted that the Nawrots ought to be provided with denied boarding compensation in the amount of 600.00 EUR per person, that is, a total of 1,800.00 EUR.

V. Costs

A. Applicable law

(a) Enabling legislation

While not every quasi-judicial body has the power to make an order for costs (see *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53), s. 25.1 of the enabling legislation of the Agency, the *Canada Transportation Act*, S.C. 1996, c. 10 (the “CTA”), confers very broad powers upon the Agency in relation to costs:

25.1 (1) Subject to subsections (2) to (4), the Agency has all the powers that the Federal Court has to award costs in any proceeding before it.

(2) Costs may be fixed in any case at a sum certain or may be taxed.

(3) The Agency may direct by whom and to whom costs are to be paid and by whom they are to be taxed and allowed.

(4) The Agency may make rules specifying a scale under which costs are to be taxed.

(b) The Agency’s current practices

It appears that the Agency has never exercised its powers pursuant to s. 25.1(4) of the *CTA* to establish a scale for taxation of costs, and has been reluctant to make cost awards. In *Kipper v. WestJet*, 20-C-A-2011, the Agency held (at para. 10):

As a general rule, costs are not awarded, and the Agency’s practice has been to award these only in special or exceptional circumstances. In making its determination in a given case, the Agency considers a combination of factors such as the nature of the application, the length and complexity of the proceeding, whether the Agency held an oral hearing, whether parties have acted efficiently and in good faith, or if a party has incurred extraordinary costs to prepare and defend its application.

The same principle was reiterated and applied by the Agency in *Kouznetchik v. American Airlines*, 99-C-A-2011 (at paras. 72-73).

It is submitted that the aforementioned “general rule” is inconsistent with the dicta of the Supreme Court of Canada on the legal principles applicable for awarding costs. Therefore, in what follows, the Nawrots would like to invite the Agency to revisit and refine this “general rule”.

(c) **Binding authority**

A leading authority on cost awards is the decision of the Supreme Court of Canada in *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71. Justice LeBel, writing for the majority, described the traditional principles for awarding costs (at para. 20) as follows:

- They are an award to be made in favour of a successful or deserving litigant, payable by the loser.
- Of necessity, the award must await the conclusion of the proceeding, as success or entitlement cannot be determined before that time.
- They are payable by way of indemnity for allowable expenses and services incurred relevant to the case or proceeding.
- They are not payable for the purpose of assuring participation in the proceedings.

Justice LeBel then went on to explain the contemporary principles of awarding costs:

22 These background principles continue to govern the law of costs in cases where there are no special factors that would warrant a departure from them. The power to order costs is discretionary, but it is a discretion that must be exercised judicially, and accordingly the ordinary rules of costs should be followed unless the circumstances justify a different approach. For some time, however, courts have recognized that indemnity to the successful party is not the sole purpose, and in some cases not even the primary purpose, of a costs award. Orkin, *supra*, at p. 2-24.2, has remarked that:

The principle of indemnification, while paramount, is not the only consideration when the court is called on to make an order of costs; indeed, the principle has been called “outdated” since other functions may be served by a costs order, for example to encourage settlement, to prevent frivolous or vexatious [*sic*] litigation and to discourage unnecessary steps.

:

25 [...] Costs can also be used to sanction behaviour that increases the duration and expense of litigation, or is otherwise unreasonable or vexatious. In short, it has become a routine matter for courts to employ the power to order costs as a tool in the furtherance of the efficient and orderly administration of justice.

[Emphasis added.]

It is submitted that the Agency is bound by the aforementioned principles laid down by the Supreme Court of Canada. Thus, the Agency must exercise the powers and discretion conferred upon it by s. 25.1(1) of the *CTA* judicially, and the ordinary rules of costs (namely, that costs follow the event) should be followed unless the circumstances justify a different approach.

Therefore, it is submitted that awarding costs to the successful party against the unsuccessful one ought to be the “general rule” for awarding costs by the Agency, and not awarding costs ought to be the exception.

B. Considerations specific to consumer complaints against airlines

(a) Costs under the *Montreal Convention*

The preamble of the *Montreal Convention* recognizes “the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution.”

The basic premise of the *Montreal Convention* is to significantly limit carriers’ liability, and at the same time to place strict liability (and in certain cases absolute liability) upon carriers. This results in a calculable (and thus easily incurable) risk, and in easily determined damages, which ideally carriers and passengers ought to be able to settle without the intervention of the courts.

The drafters of the *Montreal Convention* recognized that failure of a carrier to voluntarily comply with the liability provisions may result in costs to the consumer that are significantly higher than the damage award itself (which is capped by virtue of Articles 21 and 22); furthermore, they chose to severely sanction carriers who fail to offer a reasonable settlement by excluding the costs that a court or tribunal may award against them from the liability cap for the damages payable. Indeed, Article 22(6) states that:

The limits prescribed in Article 21 and in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff, including interest. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

This provision is consonant with the principle that only a “well behaved” carrier can avail itself to the liability caps of the *Montreal Convention* (see also Article 22(5)).

While Article 22(6) of the *Montreal Convention* explicitly recognizes that costs are to be awarded in accordance with the own law of the court seized with the matter, it is submitted that the aforementioned underlying principles of the Convention strongly militate in favour of awarding costs on a full indemnity basis against carriers who fail to offer compensation to passengers in accordance with the provisions of the *Montreal Convention*.

(b) Public litigation interest and access to justice – costs in favour of successful consumers

The *CTA*, and the *ATR* promulgated pursuant to it, do not merely create a mechanism for enforcing the rights of individual passengers; rather, Parliament intended to establish a regulatory scheme: Carriers must set and publish their tariffs, which must be clear and applied to all passengers. Under the *ATR*, the Agency has a dual role: To review, disallow, suspend, and substitute tariff provisions on the one hand, and to enforce tariff provisions by ordering carriers to take corrective measures.

The purpose of having a regulatory scheme in place is not merely to resolve disputes between passengers and airlines, but rather to assist in achieving the objectives declared in s. 5 of the *CTA*. The statutory obligation to publish, file, and apply tariffs imposed upon carriers becomes meaningless if these obligations are not enforced. Individual complaints against carriers that are brought before the Agency have an important role in enforcing the regulatory scheme that Parliament has put in place by enacting the *CTA*, and consequently such complaints serve not only the interests of the individual consumer, but also the entire travelling public. Thus, consumer complaints brought before the Agency also serve, by their very nature, the public interest.

Access to justice has been recognized as a consideration in awarding costs, in particular in the context of public interest litigation, in the landmark decision of the Supreme Court of Canada in *British Columbia (Minister of Forests) v. Okanagan Indian Band* (at para. 27).

As Chief Justice Beverly McLachlin of the Supreme Court of Canada stated in an address to the Council of the Canadian Bar Association, August 11, 2007:

The cost of legal services limits access to justice for many Canadians. The wealthy, and large corporations who have the means to pay, have access to justice. So do the very poor, who, despite its deficiencies in some areas, have access to legal aid, at least for serious criminal charges where they face the possibility of imprisonment. Middle income Canadians are hard hit, and often left with the very difficult choice that if they want access to justice, they must put a second mortgage on their home, or use funds set aside for a child's education or for retirement. The price of justice should not be so dear.

Since then, Chief Justice McLachlin has pointed out time after time that “[a]ccess to justice is the greatest challenge facing the Canadian justice system.” These concerns particularly apply to consumer complaints before the Agency for a number of reasons. Although the Agency's procedures are somewhat more simple than those of a court of law, they nevertheless involve an adversarial process, strict deadlines, and complex legal arguments that are clearly beyond the legal knowledge and skill of an average air passenger. Consequently, aggrieved passengers face the choice between not pursuing their legitimate claims at all or retaining legal counsel at a significant expense.

None of the common cost-reducing methods (such as commencing a class proceeding or a contingency fee agreement) are available to consumers before the Agency. Indeed, the Agency has neither jurisdiction nor procedures for adjudicating class proceedings, and the amounts typically involved in individual consumer complaints are too small for contingency fee agreements.

Thus, individual consumers are left with only one avenue to obtain legal representation before the Agency: paying the legal fees from their own resources. These fees significantly exceed the amount of damages sought, and render such complaints economically infeasible if the Agency follows its “general rule” to not award costs to successful consumers.

Therefore, it is submitted that awarding costs in favour of consumers who are successful in a proceeding before the Agency is absolutely necessary in order to ensure that the complaint process to the Agency remains accessible for the travelling public at large, and not only to the exceptionally wealthy or the legally trained.

(c) Chilling effect – costs against unsuccessful consumers

A shift in the Agency’s approach toward costs naturally requires examining the question of awarding costs against consumers who are unsuccessful before the Agency. In this respect, there is no doubt that the Agency ought to sanction vexatious complaints, which are brought in bad faith. At the same time, it is important to bear in mind the chilling effect that a mechanical application of cost rules will have on consumers, which is not desirable given the public interest nature of such complaints. In *Mahar v. Rogers Cablesystems Ltd.*, 1995 CanLII 7129 (ON S.C.) it was held that:

[48] In my view, it is appropriate in this case to exercise my discretion in favour of the applicant and to make no order as to costs. The issue raised was novel and certainly involved a matter of public interest. While I decided the jurisdictional point against the applicant, I am satisfied that the application was brought in good faith for the genuine purpose of having a point of law of general public interest resolved. It is true that many of the cases in which an unsuccessful public interest litigant has been relieved of the usual cost order have involved suits against the government and the respondent here is a private entity. However, the respondent does enjoy the substantial benefit and protection of a statutory monopoly in the provision of its services to the public, and this application was brought in relation to an important aspect of the terms on which that monopoly is enjoyed. While the targets of public interest litigation are certainly entitled to the protection of the rules of court, it should not be forgotten that those rules include a discretion to relieve the loser of the burden of *paying* the winner’s party and party costs. As observed by Fox, *supra*, and by the Ontario Law Reform Commission report, *supra*, public interest litigants are in a different position than parties involved in ordinary civil proceedings. The incentives and disincentives created by costs rules assume that the parties are primarily motivated by the pursuit of their own private and financial interests.

[49] An unrelenting application of those rules to public interest litigants will have the result of significantly limiting access to the courts by such litigants. Such a consequence would be undesirable with respect to proceedings such as the present one which was, in my view, brought on a bona fide basis and which raised a genuine issue of law of significance to the public at large.

Another consideration is that the *Montreal Convention* significantly limits the type of damages that are recoverable in international carriage of passengers, and thus passengers may suffer inconvenience that is non-compensable. These circumstances may also warrant not awarding costs against an unsuccessful consumer, as the trial judge did in *Lukács v. United Airlines Inc., et al.*, 2009 MBQB 29 (leave to appeal denied; 2009 MBCA 111) at the conclusion of her decision:

Although the defendants have been substantially successful in opposing the plaintiff's claim, in the circumstances, having considered the inconvenience and lack of consideration suffered by the plaintiff, which is non-compensable, I have determined that each party shall bear his own costs of these proceedings.

Therefore, it is submitted that costs should be awarded against an unsuccessful consumer only in the case of vexatious complaints, which are brought in bad faith.

(d) Public policy considerations

It is important to also reflect on the public policy effect of the Agency's current "general rule" of not awarding costs, which (as the present case exemplifies) encourages airlines to ignore consumer complaints that could be settled as hoped for by the drafters of the *Montreal Convention*, without the involvement of the Agency. Indeed, a significant portion of consumers are deterred from pursuing their claims before the Agency due to the associated legal fees, which they would not be compensated for because of the Agency's "general rule" on costs.

Thus, it is submitted that the current "general rule" provides a disincentive for airlines to settle claims, and encourages airlines to not take consumer complaints seriously until they are brought before the Agency or a court.

Therefore, it is further submitted that there is a significant public interest in holding airlines liable for the legal expenses that consumers are forced to incur as a result of the airline's failure to effectively address their valid complaints and claims. It is submitted that costs awarded against carriers should adhere to the principles of indemnification and restitution, enshrined in the preamble of the *Montreal Convention*.

C. Application of the law to the case at bar

The Nawrots were not simply denied boarding, but rather Sunwing Airlines failed to fulfill its most basic obligation to staff its check-in counter until up to one hour before their flight, and thus it prevented the Nawrots from checking in and boarding their flight. After the event, the Nawrots made numerous attempts to seek assistance from Sunwing Airlines to be transported back to Toronto as soon as possible; however, Sunwing Airlines' only offer was to transport them six days later than originally scheduled. Sunwing Airlines never offered to transport the Nawrots on another carrier, as required by Rule 20.

Up to this point, the events could be attributed to an unfortunate chain of human errors and miscommunications between various employees of Sunwing Airlines, which could have been settled by Sunwing Airlines compensating the Nawrots for their out-of-pocket expenses.

Mr. Nawrot has made numerous attempts to seek compensation for these out-of-pocket expenses; however, Sunwing Airlines insists that the Nawrots were “no shows” who are not entitled to any compensation. Sunwing Airlines’ best offer was to refund the Nawrots a total of \$2,200.

Affidavit of Mr. Nawrot (February 28, 2013), Exhibits “P”–“Y”

Sunwing Airlines’ allegations that the Nawrots were “no shows” and failed to present themselves 60 minutes before their flight, however, are no longer a genuine error, but rather an egregious conduct, which constitutes evidence of bad faith and malice on Sunwing Airlines’ part. Indeed, at first, Sunwing Airlines did not allege that the Nawrots were “no shows” or that they were late to check in for Flight WG 201. Even two days after the Nawrots were denied boarding, no such allegations were levelled by Sunwing Airlines.

Affidavit of Mr. Nawrot (February 28, 2013), Exhibits “J” and “N”

Sunwing Airlines first made these allegations only on October 9, 2012, as an excuse for refusing Mr. Nawrot’s request that Sunwing Airlines reimburse the Nawrots for out-of-pocket expenses occasioned by the incident.

Affidavit of Mr. Nawrot (February 28, 2013), Exhibit “Q”

Thus, it is submitted that Sunwing Airlines has been refusing to compensate the Nawrots even though it knows perfectly well that the Nawrots did present themselves for check-in on time, before the 60-minute cut-off, and were nevertheless denied boarding and transportation.

It is submitted that the high-handedness and lack of consideration displayed by Sunwing Airlines toward the Nawrots is a conduct that ought to be discouraged by the Agency. Passengers should not have to resort to the services of a trained lawyer in order to be compensated by an airline.

Sunwing Airlines’ unreasonable and egregious refusal to compensate the Nawrots in the face of numerous requests and a substantial number of documents provided by Mr. Nawrot to Sunwing Airlines has left the Nawrots with no choice but to retain counsel to enforce their rights. It is submitted that Sunwing Airlines ought to bear the financial consequences of failing to compensate the Nawrots, and forcing them to retain legal representation.

It is submitted that these exceptional circumstances warrant a costs award in favour of the Nawrots, even under the Agency’s current “general rule” with respect to costs.

Hence, it is submitted that the Nawrots ought to be awarded costs on a full indemnity basis.

VI. Relief sought

For the aforesaid reasons, the Nawrots pray the Agency that:

- A. the Agency direct Sunwing Airlines to reimburse the Nawrots for the sum of \$4,963.32 of out-of-pocket expenses, plus interest;
- B. the Agency direct Sunwing Airlines to pay the Nawrots denied boarding compensation in the amount of 1,800.00 EUR, plus interest;
- C. the Agency substitute the phrase “recommended times” with “cut-off times” or “minimum times” in Sunwing Airlines’ International Tariff Rule 18(g);
- D. the Agency disallow Sunwing Airlines’ International Tariff Rule 20 as unclear and unreasonable, and substitute it with a denied boarding compensation policy similar to that of major airlines, such as Air France or Lufthansa;
- E. the Agency order Sunwing Airlines to pay costs to the Nawrots on a full indemnity basis.

All of which is most respectfully submitted.

Louis Béliveau

Cc: Mr. Ray Nawrot
Mr. Clay Hunter, counsel for Sunwing Airlines

LIST OF AUTHORITIES

Legislation

1. *Air Transportation Regulations*, S.O.R./88-58.
2. *Carriage by Air Act*, R.S.C. 1985, c. C-26.
3. *Canada Transportation Act*, S.C. 1996, c. 10.
4. *Canadian Transportation Agency General Rules*, S.O.R./2005-35.

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. *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71.
9. *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53.
10. *Caron c. Vacances Sunwing*, 2012 QCCQ 2050.
11. *Griffiths v. Air Canada*, Canadian Transportation Agency, 287-C-A-2009.
12. *H. v. Air Canada*, Canadian Transportation Agency, 2-C-A-2001.
13. *Kipper v. WestJet*, Canadian Transportation Agency, 309-C-A-2010.
14. *Kipper v. WestJet*, Canadian Transportation Agency, 20-C-A-2011.
15. *Kirkham v. Air Canada*, Canadian Transportation Agency, 268-C-A-2007.
16. *Kouznetchik v. American Airlines*, Canadian Transportation Agency, 99-C-A-2011.
17. *Lukács v. Air Canada*, Canadian Transportation Agency, LET-C-A-155-2009.

18. *Lukács v. Air Canada*, Canadian Transportation Agency, LET-C-A-80-2011.
19. *Lukács v. Air Canada*, Canadian Transportation Agency, 291-C-A-2011.
20. *Lukács v. Air Canada*, Canadian Transportation Agency, LET-C-A-47-2012.
21. *Lukács v. Air Canada*, Canadian Transportation Agency, 250-C-A-2012.
22. *Lukács v. Porter Airlines*, Canadian Transportation Agency, 16-C-A-2013.
23. *Lukács v. WestJet*, Canadian Transportation Agency, 418-C-A-2011.
24. *Mahar v. Rogers Cablesystems Ltd.*, 1995 CanLII 7129 (ON S.C.).
25. *Mohammad c. Air Canada*, 2010 QCCQ 6858.
26. *O'Toole v. Air Canada*, Canadian Transportation Agency, 215-C-A-2006.

Foreign legislation

27. European Union: *Regulation (EC) No 261/2004* of the European Parliament and of the Council (11 February 2004).
28. United States: 14 CFR 250, as amended by final decision 76 FR 23110 of the Department of Transportation.

Annex "A" to the complaint of the Nawrots



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SOUTHERN CUSTOMER SERVICES:
08451 27 29 20 | southernrailway.com

This timetable shows a summary of direct train services between London Victoria and Gatwick Airport

SUMMER TRAIN TIMES
19 MAY TO 8 DECEMBER 2012

GATWICK AIRPORT TO LONDON

BRIGHTON MAINLINE
GATWICK EXPRESS



Mondays to Fridays

Gatwick Airport to London

| Operator | Facilities | Notes | GX | FC | FC | FC | GX | GX | GX | SN | FC | GX | SN | FC | SN | FC | SN | FC | GX | FC | GX | SN | FC | GX | FC | SN | SN | SN | GX | FC | GX | FC |
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| Gatwick Airport | ← | d | 00 05 | 00 15 | 00 17 | 00 20 | 00 36 | 00 50 | 01 05 | 01 30 | 01 35 | 02 05 | 02 30 | 03 05 | 03 30 | 04 04 | 04 30 | 04 35 | 05 00 | 05 20 | 05 03 | 05 27 | 05 50 | 05 47 | 05 38 | 05 55 | 05 59 | 06 06 | 06 17 | 06 20 | 06 25 | |
| East Croydon | Z5 | a | 00 35 | 00 36 | | | | | 01 27 | 01 47 | | 02 27 | 02 47 | 03 27 | 03 47 | 04 31 | 04 47 | | 05 17 | | 05 28 | 05 47 | | 06 01 | 06 06 | 06 10 | 06 14 | 06 32 | 06 44 | 06 58 | | |
| London Bridge | Z1 | a | 00 51 | 00 50 | | | | | | | | 02 40 | 03 13 | | 03 40 | 04 13 | | 05 13 | | 05 34 | | 06 02 | | 06 15 | | 06 21 | 06 25 | 06 46 | 06 52 | 07 04 | | |
| London Blackfriars | Z1 | a | 00 58 | 00 57 | | | | | | | | | | | | | | | | | | 06 10 | | 06 23 | | 06 18 | 06 21 | 06 25 | 06 52 | | | |
| Clapham Junction | Z2 | a | | | | | | | 01 40 | | 02 40 | | 03 40 | | 04 51 | | 05 13 | | 05 41 | | | 06 10 | | | 06 18 | 06 21 | 06 25 | 06 52 | | | | |
| London Victoria | 10 Z1 | a | 00 40 | | | 00 55 | 01 11 | 01 25 | 01 49 | | 02 10 | 02 49 | | 03 49 | | 04 58 | | 05 12 | | 05 55 | 05 58 | | 06 20 | | 06 25 | 06 28 | 06 32 | 06 35 | 06 50 | | | |

Annex "A" to the complaint of the Nawrots

March 21, 2013
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Saturdays

Gatwick Airport to London

| Operator | Facilities | GX | FC | GX | GX | GX | SN | FC | GX | SN | FC | SN | FC | GX | FC | GX | SN | FC | GX | SN | SN | FC | GX | GX | SN | FC | GX | SN | | |
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| Notes | | AO | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Gatwick Airport | ← Z5 | 00 05 | 00 15 | 00 20 | 00 35 | 00 50 | 01 05 | 01 30 | 01 35 | 02 05 | 02 30 | 03 05 | 03 30 | 04 05 | 04 30 | 04 35 | 05 00 | 05 20 | 05 05 | 05 27 | 05 50 | 05 38 | 05 53 | 06 02 | 06 05 | 06 20 | 06 26 | 06 32 | 06 35 | 06 38 |
| East Croydon | Z5 | | 00 35 | | | 01 05 | 01 30 | 01 35 | 02 05 | 02 30 | 03 05 | 03 30 | 04 05 | 04 30 | 04 35 | 05 00 | 05 20 | 05 05 | 05 27 | 05 50 | 05 38 | 05 53 | 06 02 | 06 05 | 06 20 | 06 26 | 06 32 | 06 35 | 06 38 | |
| London Bridge | Z1 | | 00 51 | | | 01 27 | 01 49 | | 02 27 | 02 47 | 03 27 | 03 47 | 04 27 | 04 47 | | 05 17 | | 05 29 | 05 47 | | 06 02 | 06 10 | 06 16 | 06 30 | 06 40 | 06 46 | 06 46 | 06 46 | 06 53 | |
| London Blackfriars | Z1 | | 00 58 | | | | 02 13 | | | 03 13 | | | 05 13 | | | 05 43 | | | 06 08 | | | 06 37 | | | 07 00 | | | 07 07 | | |
| Clapham Junction | Z2 | | | | | 01 41 | | 02 41 | | 03 41 | | 04 41 | | 05 10 | | 05 49 | | 05 58 | | 06 20 | 06 18 | 06 21 | | | 06 50 | | | 07 02 | | |
| London Victoria | 10 Z1 | 00 40 | 00 55 | 01 11 | 01 25 | 01 49 | 02 10 | 02 49 | 03 49 | 04 50 | | | 05 10 | | 05 55 | 05 58 | | 06 20 | 06 26 | 06 30 | | | 06 35 | 06 50 | 06 57 | | 07 05 | 07 09 | | |

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| Gatwick Airport | ← Z5 | 06 50 | 06 55 | 07 02 | 07 05 | 07 10 | 07 17 | 07 20 | 07 26 | 07 32 | 07 35 | 07 38 | 07 47 | 07 50 | 07 53 | 07 56 | 08 02 | 08 05 | 08 08 | 08 17 | 08 20 | 08 25 | 08 32 | 08 35 | 08 38 | 08 47 | 08 50 | 08 53 | 08 56 | 09 02 |
| East Croydon | Z5 | | 07 09 | 07 16 | 07 29 | 07 31 | 07 41 | 07 46 | 07 59 | 08 02 | 08 08 | 08 11 | 08 16 | 08 27 | 08 31 | 08 36 | 08 40 | 08 46 | 08 59 | 09 02 | 09 08 | 09 11 | | | 09 16 | | | 09 16 | | |
| London Bridge | Z1 | | 07 30 | 07 37 | 07 45 | 07 52 | 08 00 | 08 07 | 08 15 | 08 22 | 08 30 | 08 37 | 08 45 | 08 52 | 09 00 | 09 07 | 09 15 | 09 22 | 09 29 | 09 37 | 09 44 | 09 51 | 09 58 | 10 05 | 10 12 | 10 19 | 10 26 | 10 33 | 10 40 | |
| London Blackfriars | Z1 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Clapham Junction | Z2 | | 07 19 | 07 39 | 07 59 | 08 19 | 08 39 | 08 59 | 09 19 | 09 39 | 09 59 | 10 19 | 10 39 | 10 59 | 11 19 | 11 39 | 11 59 | 12 19 | 12 39 | 12 59 | 13 19 | 13 39 | 13 59 | 14 19 | 14 39 | 14 59 | 15 19 | 15 39 | 15 59 | |
| London Victoria | 10 Z1 | 07 20 | 07 27 | 07 35 | 07 46 | 07 50 | 07 58 | 08 05 | 08 16 | 08 20 | 08 24 | 08 28 | 08 35 | 08 44 | 08 50 | 08 57 | 09 05 | 09 16 | 09 20 | 09 24 | 09 28 | | | 09 35 | 09 44 | 09 50 | 09 58 | 10 05 | 10 16 | |

| Operator | Facilities | GX | SN | FC | GX | SN | FC | GX | SN | FC | GX | SN | FC | GX | SN | SN | FC | GX | SN | FC | GX | SN | SN | FC | GX | SN | SN | FC | GX | SN |
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| Notes | | AO | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Gatwick Airport | ← Z5 | 09 05 | 09 08 | 09 17 | 09 20 | 09 26 | 09 32 | 09 35 | 09 38 | 09 47 | 09 50 | 09 53 | 09 56 | 10 02 | 10 05 | 10 08 | 10 16 | 10 20 | 10 25 | 10 32 | 10 35 | 10 38 | 10 47 | 10 50 | 10 53 | 10 56 | 11 02 | 11 05 | 11 08 | 11 11 |
| East Croydon | Z5 | | 09 27 | 09 31 | 09 41 | 09 46 | 09 59 | 10 02 | 10 15 | 10 22 | 10 30 | 10 37 | 10 45 | 10 52 | 11 00 | 11 07 | 11 15 | 11 22 | 11 29 | 11 36 | 11 43 | 11 50 | 11 57 | 12 04 | 12 11 | 12 18 | 12 25 | 12 32 | 12 39 | 12 46 |
| London Bridge | Z1 | | 09 45 | 09 52 | 10 00 | 10 07 | 10 15 | 10 22 | 10 30 | 10 37 | 10 45 | 10 52 | 11 00 | 11 07 | 11 15 | 11 22 | 11 29 | 11 36 | 11 43 | 11 50 | 11 57 | 12 04 | 12 11 | 12 18 | 12 25 | 12 32 | 12 39 | 12 46 | 12 53 | 13 00 |
| London Blackfriars | Z1 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Clapham Junction | Z2 | | 09 37 | 09 50 | 10 09 | 10 17 | 10 21 | 10 37 | 10 44 | 10 50 | 10 57 | 11 05 | 11 16 | 11 20 | 11 24 | 11 28 | 11 35 | 11 42 | 11 49 | 11 56 | 12 03 | 12 10 | 12 17 | 12 24 | 12 31 | 12 38 | 12 45 | 12 52 | 12 59 | 13 06 |
| London Victoria | 10 Z1 | 09 35 | 09 44 | 09 50 | 09 58 | 10 05 | 10 16 | 10 20 | 10 24 | 10 28 | 10 35 | 10 44 | 10 50 | 10 57 | 11 05 | 11 16 | 11 20 | 11 24 | 11 28 | 11 35 | 11 42 | 11 49 | 11 56 | 12 03 | 12 10 | 12 17 | 12 24 | 12 31 | 12 38 | 12 45 |

| Operator | Facilities | FC | GX | SN | FC | GX | SN | SN | FC | GX | SN | FC | GX | SN | FC | GX | SN | FC | GX | SN | FC | GX | SN | FC | GX | SN | FC | GX | SN |
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| Gatwick Airport | ← Z5 | 19 02 | 19 05 | 19 08 | 19 17 | 19 20 | 19 23 | 19 26 | 19 32 | 19 35 | 19 39 | 19 47 | 19 50 | 19 56 | 20 02 | 20 05 | 20 11 | 20 17 | 20 20 | 20 26 | 20 32 | 20 35 | 20 38 | 20 47 | 20 50 | 20 53 | 21 02 | 21 05 | 21 11 |
| East Croydon | Z5 | | 19 16 | 19 29 | 19 31 | 19 38 | 19 41 | 19 46 | 20 00 | 20 02 | 20 11 | 20 16 | 20 20 | 20 29 | 20 31 | 20 41 | 20 46 | 20 59 | 21 02 | 21 08 | 21 16 | 21 20 | 21 25 | 21 30 | 21 37 | 21 44 | 21 51 | 21 58 | 22 05 |
| London Bridge | Z1 | | 19 30 | 19 45 | 19 52 | 20 00 | 20 07 | 20 15 | 20 22 | 20 30 | 20 37 | 20 45 | 20 52 | 21 00 | 21 07 | 21 15 | 21 22 | 21 30 | 21 37 | 21 45 | 21 52 | 22 00 | 22 07 | 22 15 | 22 22 | 22 30 | 22 37 | 22 45 | 22 52 |
| London Blackfriars | Z1 | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Clapham Junction | Z2 | | 19 40 | 19 50 | 19 54 | 19 58 | 20 05 | 20 11 | 20 20 | 20 28 | 20 35 | 20 50 | 20 50 | 20 58 | 21 05 | 21 10 | 21 18 | 21 20 | 21 26 | 21 35 | 21 44 | 21 50 | 21 58 | 22 05 | 22 13 | 22 21 | 22 29 | 22 37 | 22 45 |
| London Victoria | 10 Z1 | 19 35 | 19 50 | 19 54 | 19 58 | 20 05 | 20 11 | 20 20 | 20 28 | 20 35 | 20 50 | 20 50 | 20 58 | 21 05 | 21 17 | 21 20 | 21 26 | 21 35 | 21 44 | 21 50 | 21 58 | 22 05 | 22 13 | 22 21 | 22 29 | 22 37 | 22 45 | 22 53 | 23 01 |

| Operator | Facilities | FC | GX | SN | FC | GX | SN | SN | FC | GX | SN | FC | GX | SN | FC | GX | SN | FC | GX | SN | FC | GX | SN | FC | GX | SN | FC | GX | SN |
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| Notes | | AO | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Gatwick Airport | ← Z5 | 21 17 | 21 20 | 21 27 | 21 35 | 21 38 | 21 47 | 21 50 | 21 53 | 22 05 | 22 17 | 22 21 | 22 27 | 22 30 | 22 35 | 22 38 | 22 47 | 22 50 | 23 05 | 23 13 | 23 17 | 23 20 | 23 35 | 23 43 | 23 53 | 24 03 | 24 13 | 24 23 | 24 33 |
| East Croydon | Z5 | | 21 31 | 21 41 | 21 59 | 22 02 | 22 08 | 22 24 | 22 30 | 22 32 | 22 40 | 22 59 | 23 02 | 23 29 | 23 32 | 23 46 | 23 52 | 24 01 | 24 11 | 24 21 | 24 31 | 24 41 | 24 51 | 25 01 | 25 11 | 25 21 | 25 31 | 25 41 | 25 51 |
| London Bridge | Z1 | | 21 45 | 21 52 | 22 15 | 22 22 | 22 30 | 22 37 | 22 45 | 22 52 | 23 00 | 23 15 | 23 22 | 23 30 | 23 37 | 23 46 | 23 52 | 24 01 | 24 11 | 24 21 | 24 31 | 24 41 | 24 51 | 25 01 | 25 11 | 25 21 | 25 31 | 25 41 | 25 51 |
| London Blackfriars | Z1 | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Clapham Junction | Z2 | | 21 51 | 22 10 | 22 20 | 22 28 | 22 37 | 22 40 | 22 49 | 23 10 | 23 20 | 23 30 | 23 41 | 23 51 | 24 01 | 24 11 | 24 21 | 24 31 | 24 41 | 24 51 | 25 01 | 25 11 | 25 21 | 25 31 | 25 41 | 25 51 | 26 01 | 26 11 | 26 21 |
| London Victoria | 10 Z1 | 21 50 | 21 58 | 22 05 | 22 10 | 22 20 | 22 26 | 22 35 | 22 44 | 22 50 | 22 50 | 22 57 | 23 05 | 23 20 | 23 20 | 23 35 | 23 52 | 23 55 | 00 10 | 00 18 | 00 20 | 00 27 | 00 37 | 00 42 | 00 50 | 00 58 | 01 07 | 01 15 | 01 23 |

| Operator | Facilities | GX | GX | GX | SN | GX | SN | SN | |
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| Notes | | AO | | | | | | | |
| Gatwick Airport | ← Z5 | 00 20 | 00 35 | 00 50 | 01 20 | 01 35 | 02 15 | 03 15 | |
| East Croydon | Z5 | | 00 35 | | 01 42 | 02 39 | 03 39 | | |
| London Bridge | Z1 | | 00 51 | | 01 54 | 02 53 | 03 53 | | |
| London Blackfriars | Z1 | | | | 01 54 | 02 53 | 03 53 | | |
| Clapham Junction | Z2 | | | | 01 54 | 02 53 | 03 53 | | |
| London Victoria | 10 Z1 | 00 55 | 01 11 | 01 25 | 02 05 | 02 10 | 03 05 | 04 05 | |

Sundays

Gatwick Airport to London

20 May to 9 September

| Operator | Facilities | GX | FC | GX | GX | GX | SN | GX | SN | SN | SN | GX | SN | FC | GX | SN | GX | SN | FC | GX | SN | FC | GX | GX | FC | GX | SN | FC | GX | SN |
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| Gatwick Airport | ← Z5 | 00 07 | 00 15 | 00 20 | 00 35 | 00 50 | 01 20 | 01 35 | 02 15 | 03 15 | 04 15 | 05 03 | 05 03 | 05 27 | 05 32 | 05 20 | 05 36 | 05 50 | 06 05 | 06 17 | 06 32 | 06 20 | 06 35 | 06 47 | 06 50 | 06 58 | 07 17 | 07 20 | 07 23 | |
| East Croydon | Z5 | | 00 35 | | | 01 42 | 02 39 | 03 39 | 04 39 | 05 39 | 06 39 | 07 39 | 08 39 | 09 39 | 10 39 | 11 39 | 12 39 | 13 39 | 14 39 | 15 39 | 16 39 | 17 39 | 18 39 | 19 39 | 20 39 | 21 39 | 22 39 | 23 39 | 24 39 | |
| London Bridge | Z1 | | 00 51 | | | 01 54 | 02 53 | 03 53 | 04 53 | 05 53 | 0 | | | | | | | | | | | | | | | | | | | |

Annex "A" to the complaint of the Nawrots

General Information

This timetable shows train times from 19 May to 8 December 2012.

This timetable shows a summary of direct train services between London Victoria and Gatwick Airport.

Changes to Train Times

National Rail Enquiries
08457 48 49 50 or www.nationalrail.co.uk
We advise you to consult National Rail Enquiries before travelling.

Improvement Work may affect train times, particularly at weekends.

Holiday Services

A revised service operates on public holidays. Further information at www.southernrailway.com

PLUSBUS

For unlimited local bus travel ask for PLUSBUS. www.southernrailway.com/plusbus and www.plusbus.info

Bicycle Policy

Restrictions apply in the peak hours for carrying non-folding bikes. www.southernrailway.com/cyclepolicy

MyTimes

The timetable that fits around you. www.southernrailway.com/mytimes

Customer Services

For information, lost property, comments and suggestions. Southern Customer Services, PO Box 3021, Bristol, BS2 2BS. Phone: 08451 27 29 20. e-mail: comments@southernrailway.com www.southernrailway.com/customerservices

Assisted Travel

For help in planning an accessible journey with Southern. Phone: 0800 138 1016. e-mail: myjourney@southernrailway.com www.southernrailway.com/accessibility

Independent Passenger Groups

Passenger Focus www.passengerfocus.org.uk

London TravelWatch www.londontravelwatch.org.uk

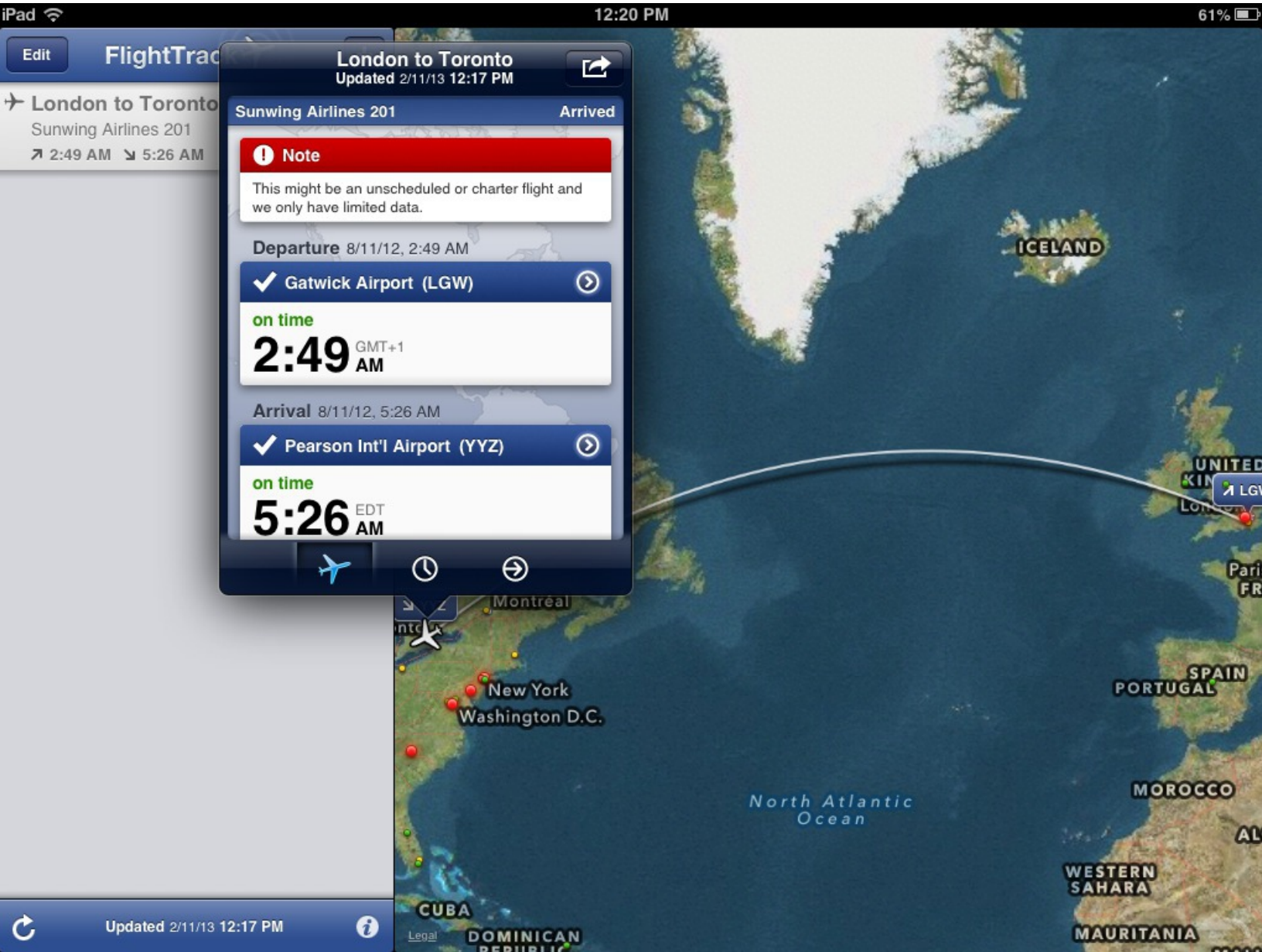
Brighton Line Commuters www.brightonlinecommuters.co.uk

Notes & Symbols

- Bold** Direct train
- Light** Connecting train
- 1** First Class accommodation available
- Z1-6** TravelCard Zone
- ⊕** London Underground interchange
- ⊕** Croydon Tramlink interchange
- ⊕** PLUSBUS through ticketing available
- ⊕** Airport interchange
- ⊕** Restricted access. Unsuitable for scooters and large wheelchairs
- ⊕** Only folded cycles can be carried on trains marked with this symbol
- ⊕** On-board catering service available for all or part of the journey
- FC** Service operated by First Capital Connect
- GX** Service operated by Gatwick Express
- SN** Service operated by Southern
- a** Arrival Time
- d** Departure Time
- A** To Eastbourne & Worthing
- B** From Bedford to Three Bridges
- C** To Brighton
- D** To Three Bridges
- E** From St Pancras International to Three Bridges
- F** From Bedford to Brighton
- G** From St Pancras International to Brighton
- H** To Ore
- J** To Tonbridge & Bognor Regis. Train divides at Redhill
- K** To Horsham & Tonbridge. Train divides at Redhill
- L** To Southampton Central
- M** To Littlehampton
- N** To Tonbridge & Brighton. Train divides at Redhill
- P** To Bognor Regis & Portsmouth Harbour
- Q** To Eastbourne & Littlehampton
- R** To Bognor Regis & Southampton Central
- S** To Littlehampton & Ore
- T** To Horsham
- U** To Hastings
- V** To Reigate & Three Bridges. Train divides at Redhill
- W** To Tonbridge & Horsham. Train divides at Redhill
- X** To Seaford & Ore
- Y** To Reigate & Horsham. Train divides at Redhill
- Z** To Bognor Regis and Portsmouth & Southsea
- AA** To Littlehampton & Hastings
- AB** To Eastbourne & Bognor Regis
- AC** To Portsmouth & Southsea
- AD** To Bognor Regis
- AE** To Chichester
- AF** To Worthing & Hastings
- AG** To Worthing
- AH** Service operates Tuesday to Friday mornings only. To Eastbourne & Worthing
- AJ** To Brighton & Portsmouth Harbour
- AK** To Reigate & Southampton Central. Train divides at Redhill
- AL** To Tonbridge & Portsmouth Harbour. Train divides at Redhill
- AM** To Littlehampton & Portsmouth Harbour
- AN** To Eastbourne
- AO** To Bedford
- AP** To Luton
- AQ** On-board catering available on 1353 & 1453 departures
- AR** On-board catering available on 1151 & 1451 departures
- MO** Service operates Mondays only
- MX** Service operates Tuesdays to Fridays only
- SO** Service operates Saturdays only
- SX** Service operates Mondays to Fridays only

Mondays to Fridays London to Gatwick Airport

| Operator | Facilities | Notes | London Victoria | Clapham Junction | London Blackfriars | London Bridge | East Croydon | Gatwick Airport |
|----------|------------|-------|-----------------|------------------|--------------------|---------------|--------------|-----------------|
| Operator | Facilities | Notes | London Victoria | Clapham Junction | London Blackfriars | London Bridge | East Croydon | Gatwick Airport |



**Annex “C” to the complaint
of the Nawrots**

March 21, 2013
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National Joint Council

**Travel Directive, Appendix D - Allowances - Module 4 -
Effective July 1, 2012**

Appendix D - Allowances - Module 4

Notice to the reader: This document is no longer in effect. It has been archived online and is kept purely for historical purposes.

| | |
|---|---|
| Country: <input type="text"/> or City: <input type="text"/> Return to alphabetical list <input type="button" value="Get Rates"/> | Archives July 1, 2012 <input type="button" value="v"/> |
|---|---|

Table Legend

- C = Commercial Accommodation
- P = Non-commercial Accommodation
- * = Reasonable and justifiable expenses. Receipts required.

United Kingdom (includes Northern Ireland) - Currency: Pound Sterling (GBP)

| Type of Accommodation | City | Meal Rate | | | | Incidental Amount | Grand Total (Taxes Included) |
|-----------------------|--------|-----------|-------|--------|--------------|-------------------|------------------------------|
| | | Breakfast | Lunch | Dinner | Meal Total | | |
| C | London | 15.95 | 29.10 | 38.80 | 83.85 | 26.83 | 110.68 |
| C-75% | London | 11.96 | 21.83 | 29.10 | 62.89 | 20.12 | 83.01 |
| P | London | 15.95 | 29.10 | 38.80 | 83.85 | 16.77 | 100.62 |
| P-75% | London | 11.96 | 21.83 | 29.10 | 62.89 | 12.58 | 75.47 |
| C | Other | 12.76 | 23.28 | 31.04 | 67.08 | 21.47 | 88.55 |
| C-75% | Other | 9.57 | 17.46 | 23.28 | 50.31 | 16.10 | 66.41 |
| P | Other | 12.76 | 23.28 | 31.04 | 67.08 | 13.42 | 80.50 |
| P-75% | Other | 9.57 | 17.46 | 23.28 | 50.31 | 10.06 | 60.37 |

I

(Acts whose publication is obligatory)

**REGULATION (EC) No 261/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 11 February 2004
establishing common rules on compensation and assistance to passengers in the event of denied
boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91
(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Having regard to the Treaty establishing the European
Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Economic and
Social Committee ⁽²⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article
251 of the Treaty ⁽³⁾, in the light of the joint text approved by
the Conciliation Committee on 1 December 2003,

Whereas:

- (1) Action by the Community in the field of air transport should aim, among other things, at ensuring a high level of protection for passengers. Moreover, full account should be taken of the requirements of consumer protection in general.
- (2) Denied boarding and cancellation or long delay of flights cause serious trouble and inconvenience to passengers.
- (3) While Council Regulation (EEC) No 295/91 of 4 February 1991 establishing common rules for a denied boarding compensation system in scheduled air transport ⁽⁴⁾ created basic protection for passengers, the number of passengers denied boarding against their will remains too high, as does that affected by cancellations without prior warning and that affected by long delays.

(4) The Community should therefore raise the standards of protection set by that Regulation both to strengthen the rights of passengers and to ensure that air carriers operate under harmonised conditions in a liberalised market.

(5) Since the distinction between scheduled and non-scheduled air services is weakening, such protection should apply to passengers not only on scheduled but also on non-scheduled flights, including those forming part of package tours.

(6) The protection accorded to passengers departing from an airport located in a Member State should be extended to those leaving an airport located in a third country for one situated in a Member State, when a Community carrier operates the flight.

(7) In order to ensure the effective application of this Regulation, the obligations that it creates should rest with the operating air carrier who performs or intends to perform a flight, whether with owned aircraft, under dry or wet lease, or on any other basis.

(8) This Regulation should not restrict the rights of the operating air carrier to seek compensation from any person, including third parties, in accordance with the law applicable.

⁽¹⁾ OJ C 103 E, 30.4.2002, p. 225 and OJ C 71 E, 25.3.2003, p. 188.

⁽²⁾ OJ C 241, 7.10.2002, p. 29.

⁽³⁾ Opinion of the European Parliament of 24 October 2002 (OJ C 300 E, 11.12.2003, p. 443), Council Common Position of 18 March 2003 (OJ C 125 E, 27.5.2003, p. 63) and Position of the European Parliament of 3 July 2003. Legislative Resolution of the European Parliament of 18 December 2003 and Council Decision of 26 January 2004.

⁽⁴⁾ OJ L 36, 8.2.1991, p. 5.

(9) The number of passengers denied boarding against their will should be reduced by requiring air carriers to call for volunteers to surrender their reservations, in exchange for benefits, instead of denying passengers boarding, and by fully compensating those finally denied boarding.

- (10) Passengers denied boarding against their will should be able either to cancel their flights, with reimbursement of their tickets, or to continue them under satisfactory conditions, and should be adequately cared for while awaiting a later flight.
- (11) Volunteers should also be able to cancel their flights, with reimbursement of their tickets, or continue them under satisfactory conditions, since they face difficulties of travel similar to those experienced by passengers denied boarding against their will.
- (12) The trouble and inconvenience to passengers caused by cancellation of flights should also be reduced. This should be achieved by inducing carriers to inform passengers of cancellations before the scheduled time of departure and in addition to offer them reasonable re-routing, so that the passengers can make other arrangements. Air carriers should compensate passengers if they fail to do this, except when the cancellation occurs in extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.
- (13) Passengers whose flights are cancelled should be able either to obtain reimbursement of their tickets or to obtain re-routing under satisfactory conditions, and should be adequately cared for while awaiting a later flight.
- (14) As under the Montreal Convention, obligations on operating air carriers should be limited or excluded in cases where an event has been caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. Such circumstances may, in particular, occur in cases of political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and strikes that affect the operation of an operating air carrier.
- (15) Extraordinary circumstances should be deemed to exist where the impact of an air traffic management decision in relation to a particular aircraft on a particular day gives rise to a long delay, an overnight delay, or the cancellation of one or more flights by that aircraft, even though all reasonable measures had been taken by the air carrier concerned to avoid the delays or cancellations.
- (16) In cases where a package tour is cancelled for reasons other than the flight being cancelled, this Regulation should not apply.
- (17) Passengers whose flights are delayed for a specified time should be adequately cared for and should be able to cancel their flights with reimbursement of their tickets or to continue them under satisfactory conditions.
- (18) Care for passengers awaiting an alternative or a delayed flight may be limited or declined if the provision of the care would itself cause further delay.
- (19) Operating air carriers should meet the special needs of persons with reduced mobility and any persons accompanying them.
- (20) Passengers should be fully informed of their rights in the event of denied boarding and of cancellation or long delay of flights, so that they can effectively exercise their rights.
- (21) Member States should lay down rules on sanctions applicable to infringements of the provisions of this Regulation and ensure that these sanctions are applied. The sanctions should be effective, proportionate and dissuasive.
- (22) Member States should ensure and supervise general compliance by their air carriers with this Regulation and designate an appropriate body to carry out such enforcement tasks. The supervision should not affect the rights of passengers and air carriers to seek legal redress from courts under procedures of national law.
- (23) The Commission should analyse the application of this Regulation and should assess in particular the opportunity of extending its scope to all passengers having a contract with a tour operator or with a Community carrier, when departing from a third country airport to an airport in a Member State.
- (24) Arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a joint declaration by the Ministers of Foreign Affairs of the two countries. Such arrangements have yet to enter into operation.
- (25) Regulation (EEC) No 295/91 should accordingly be repealed,
- HAVE ADOPTED THIS REGULATION:
- Article 1*
- Subject**
1. This Regulation establishes, under the conditions specified herein, minimum rights for passengers when:
- (a) they are denied boarding against their will;
- (b) their flight is cancelled;
- (c) their flight is delayed.

2. Application of this Regulation to Gibraltar airport is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.

3. Application of this Regulation to Gibraltar airport shall be suspended until the arrangements in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 enter into operation. The Governments of Spain and the United Kingdom will inform the Council of such date of entry into operation.

Article 2

Definitions

For the purposes of this Regulation:

- (a) ‘air carrier’ means an air transport undertaking with a valid operating licence;
- (b) ‘operating air carrier’ means an air carrier that performs or intends to perform a flight under a contract with a passenger or on behalf of another person, legal or natural, having a contract with that passenger;
- (c) ‘Community carrier’ means an air carrier with a valid operating licence granted by a Member State in accordance with the provisions of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers ⁽¹⁾;
- (d) ‘tour operator’ means, with the exception of an air carrier, an organiser within the meaning of Article 2, point 2, of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours ⁽²⁾;
- (e) ‘package’ means those services defined in Article 2, point 1, of Directive 90/314/EEC;
- (f) ‘ticket’ means a valid document giving entitlement to transport, or something equivalent in paperless form, including electronic form, issued or authorised by the air carrier or its authorised agent;
- (g) ‘reservation’ means the fact that the passenger has a ticket, or other proof, which indicates that the reservation has been accepted and registered by the air carrier or tour operator;
- (h) ‘final destination’ means the destination on the ticket presented at the check-in counter or, in the case of directly connecting flights, the destination of the last flight; alternative connecting flights available shall not be taken into account if the original planned arrival time is respected;
- (i) ‘person with reduced mobility’ means any person whose mobility is reduced when using transport because of any physical disability (sensory or locomotory, permanent or temporary), intellectual impairment, age or any other cause

of disability, and whose situation needs special attention and adaptation to the person's needs of the services made available to all passengers;

- (j) ‘denied boarding’ means a refusal to carry passengers on a flight, although they have presented themselves for boarding under the conditions laid down in Article 3(2), except where there are reasonable grounds to deny them boarding, such as reasons of health, safety or security, or inadequate travel documentation;
- (k) ‘volunteer’ means a person who has presented himself for boarding under the conditions laid down in Article 3(2) and responds positively to the air carrier's call for passengers prepared to surrender their reservation in exchange for benefits.
- (l) ‘cancellation’ means the non-operation of a flight which was previously planned and on which at least one place was reserved.

Article 3

Scope

1. This Regulation shall apply:
 - (a) to passengers departing from an airport located in the territory of a Member State to which the Treaty applies;
 - (b) to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies, unless they received benefits or compensation and were given assistance in that third country, if the operating air carrier of the flight concerned is a Community carrier.
2. Paragraph 1 shall apply on the condition that passengers:
 - (a) have a confirmed reservation on the flight concerned and, except in the case of cancellation referred to in Article 5, present themselves for check-in,
 - as stipulated and at the time indicated in advance and in writing (including by electronic means) by the air carrier, the tour operator or an authorised travel agent,or, if no time is indicated,
 - not later than 45 minutes before the published departure time; or
 - (b) have been transferred by an air carrier or tour operator from the flight for which they held a reservation to another flight, irrespective of the reason.
3. This Regulation shall not apply to passengers travelling free of charge or at a reduced fare not available directly or indirectly to the public. However, it shall apply to passengers having tickets issued under a frequent flyer programme or other commercial programme by an air carrier or tour operator.

⁽¹⁾ OJ L 240, 24.8.1992, p. 1.

⁽²⁾ OJ L 158, 23.6.1990, p. 59.

4. This Regulation shall only apply to passengers transported by motorised fixed wing aircraft.

5. This Regulation shall apply to any operating air carrier providing transport to passengers covered by paragraphs 1 and 2. Where an operating air carrier which has no contract with the passenger performs obligations under this Regulation, it shall be regarded as doing so on behalf of the person having a contract with that passenger.

6. This Regulation shall not affect the rights of passengers under Directive 90/314/EEC. This Regulation shall not apply in cases where a package tour is cancelled for reasons other than cancellation of the flight.

Article 4

Denied boarding

1. When an operating air carrier reasonably expects to deny boarding on a flight, it shall first call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the operating air carrier. Volunteers shall be assisted in accordance with Article 8, such assistance being additional to the benefits mentioned in this paragraph.

2. If an insufficient number of volunteers comes forward to allow the remaining passengers with reservations to board the flight, the operating air carrier may then deny boarding to passengers against their will.

3. If boarding is denied to passengers against their will, the operating air carrier shall immediately compensate them in accordance with Article 7 and assist them in accordance with Articles 8 and 9.

Article 5

Cancellation

1. In case of cancellation of a flight, the passengers concerned shall:

- (a) be offered assistance by the operating air carrier in accordance with Article 8; and
- (b) be offered assistance by the operating air carrier in accordance with Article 9(1)(a) and 9(2), as well as, in event of re-routing when the reasonably expected time of departure of the new flight is at least the day after the departure as it was planned for the cancelled flight, the assistance specified in Article 9(1)(b) and 9(1)(c); and
- (c) have the right to compensation by the operating air carrier in accordance with Article 7, unless:
 - (i) they are informed of the cancellation at least two weeks before the scheduled time of departure; or

- (ii) they are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or

- (iii) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.

2. When passengers are informed of the cancellation, an explanation shall be given concerning possible alternative transport.

3. An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.

4. The burden of proof concerning the questions as to whether and when the passenger has been informed of the cancellation of the flight shall rest with the operating air carrier.

Article 6

Delay

1. When an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure:

- (a) for two hours or more in the case of flights of 1 500 kilometres or less; or
- (b) for three hours or more in the case of all intra-Community flights of more than 1 500 kilometres and of all other flights between 1 500 and 3 500 kilometres; or
- (c) for four hours or more in the case of all flights not falling under (a) or (b),

passengers shall be offered by the operating air carrier:

- (i) the assistance specified in Article 9(1)(a) and 9(2); and
- (ii) when the reasonably expected time of departure is at least the day after the time of departure previously announced, the assistance specified in Article 9(1)(b) and 9(1)(c); and
- (iii) when the delay is at least five hours, the assistance specified in Article 8(1)(a).

2. In any event, the assistance shall be offered within the time limits set out above with respect to each distance bracket.

Article 7

Right to compensation

1. Where reference is made to this Article, passengers shall receive compensation amounting to:

- (a) EUR 250 for all flights of 1 500 kilometres or less;
- (b) EUR 400 for all intra-Community flights of more than 1 500 kilometres, and for all other flights between 1 500 and 3 500 kilometres;
- (c) EUR 600 for all flights not falling under (a) or (b).

In determining the distance, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger's arrival after the scheduled time.

2. When passengers are offered re-routing to their final destination on an alternative flight pursuant to Article 8, the arrival time of which does not exceed the scheduled arrival time of the flight originally booked

- (a) by two hours, in respect of all flights of 1 500 kilometres or less; or
- (b) by three hours, in respect of all intra-Community flights of more than 1 500 kilometres and for all other flights between 1 500 and 3 500 kilometres; or
- (c) by four hours, in respect of all flights not falling under (a) or (b),

the operating air carrier may reduce the compensation provided for in paragraph 1 by 50 %.

3. The compensation referred to in paragraph 1 shall be paid in cash, by electronic bank transfer, bank orders or bank cheques or, with the signed agreement of the passenger, in travel vouchers and/or other services.

4. The distances given in paragraphs 1 and 2 shall be measured by the great circle route method.

Article 8

Right to reimbursement or re-routing

1. Where reference is made to this Article, passengers shall be offered the choice between:

- (a) — reimbursement within seven days, by the means provided for in Article 7(3), of the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant,
 - a return flight to the first point of departure, at the earliest opportunity;
- (b) re-routing, under comparable transport conditions, to their final destination at the earliest opportunity; or

(c) re-routing, under comparable transport conditions, to their final destination at a later date at the passenger's convenience, subject to availability of seats.

2. Paragraph 1(a) shall also apply to passengers whose flights form part of a package, except for the right to reimbursement where such right arises under Directive 90/314/EEC.

3. When, in the case where a town, city or region is served by several airports, an operating air carrier offers a passenger a flight to an airport alternative to that for which the booking was made, the operating air carrier shall bear the cost of transferring the passenger from that alternative airport either to that for which the booking was made, or to another close-by destination agreed with the passenger.

Article 9

Right to care

1. Where reference is made to this Article, passengers shall be offered free of charge:

- (a) meals and refreshments in a reasonable relation to the waiting time;
- (b) hotel accommodation in cases
 - where a stay of one or more nights becomes necessary, or
 - where a stay additional to that intended by the passenger becomes necessary;
- (c) transport between the airport and place of accommodation (hotel or other).

2. In addition, passengers shall be offered free of charge two telephone calls, telex or fax messages, or e-mails.

3. In applying this Article, the operating air carrier shall pay particular attention to the needs of persons with reduced mobility and any persons accompanying them, as well as to the needs of unaccompanied children.

Article 10

Upgrading and downgrading

1. If an operating air carrier places a passenger in a class higher than that for which the ticket was purchased, it may not request any supplementary payment.

2. If an operating air carrier places a passenger in a class lower than that for which the ticket was purchased, it shall within seven days, by the means provided for in Article 7(3), reimburse

- (a) 30 % of the price of the ticket for all flights of 1 500 kilometres or less, or

- (b) 50 % of the price of the ticket for all intra-Community flights of more than 1 500 kilometres, except flights between the European territory of the Member States and the French overseas departments, and for all other flights between 1 500 and 3 500 kilometres, or
- (c) 75 % of the price of the ticket for all flights not falling under (a) or (b), including flights between the European territory of the Member States and the French overseas departments.

Article 11

Persons with reduced mobility or special needs

1. Operating air carriers shall give priority to carrying persons with reduced mobility and any persons or certified service dogs accompanying them, as well as unaccompanied children.
2. In cases of denied boarding, cancellation and delays of any length, persons with reduced mobility and any persons accompanying them, as well as unaccompanied children, shall have the right to care in accordance with Article 9 as soon as possible.

Article 12

Further compensation

1. This Regulation shall apply without prejudice to a passenger's rights to further compensation. The compensation granted under this Regulation may be deducted from such compensation.
2. Without prejudice to relevant principles and rules of national law, including case-law, paragraph 1 shall not apply to passengers who have voluntarily surrendered a reservation under Article 4(1).

Article 13

Right of redress

In cases where an operating air carrier pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation may be interpreted as restricting its right to seek compensation from any person, including third parties, in accordance with the law applicable. In particular, this Regulation shall in no way restrict the operating air carrier's right to seek reimbursement from a tour operator or another person with whom the operating air carrier has a contract. Similarly, no provision of this Regulation may be interpreted as restricting the right of a tour operator or a third party, other than a passenger, with whom an operating air carrier has a contract, to seek reimbursement or compensation from the operating air carrier in accordance with applicable relevant laws.

Article 14

Obligation to inform passengers of their rights

1. The operating air carrier shall ensure that at check-in a clearly legible notice containing the following text is displayed in a manner clearly visible to passengers: 'If you are denied boarding or if your flight is cancelled or delayed for at least two hours, ask at the check-in counter or boarding gate for the text stating your rights, particularly with regard to compensation and assistance'.
2. An operating air carrier denying boarding or cancelling a flight shall provide each passenger affected with a written notice setting out the rules for compensation and assistance in line with this Regulation. It shall also provide each passenger affected by a delay of at least two hours with an equivalent notice. The contact details of the national designated body referred to in Article 16 shall also be given to the passenger in written form.
3. In respect of blind and visually impaired persons, the provisions of this Article shall be applied using appropriate alternative means.

Article 15

Exclusion of waiver

1. Obligations vis-à-vis passengers pursuant to this Regulation may not be limited or waived, notably by a derogation or restrictive clause in the contract of carriage.
2. If, nevertheless, such a derogation or restrictive clause is applied in respect of a passenger, or if the passenger is not correctly informed of his rights and for that reason has accepted compensation which is inferior to that provided for in this Regulation, the passenger shall still be entitled to take the necessary proceedings before the competent courts or bodies in order to obtain additional compensation.

Article 16

Infringements

1. Each Member State shall designate a body responsible for the enforcement of this Regulation as regards flights from airports situated on its territory and flights from a third country to such airports. Where appropriate, this body shall take the measures necessary to ensure that the rights of passengers are respected. The Member States shall inform the Commission of the body that has been designated in accordance with this paragraph.

2. Without prejudice to Article 12, each passenger may complain to any body designated under paragraph 1, or to any other competent body designated by a Member State, about an alleged infringement of this Regulation at any airport situated on the territory of a Member State or concerning any flight from a third country to an airport situated on that territory.

3. The sanctions laid down by Member States for infringements of this Regulation shall be effective, proportionate and dissuasive.

Article 17

Report

The Commission shall report to the European Parliament and the Council by 1 January 2007 on the operation and the results of this Regulation, in particular regarding:

- the incidence of denied boarding and of cancellation of flights,
- the possible extension of the scope of this Regulation to passengers having a contract with a Community carrier or holding a flight reservation which forms part of a ‘package

tour’ to which Directive 90/314/EEC applies and who depart from a third-country airport to an airport in a Member State, on flights not operated by Community air carriers,

- the possible revision of the amounts of compensation referred to in Article 7(1).

The report shall be accompanied where necessary by legislative proposals.

Article 18

Repeal

Regulation (EEC) No 295/91 shall be repealed.

Article 19

Entry into force

This Regulation shall enter into force on 17 February 2005.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 11 February 2004.

For the European Parliament
The President
P. COX

For the Council
The President
M. McDOWELL

**Annex "E" to the complaint
of the Nawrots**

March 21, 2013
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NTA(A) No. 458 T.C.A.B. No. 696

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

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

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

89 DENIED BOARDING COMPENSATION

PART 1

- | | |
|---|--|
| C | +{X}. When AC is unable to provide previously confirmed space due to there being more passengers holding confirmed reservations and tickets than for which there are available seats on a flight, AC shall implement the provisions of this rule, †{N}unless applicable local law provides otherwise. In particular, for flights departing from the following countries, Air Canada will apply the provisions of the following legislations: United States: US 14 CFR part 250; European Union: EC regulation No. 261/2004; An Andean community country: Decision 619; Argentina: Administrative Order PRE-CJU-002-05 (18 November 2004) Israel: Aviation Services Law (Compensation and Assistance for flight cancellation or change of conditions), 5772-2012. |
| C | (A) †{CANCELLED} |
| C | (B) <u>REQUEST FOR VOLUNTEERS</u> (1) AC will request volunteers from among the confirmed passengers to relinquish their seats in exchange for compensation as defined in (E). (2) Once a passenger has voluntarily relinquished his seat, he will not later be involuntarily denied boarding unless he was advised at the time he volunteered of such possibility and the amount of compensation to which he would be entitled. (3) The request for volunteers and the selection of passengers to be denied boarding shall be in a manner solely determined by AC. |
| C | (C) <u>BOARDING PRIORITIES</u> (1) If a flight is oversold, no passenger may be involuntarily denied boarding until AC has first requested volunteers to relinquish their seats. (2) In the event there are not enough volunteers, other passengers may be involuntarily denied boarding in accordance with AC boarding priority policy. Passengers with confirmed reservations †{X}, will be permitted to board in the following order until all available seats are occupied: (a) Disabled passengers, unaccompanied children under 12 years of age and others for whom, in AC'S assessment, failure to carry would cause severe hardship. (b) Passengers paying First (F), Executive (J) or full Economy (Y) class fares. (c) All other passengers, †{X} in the order in which they present themselves for check-in and boarding. |
| C | +{C}(D) <u>TRANSPORTATION FOR PASSENGERS DENIED BOARDING</u> When a passenger has been denied boarding, either voluntarily or involuntarily, carrier will: (1) Carry the passenger on another of its passenger aircraft or class of service on which space is available without additional charge regardless of the class of service; or, at carrier's option; (2) 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; (3) 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, (4) If the passenger choose to no longer travel or if carrier is unable to perform the option stated in (1) thru (3) above within a reasonable amount of time, make involuntary refund in accordance with Rule 90(D), or upon request, for denied boardings 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's request. (5) For denied boardings 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 (1) thru (3) 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 seat on another carrier whose flight is scheduled to arrive appreciably earlier than the options proposed in (1) thru (3) above. |

(Continued on next page)

† - Effective August 16 Decision 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.

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INTERNATIONAL PASSENGER RULES AND FARES TARIFF
NO. AC-2

7th Revised Page AC-22-D
Cancels 6th Revised Page AC-22-D

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

89 DENIED BOARDING COMPENSATION (Continued)
PART 1 (Continued)

(E) COMPENSATION

In addition to providing transportation in accordance with (D), a passenger who has been denied boarding involuntarily will be compensated by AC as follows:

(1) Conditions for Payment

- (a) The passenger must present himself for carriage at the appropriate time and place in accordance with this tariff: having complied fully with AC applicable reservation, ticketing, check-in and boarding; and,
(ii) [X].

- (b) It must not have been possible to accommodate the passenger on the flight on which he held confirmed reservations and the flight must have departed without him.

EXCEPTION: The passenger will not be eligible for compensation:

- (i) if he is offered accommodation or is seated in a compartment of the aircraft other than that specified on his ticket at no extra charge to him. (Should he be seated in a compartment for which a lower fare applies, he shall be entitled to the appropriate refund); or,
(ii) when the flight on which he holds a confirmed and ticketed reservation is cancelled or space has been requisitioned by the government; or,
(iii) (Applicable to AC connector carrier ZX only) if the passenger can be accommodated on another flight which departs within one hour of the scheduled departure of the flight on which boarding has been denied.

(2) Amount of Compensation

Subject to the provisions of (E)(1)(a) AC will tender liquidated damages in the amounts in cash or a credit voucher good for travel on AC as follows: Caribbean/Bermuda to Canada, compensation by cash is equal to the value of coupons remaining to an online or interline destination, or next stopover points, maximum is CAD 200.00. Compensation by MCO (credit voucher), is equal to twice the value of coupons remaining to an online or interline destination or next stopover point, minimum is CAD 100.00, maximum is CAD 500.00. From Venezuela, compensation to passengers must equal 25% of the value of the ticket to be paid by cash, by electronic bank transfer, cheque, or in accordance with an agreement signed with the passenger, with travel vouchers or other services.

| | Draft | MCO (credit voucher) |
|--|-------------------------|----------------------|
| Canada to Mexico/Mexico to Canada | CAD 100.00 | CAD 200.00 |
| Canada to all other destinations | CAD 200.00 | CAD 500.00 |
| Asia to Canada (excluding Japan and Korea) | CAD 300.00 | CAD 600.00 |
| Japan to Canada (compensation is offered in cash only) | JPY 30,000 | not applicable |
| | (paid by bank transfer) | |
| Seoul to Canada | Y class USD 400.00 | not applicable |
| (compensation is offered in cash only) | J class USD 600.00 | not applicable |
| | not applicable | |
| South America/South Pacific to Canada | CAD 200.00 | CAD 500.00 |
| **exceptions** | | |
| From Sao Paulo to Toronto | USD 750.00 | USD 1500.00 |

(3) Time of Offer of Compensation

- (a) Compensation will be offered to, and if accepted, receipted by the passenger on the day and at the place where the denied boarding occurs.
(b) In the event the alternate transportation departs before the offer can be made, it shall be made by mail or other means within 24 hours after the time the failure to accommodate has occurred.

(F) NOTICE PROVIDED TO PASSENGERS

[CANCELLED]

(Continued on next page)

† - Effective August 16 Decision 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.

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Airline Tariff Publishing Company, Agent
**INTERNATIONAL PASSENGER RULES AND FARES TARIFF
AF-1**

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Cancels 5th Revised Page 75

| RULE | SECTION I - GENERAL RULES | | | | | | | | | | | | | | | |
|------------------------------------|---|--------|-----|-----|-----------|-----|-----|------------------------------------|-----|-----|-------------------|-----|-----|--|-----|-----|
| C87 | <p>†[C]PART II DENIED BOARDING COMPENSATION (Applicable to flights or portions to flight originating in Canada)</p> <p>(A) APPLICABILITY The following rules shall apply:</p> <ol style="list-style-type: none"> (1) In respect of flights departing from an airport in the European Union (EU) and flights departing from an airport in a third country bound to an airport in the EU unless passenger received benefits or compensation and were given assistance in that third country; (2) On condition that passengers have a confirmed reservation on the flight concerned and presents himself/herself for check-in at the time indicated in advance and in writing or electronically; or; if no time is indicated; not later than 60 minutes before the published departure time; (3) Only to the passenger travelling with a valid ticket including tickets issued under a frequent flyer or other commercial programme with confirmed reservations and <ol style="list-style-type: none"> (a) Presents himself at the appropriate place and has observed published minimum check-in times (b) Has complied with Air France's ticketing and reconfirmation procedures (c) Is acceptable for transportation under the carrier's tariff and the flight for which the passenger holds confirmed reservations is unable to accommodate the passenger and departs without him/her (4) Where AF is the operating carrier of the flight EXCEPTIONS: The following passengers will not be entitled to compensations; <ol style="list-style-type: none"> (a) Passengers travelling to EU who have received benefits or compensation in a third country. (b) Passengers travelling between two airports outside the EU unless the sector is part of a flight (same flight number) that originated in the EU. (c) Passengers without confirmed reservation. (d) Passengers who have not presented themselves for check-in on time (e) Passengers on free or reduced fares not directly or indirectly available to the public, e.g. ID and AD tickets (5) The passenger is accommodated on the flight for which he/she hold's confirmed reservations, but is seated in a compartment of the aircraft other than that reserved, provided that when the passenger is accommodated in a class of service for which a lower fare is charged, the passenger will be entitled to the appropriate refund. <p>(B) PASSENGER RIGHTS</p> <ol style="list-style-type: none"> (1) Denied Boarding Volunteers Volunteers have the right of mutually agreed benefits plus the right to choose between reimbursement and rerouting with the following options: <ol style="list-style-type: none"> (a) Reimbursement within 7 days of coupons not used or (b) Rerouting to final destination at the earliest opportunity under comparable transport conditions or (c) Rerouting to final destination at a later date according to passenger's convenience but subject to availability of space. Volunteers are not entitled to care, such as phone calls, foods, accommodation etc. (2) Involuntary Denied Boarding In case of Involuntary Denied Boarding the passengers are entitled to the following: <ol style="list-style-type: none"> (a) Right to compensation according to paragraph (C) and (b) Right to choose between reimbursement/rerouting with the same options as mentioned under (A)(1) above and (c) Right to care including <ul style="list-style-type: none"> - Meals and refreshments, reasonably related to the waiting time - 2 telephone calls or telex, e-mails, fax - if necessary, hotel accommodation plus transfer between airport and hotel (3) Amount of Compensation Payable <ol style="list-style-type: none"> (a) The amount of compensation depends on the distance of the scheduled flight or the alternative flight proposed. Compensation Amounts in EUR/CAD: Flight KM between And Amount in <table style="margin-left: 40px;"> <tr> <td>0-1500</td> <td>EUR</td> <td>CAD</td> </tr> <tr> <td>1500-3500</td> <td>250</td> <td>400</td> </tr> <tr> <td>Intra EU flights of more than 1500</td> <td>400</td> <td>645</td> </tr> <tr> <td>greater than 3500</td> <td>400</td> <td>645</td> </tr> <tr> <td></td> <td>600</td> <td>965</td> </tr> </table> | 0-1500 | EUR | CAD | 1500-3500 | 250 | 400 | Intra EU flights of more than 1500 | 400 | 645 | greater than 3500 | 400 | 645 | | 600 | 965 |
| 0-1500 | EUR | CAD | | | | | | | | | | | | | | |
| 1500-3500 | 250 | 400 | | | | | | | | | | | | | | |
| Intra EU flights of more than 1500 | 400 | 645 | | | | | | | | | | | | | | |
| greater than 3500 | 400 | 645 | | | | | | | | | | | | | | |
| | 600 | 965 | | | | | | | | | | | | | | |

(Continued on next page)

For unexplained abbreviations, reference marks and symbols see Pages 21 through 29.

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INTERNATIONAL PASSENGER RULES AND FARES TARIFF
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RULE

SECTION I - GENERAL RULES

C87

+ (C) PART II DENIED BOARDING COMPENSATION (Continued)

(B) PASSENGER RIGHTS (Continued)

(3) Amount of Compensation Payable (Continued)

(b) If an alternative flight is offered and the new scheduled arrival time does not exceed 2 hours versus the originally planned, the compensation amounts shown under (1) above can be reduced by 50 percent:

| Flight KM between And | Amount in | |
|------------------------------------|-----------|-----|
| | EUR | CAD |
| 0-1500 | 125 | 200 |
| 1500-3500 | 200 | 320 |
| Intra EU flights of more than 1500 | 200 | 320 |
| greater than 3500 | 300 | 485 |

(c) In lieu of cash payment of the amount mentioned in (B)(1) and (B)(2) the passenger may choose compensation in the form of a voucher valid for further travel on the services of Air France, then the compensation amount will be 150 percent of the amount mentioned in (B)(1) and (B)(2). Following conditions shall apply to such vouchers:

- validity is 1 year from the date of issue
- if, after one year the voucher has not been used, it will be refunded but only at the cash values as applicable in (B)(1) and (B)(2).
- lost vouchers will not be replaced
- a ticket may only be issued in exchange for the voucher in the same name as that on the voucher
- if the value of a desired ticket exceeds the value of the voucher, the passenger shall pay the applicable difference
- if the value of the voucher exceeds the value of a desired ticket, the difference will not be refunded.

(4) Cancellation of Flights

(a) In case of cancellation of a flight the passengers will be entitled to the following:

- (1) Right to compensation according to paragraph (C) and
- (2) Right to choose between reimbursement/rerouting with the same options as mentioned under (A)(1) above and
- (3) Right to care including
 - Meals and refreshments, reasonably related to the waiting time
 - 2 telephone calls or telex, e-mails, fax
 - If necessary, hotel accommodation plus transfer between airport and hotel

(b) Amount of Compensation Payable

(1) The amount of compensation depends on the distance of the scheduled flight or the alternative flight proposed.

Compensation Amounts in EUR/CAD:

| Flight KM between And | Amount in | |
|------------------------------------|-----------|-----|
| | EUR | CAD |
| 0-1500 | 250 | 400 |
| 1500-3500 | 400 | 645 |
| Intra EU flights of more than 1500 | 400 | 645 |
| greater than 3500 | 600 | 965 |

(2) If an alternative flight is offered and the new scheduled arrival time does not exceed 2 hours versus the originally planned, the compensation amounts shown under (1) above can be reduced by 50 percent:

| Flight KM between And | Amount in | |
|------------------------------------|-----------|-----|
| | EUR | CAD |
| 0-1500 | 125 | 200 |
| 1500-3500 | 200 | 320 |
| Intra EU flights of more than 1500 | 200 | 320 |
| greater than 3500 | 300 | 485 |

(Continued on next page)

For unexplained abbreviations, reference marks and symbols see Pages 21 through 29.

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(Except as Noted)

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| | |
|-------------|----------------------------------|
| RULE | SECTION I - GENERAL RULES |
|-------------|----------------------------------|

| | | | | | | | |
|---|--|--------------------------|-------------------|---|-------------------|---|-------------------|
| C87 | <p>+ [C] <u>PART II DENIED BOARDING COMPENSATION</u> (Continued)</p> <p>(B) <u>PASSENGER RIGHTS</u> (Continued)</p> <p>(4) <u>Cancellation of Flights</u> (Continued)</p> <p>(b) <u>Amount of Compensation Payable</u> (Continued)</p> <p>(3) In lieu of cash payment of the amount mentioned in (B)(1) and (B)(2) the passenger may choose compensation in the form of a voucher valid for further travel on the services of Air France, then the compensation amount will be 150 percent of the amount mentioned in (B)(1) and (B)(2). Following conditions shall apply to such vouchers:</p> <ul style="list-style-type: none"> - validity is 1 year from the date of issue - if, after one year the voucher has not been used, it will be refunded but only at the cash values as applicable in (B)(1) and (B)(2). - lost vouchers will not be replaced - a ticket may only be issued in exchange for the voucher in the same name as that on the voucher - if the value of a desired ticket exceeds the value of the voucher, the passenger shall pay the applicable difference - if the value of the voucher exceeds the value of a desired ticket, the difference will not be refunded. <p>(C) <u>LONG DELAY</u> This rule is only applicable when a flight is delayed at departure, not when a flight leaves on time and is subsequently delayed. A long delay is considered a flight that is delayed according to the following parameters:</p> <table style="width:100%; border: none;"> <tr> <td style="width:50%;">Trips less than 1,500 KM</td> <td style="width:50%;">More than 2 hours</td> </tr> <tr> <td>Trips between 1,500-3,500 KM and all intra EU flights in excess of 1,500 KM</td> <td>More than 3 hours</td> </tr> <tr> <td>Trips more than 3,500 KM (non intra EU)</td> <td>More than 4 hours</td> </tr> </table> <p>In this case the passengers are entitled to the following</p> <p>(1) Right to care provided this does not result in a further delay of the flight including</p> <ul style="list-style-type: none"> - Meals and refreshments, reasonably related to the waiting time - 2 telephone calls or telex, e-mails, fax - If necessary, hotel accommodation plus transfer between airport and hotel; in case the flight is delayed until the next day hotel accommodation and transfer are mandatory. <p>(2) If flight is delayed more than 5 hours right to be reimbursed within 7 days:</p> <p>(a) Outbound passenger: Cost of ticket</p> <p>(b) Inbound passenger: Cost of Non-used coupon</p> <p>(c) Transit Passenger: Cost of Non-used coupon, if the flight no longer serves any purpose; also cost of the tickets for parts of the journey already made and if relevant return flight to the first point of departure</p> <p>(d) For package tour passengers the value of reimbursement will have to be assigned to unused flight coupon(s)</p> <p>(3) <u>Downgrading of Passengers</u> In case of involuntary downgrading to a lower class of service passengers will be entitled to the following reimbursement within 7 days</p> <p>(a) 30 percent of the ticket price for trips less than 1,500 KM</p> <p>(b) 50 percent of the ticket price for trips between 1,500 and 3,500 KM and all intra EU flights in excess of 1,500 KM</p> <p>(c) 75 percent of the ticket price for all other trips more than 3,500 KM</p> <p>NOTES: In all cases the relevant distance is understood to be the sector on which the passenger is downgraded. The ticket price is understood to be the one-way coupon value for the sector on which the passenger is downgraded.</p> | Trips less than 1,500 KM | More than 2 hours | Trips between 1,500-3,500 KM and all intra EU flights in excess of 1,500 KM | More than 3 hours | Trips more than 3,500 KM (non intra EU) | More than 4 hours |
| Trips less than 1,500 KM | More than 2 hours | | | | | | |
| Trips between 1,500-3,500 KM and all intra EU flights in excess of 1,500 KM | More than 3 hours | | | | | | |
| Trips more than 3,500 KM (non intra EU) | More than 4 hours | | | | | | |

(Continued on next page)

For unexplained abbreviations, reference marks and symbols see Pages 21 through 29.

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| | |
|-------------|----------------------------------|
| RULE | SECTION I - GENERAL RULES |
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87 PART II DENIED BOARDING COMPENSATION (Continued)

(D) BOARDING PRIORITY

- (1) Crew Members positioning in preparation for a flight and ground personnel needed for emergency repairs on an aircraft grounded at a station.
- (2) Transit passengers continuing on the same flight
- (3) Unaccompanied children (under +[15 years of age)
- (4) Stretcher and wheelchair cases
- (5) Hardship cases as determined by the manager on duty
- (6) Transit passengers continuing on the same flight
- (7) Connecting passengers
- (8) Passengers holding confirmed reservations will be boarded before any passengers not holding confirmed reservations or any who are not entitled to confirmed reservations.
- (9) Passengers holding confirmed reservations and a valid ticket for the flight
- (10) Local passengers in the order their boarding card has been issued excluding passengers who volunteered for denied boarding.
- (11) Passengers having volunteered for denied boarding compensation in the order they volunteered.

(E) DEFINITIONS

For the purpose of this rule, except as otherwise specifically provided herein: the following definitions shall apply:

Airport means the airport at which the direct or connecting flight, on which the passenger holds confirmed reserved space, is planned to arrive or some other airport serving the same metropolitan area, provided that transportation to the other airport is accepted (i.e. used) by the passenger.

Alternate Transportation is air transportation provided by a carrier or other transportation used by the passenger which, at the time the arrangement are made, will provided for arrival at the passenger's destinations or next point of stopover, within four hours of his originally scheduled arrival time.

Carrier means an carrier, except a helicopter operator, holding a commercial air service licence authorizing the transportation of persons.

Comparable Air Transportation is provided by air carrier to the passengers at no extra cost.

Confirmed Space (reservation) is that which applies to a specific AF flight, date and fare type as requested by the passenger and which is verified in AF reservations system and is so noted on the ticket.

Cancellation means the non-operation of a flight which was previously planned and on which at least one place was reserved.

Ticket means a valid document giving entitlement to transport, or something equivalent in paperless form, including electronic form, issued or authorized by the air carrier or its authorized agents.

Stopover is a deliberate interruption of a journey requested by the passenger which is scheduled to exceed four hours at a place between the points of origin and destination.

Oversold is that condition which is the result of there being more passengers with confirmed reservations and tickets that there are seats available on a flight.

Volunteer means a person who responds to carrier's request for volunteers and who willingly accepts carrier's offer or compensation, in any amount, in exchange for relinquishing his confirmed reserved space. Any other passenger denied boarding is considered, for the purposes of this rule, to have been denied boarding involuntarily, even if he accepts denied boarding compensation.

For unexplained abbreviations, reference marks and symbols see IPGT1-1, C.A.B. NO. 581, NTA(A) NO. 373.

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EFFECTIVE: June 19, 2010

(Except as Noted)

CREDIT FOR FUTURE TRANSPORTATION ON LH IN LIEU OF MONETARY COMPENSATION. THE AMOUNT OF THE TRANSPORTATION CREDIT OFFERED SHALL BE EQUAL TO OR GREATER THAN THE MONETARY COMPENSATION DUE THE PASSENGER. THE CREDIT VOUCHER SHALL BE VALID FOR TRAVEL ON LH ONLY WITHIN 365 DAYS FROM THE DATE OF ISSUE, AND SHALL BE NON-REFUNDABLE AND NON-TRANSFERABLE.

(E) METHOD OF PAYMENT

THE AIRLINE WILL GIVE TO EACH PASSENGER, WHO QUALIFIES FOR DENIED BOARDING COMPENSATION, A PAYMENT BY CHECK, OR CASH, OR MCO, OR VOUCHER FOR THE AMOUNT SPECIFIED, ON THE DAY AND PLACE THE INVOLUNTARY DENIED BOARDING OCCURS. HOWEVER, IF THE AIRLINE ARRANGES ALTERNATE TRANSPORTATION FOR THE PASSENGER'S CONVENIENCE THAT DEPARTS BEFORE THE PAYMENT CAN BE MADE, THE PAYMENT WILL BE SENT TO THE PASSENGER WITHIN 24 HOURS. THE AIR CARRIER MAY OFFER FREE TICKETS IN PLACE OF THE CASH PAYMENT. THE PASSENGER, MAY, HOWEVER, INSIST ON THE CASH PAYMENT, OR REFUSE ALL COMPENSATION AND BRING PRIVATE LEGAL ACTION.

(F) PASSENGER'S OPTIONS

ACCEPTANCE OF THE COMPENSATION (BY ENDORSING THE CHECK OR DRAFT WITHIN 30 DAYS) RELIEVES THE CARRIER FROM ANY FURTHER LIABILITY TO THE PASSENGER CAUSED BY ITS FAILURE TO HONOR THE CONFIRMED RESERVATIONS. HOWEVER, THE PASSENGER MAY DECLINE THE PAYMENT AND SEEK TO RECOVER DAMAGES IN A COURT OF LAW OR IN SOME OTHER MANNER.

DENIED BOARDING COMPENSATION
APPLICABLE ONLY TO FLIGHTS OR PORTIONS OF FLIGHTS
ORIGINATING AND/OR TERMINATING IN CANADA

(A) APPLICABILITY

THE FOLLOWING RULES SHALL APPLY:

- (1) IN RESPECT OF FLIGHTS DEPARTING FROM AN AIRPORT IN THE EUROPEAN UNION (EU) AND FLIGHTS DEPARTING FROM AN AIRPORT IN A THIRD COUNTRY BOUND TO AN AIRPORT IN THE EU UNLESS PASSENGER RECEIVED BENEFITS OR COMPENSATION AND WERE GIVEN ASSISTANCE IN THAT THIRD COUNTRY;
- (2) ON CONDITION THAT PASSENGERS HAVE A CONFIRMED RESERVATION ON THE FLIGHT CONCERNED AND PRESENTS HIMSELF/HERSELF FOR CHECK-IN AT THE TIME INDICATED IN ADVANCE AND IN WRITING OR ELECTRONICALLY; OR; IF NO TIME IS INDICATED; NOT LATER THAN 60 MINUTES BEFORE THE PUBLISHED DEPARTURE TIME;
- (3) ONLY TO THE PASSENGER TRAVELING WITH A VALID TICKET INCLUDING TICKETS ISSUED UNDER A FREQUENT FLYER OR OTHER COMMERCIAL PROGRAMME WITH CONFIRMED

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AREA: ZZ TARIFF: IPRG CXR: LH RULE: 0089

TITLE/APPLICATION - 70 (CONT)

RESERVATIONS AND

- (A) PRESENTS HIMSELF AT THE APPROPRIATE PLACE AND HAS OBSERVED PUBLISHED MINIMUM CHECK-IN TIMES
- (B) HAS COMPLIED WITH LUFTHANSA'S TICKETING AND RECONFIRMATION PROCEDURES
- (C) IS ACCEPTABLE FOR TRANSPORTATION UNDER THE CARRIER'S TARIFF AND THE FLIGHT FOR WHICH THE PASSENGER HOLDS CONFIRMED RESERVATIONS IS UNABLE TO ACCOMMODATE THE PASSENGER AND DEPARTS WITHOUT HIM/HER

(4) WHERE LH IS THE OPERATING CARRIER OF THE FLIGHT EXCEPTIONS:

THE FOLLOWING PASSENGERS WILL NOT BE ENTITLED TO COMPENSATION:

- (A) PASSENGERS TRAVELLING TO EU WHO HAVE RECEIVED BENEFITS OR COMPENSATION IN A THIRD COUNTRY
 - (B) PASSENGERS TRAVELLING BETWEEN TWO AIRPORTS OUTSIDE THE EU UNLESS THE SECTOR IS PART OF A FLIGHT (SAME FLIGHT NUMBER) THAT ORIGINATED IN THE EU
 - (C) PASSENGERS WITHOUT CONFIRMED RESERVATIONS
 - (D) PASSENGERS WHO HAVE NOT PRESENTED THEMSELVES FOR CHECK-IN ON TIME
 - (E) PASSENGERS ON FREE OR REDUCED FARES NOT DIRECTLY OR INDIRECTLY AVAILABLE TO THE PUBLIC, E.G. ID AND AD TICKETS
- (5) THE PASSENGER IS ACCOMMODATED ON THE FLIGHT FOR WHICH HE/SHE HOLD'S CONFIRMED RESERVATIONS, BUT IS SEATED IN A COMPARTMENT OF THE AIRCRAFT OTHER THAN THAT RESERVED, PROVIDED THAT WHEN THE PASSENGER IS ACCOMMODATED IN A CLASS OF SERVICE FOR WHICH A LOWER FARE IS CHARGED, THE PASSENGER WILL BE ENTITLED TO THE APPROPRIATE REFUND.

(B) PASSENGER RIGHTS

(1) DENIED BOARDING

VOLUNTEERS

VOLUNTEERS HAVE THE RIGHT OF MUTUALLY AGREED BENEFITS PLUS THE RIGHT TO CHOOSE BETWEEN REIMBURSEMENT AND REROUTING WITH THE FOLLOWING OPTIONS:

- (A) REIMBURSEMENT WITHIN 7 DAYS OF COUPONS NOT USED OR
- (B) REROUTING TO FINAL DESTINATION AT THE EARLIEST OPPORTUNITY UNDER COMPARABLE TRANSPORT CONDITIONS OR
- (C) REROUTING TO FINAL DESTINATION AT A LATER DATE ACCORDING TO PASSENGER'S CONVENIENCE BUT SUBJECT TO AVAILABILITY OF SPACE. VOLUNTEERS ARE NOT ENTITLED TO CARE, SUCH AS PHONE CALLS, FOOD, ACCOMMODATION ETC.

(2) INVOLUNTARY DENIED BOARDING

IN CASE OF INVOLUNTARY DENIED BOARDING THE PASSENGERS ARE ENTITLED TO THE FOLLOWING:

- (A) RIGHT TO COMPENSATION ACCORDING TO PARAGRAOH
(C) AND
- (B) RIGHT TO CHOOSE BETWEEN
REIMBURSEMENT/REROUTING WITH THE SAME OPTIONS
AS MENTIONED UNDER (A) (1) ABOVE AND
- (C) RIGHT TO CARE INCLUDING
- MEALS AND REFRESHMENTS, REASONABLY RELATED
TO THE WAITING TIME
 - 2 TELEPHONE CALLS OR TELEX, E-MAILS, FAX
 - IF NECESSARY, HOTEL ACCOMODATION PLUS
TRANSFER BETWEEN AIRPORT AND HOTEL
- (3) AMOUNT OF COMPENSATION PAYABLE
- (A) THE AMOUNT OF COMPENSATION DEPENDS ON THE
DISTANCE OF THE SCHEDULED FLIGHT OR THE
ALTERNATIVE FLIGHT PROPOSED.
COMPENSATION AMOUNTS IN EUR/CAD:
- | FLIGHT KM BETWEEN AND | AMOUNT IN | |
|-----------------------|-----------|-----|
| EUR | CAD | |
| 0-1500 | 250 | 400 |
| 1500 - 3500 | 400 | 645 |
| INTRA EU FLIGHTS OF | | |
| MORE THAN 1500 | 400 | 645 |
| GREATER THAN 3500 | 600 | 965 |
- (B) IF AN ALTERNATIVE FLIGHT IS OFFERED AND THE
NEW SCHEDULED ARRIVAL TIME DOES NOT EXCEED 2
HOURS VERSUS THE ORIGINALLY PLANNED, THE
COMPENSATION AMOUNTS SHOWN UNDER (1) ABOVE
CAN BE REDUCED BY 50 PERCENT:
- | FLIGHT KM BETWEEN AND | AMOUNT IN | |
|-----------------------|-----------|-----|
| EUR | CAD | |
| 0-1500 | 125 | 200 |
| 1500-3500 | 200 | 320 |
| INTRA EU FLIGHTS OF | | |
| MORE THAN 1500 | 200 | 320 |
| GREATER THAN 3500 | 300 | 485 |
- (C) IN LIEU OF CASH PAYMENT OF THE AMOUNTS MENTIONED
IN (B) (1) AND (B) (2) THE PASSENGER MAY CHOOSE
COMPENSATION IN THE FORM OF A VOUCHER VALID FOR
FURTHER TRAVEL ON THE SERVICES OF LUFTHANSA, THEN
THE COMPENSATION AMOUNT WILL BE 150 PERCENT OF THE
AMOUNT MENTIONED IN (B) (1) AND (B) (2). FOLLOWING
CONDITIONS SHALL APPLY TO SUCH VOUCHERS:
- VALIDITY IS 1 YEAR FROM THE DATE OF ISSUE
 - IF, AFTER ONE YEAR THE VOUCHER HAS NOT BEEN
USED, IT WILL BE REFUNDED BUT ONLY AT THE
CASH VALUES AS APPLICABLE IN (B) (1) AND
(B) (2).
 - LOST VOUCHERS WILL NOT BE REPLACED
 - A TICKET MAY ONLY BE ISSUED IN EXCHANGE FOR
THE VOUCHER IN THE SAME NAME AS THAT ON THE
VOUCHER
 - IF THE VALUE OF A DESIRED TICKET EXCEEDS THE
VALUE OF THE VOUCHER, THE PASSENGER SHALL PAY
THE APPLICABLE DIFFERENCE
 - IF THE VALUE OF THE VOUCHER EXCEEDS THE VALUE
OF A DESIRED TICKET, THE DIFFERENCE WILL NOT

BE REFUNDED.

(4) CANCELLATION OF FLIGHTS

(A) IN CASE OF CANCELLATION OF A FLIGHT THE PASSENGERS WILL BE ENTITLED TO THE FOLLOWING:

- (1) RIGHT TO COMPENSATION ACCORDING TO PARAGRAPH (C) AND
- (2) RIGHT TO CHOOSE BETWEEN REIMBURSEMENT/REROUTING WITH THE SAME OPTIONS AS MENTIONED UNDER (A) (1) ABOVE AND
- (3) RIGHT TO CARE INCLUDING
 - MEALS AND REFRESHMENTS, REASONABLY RELATED TO THE WAITING TIME
 - 2 TELEPHONE CALLS OR TELEX, E-MAILS, FAX
 - IF NECESSARY, HOTEL ACCOMODATION PLUS TRANSFER BETWEEN AIRPORT AND HOTEL

(B) AMOUNT OF COMPENSATION PAYABLE

- (1) THE AMOUNT OF COMPENSATION DEPENDS ON THE DISTANCE OF THE SCHEDULED FLIGHT OR THE ALTERNATIVE FLIGHT PROPOSED.

COMPENSATION AMOUNTS IN EUR/CAD:

| FLIGHT KM BETWEEN AND | AMOUNT IN | |
|------------------------------------|-----------|-----|
| | EUR | CAD |
| 0-1500 | 250 | 400 |
| 1500 - 3500 | 400 | 645 |
| INTRA EU FLIGHTS OF MORE THAN 1500 | 400 | 645 |
| GREATER THAN 3500 | 600 | 965 |

- (2) IF AN ALTERNATIVE FLIGHT IS OFFERED AND THE NEW SCHEDULED ARRIVAL TIME DOES NOT EXCEED 2 HOURS VERSUS THE ORIGINALLY PLANNED, THE COMPENSATION AMOUNTS SHOWN UNDER (1) ABOVE CAN BE REDUCED BY 50 PERCENT:

| FLIGHT KM BETWEEN AND | AMOUNT IN | |
|------------------------------------|-----------|-----|
| | EUR | CAD |
| 0-1500 | 125 | 200 |
| 1500-3500 | 200 | 320 |
| INTRA EU FLIGHTS OF MORE THAN 1500 | 200 | 320 |
| GREATER THAN 3500 | 300 | 485 |

- (3) IN LIEU OF CASH PAYMENT OF THE AMOUNTS MENTIONED IN (B) (1) AND (B) (2) THE PASSENGER MAY CHOOSE COMPENSATION IN THE FORM OF A VOUCHER VALID FOR FURTHER TRAVEL ON THE SERVICES OF LUFTHANSA, THEN THE COMPENSATION AMOUNT WILL BE 150 PERCENT OF THE AMOUNT MENTIONED IN (B) (1) AND (B) (2). FOLLOWING CONDITIONS SHALL APPLY TO SUCH VOUCHERS:

- VALIDITY IS 1 YEAR FROM THE DATE OF ISSUE
- IF, AFTER ONE YEAR THE VOUCHER HAS NOT BEEN USED, IT WILL BE REFUNDED BUT ONLY AT THE CASH VALUES AS APPLICABLE IN (B) (1) AND (B) (2).
- LOST VOUCHERS WILL NOT BE REPLACED
- A TICKET MAY ONLY BE ISSUED IN EXCHANGE FOR THE VOUCHER IN THE SAME NAME AS THAT ON THE VOUCHER
- IF THE VALUE OF A DESIRED TICKET EXCEEDS THE VALUE OF THE VOUCHER, THE PASSENGER SHALL PAY

THE APPLICABLE DIFFERENCE

- IF THE VALUE OF THE VOUCHER EXCEEDS THE VALUE OF A DESIRED TICKET, THE DIFFERENCE WILL NOT BE REFUNDED.

(C) LONG DELAY

THIS RULE IS ONLY APPLICABLE WHEN A FLIGHT IS DELAYED AT DEPARTURE, NOT WHEN A FLIGHT LEAVES ON TIME AND IS SUBSEQUENTLY DELAYED. A LONG DELAY IS CONSIDERED A FLIGHT THAT IS DELAYED ACCORDING TO THE FOLLOWING PARAMETERS:

TRIPS LESS THAN 1,500 KM MORE THAN 2 HOURS

TRIPS BETWEEN 1,500-3,500 KM & ALL INTRA EU FLIGHTS IN EXCESS OF 1,500 KM MORE THAN 3 HOURS

TRIPS MORE THAN 3,500 KM (NON INTRA EU) MORE THAN 4 HOURS

IN THIS CASE THE PASSENGERS ARE ENTITLED TO THE FOLLOWING

- (1) RIGHT TO CARE PROVIDED THIS DOES NOT RESULT IN A FURTHER DELAY OF THE FLIGHT INCLUDING
 - MEALS AND REFRESHMENTS, REASONABLY RELATED TO THE WAITING TIME
 - 2 TELEPHONE CALLS OR TELEX, E-MAILS, FAX
 - IF NECESSARY, HOTEL ACCOMODATION PLUS TRANSFER BETWEEN AIRPORT AND HOTEL; IN CASE THE FLIGHT IS DELAYED UNTIL THE NEXT DAY HOTEL ACCOMMODATION AND TRANSFER ARE MANDATORY.
- (2) IF FLIGHT IS DELAYED MORE THAN 5 HOURS RIGHT TO BE REIMBURSED WITHIN 7 DAYS:
 - (A) OUTBOUND PASSENGER: COST OF TICKET
 - (B) INBOUND PASSENGER: COST OF NON-USED COUPON
 - (C) TRANSIT PASSENGER: COST OF NON-USED COUPON, IF THE FLIGHT NO LONGER SERVES ANY PURPOSE; ALSO COST OF THE TICKETS FOR PARTS OF THE JOURNEY ALREADY MADE AND IF RELEVANT RETURN FLIGHT TO THE FIRST POINT OF DEPARTURE
 - (D) FOR PACKAGE TOUR PASSENGERS THE VALUE OF REIMBURSEMENT WILL HAVE TO BE ASSIGNED TO UNUSED FLIGHT COUPON(S)
- (3) DOWNGRADING OF PASSENGERS
IN CASE OF INVOLUNTARY DOWNGRADING TO A LOWER CLASS OF SERVICE PASSENGERS WILL BE ENTITLED TO THE FOLLOWING REIMBURSEMENT WITHIN 7 DAYS
 - (A) 30 PERCENT OF THE TICKET PRICE FOR TRIPS LESS THAN 1,500 KM
 - (B) 50 PERCENT OF THE TICKET PRICE FOR TRIPS BETWEEN 1,500 AND 3,500 KM & ALL INTRA EU FLIGHTS IN EXCESS OF 1,500 KM
 - (C) 75 PERCENT OF THE TICKET PRICE FOR ALL OTHER TRIPS MORE THAN 3,500 KM

NOTE:

IN ALL CASES THE RELEVANT DISTANCE IS UNDERSTOOD TO BE THE SECTOR ON WHICH THE PASSENGER IS DOWNGRADED. THE TICKET PRICE IS UNDERSTOOD TO BE THE ONEWAY COUPON VALUE FOR THE SECTOR ON WHICH THE PASSENGER IS

- DOWNGRADED.
- (D) BOARDING PRIORITY
PASSENGERS HOLDING CONFIRMED RESERVATIONS WILL BE
BOARDED BEFORE:
(1) ANY PASSENGERS NOT HOLDING CONFIRMED RESERVATIONS.
(2) ANY WHO ARE NOT ENTITLED TO CONFIRMED
RESERVATIONS.
- PASSENGERS HOLDING CONFIRMED RESERVATIONS AND A VALID
TICKET FOR THE FLIGHT IN QUESTION WILL BE BOARDED IN
THE SEQUENCE IN WHICH THEY HAVE PRESENTED THEMSELVES
FOR CHECK-IN.
- EXCEPTIONS:
THE FOLLOWING PASSENGERS CANNOT BE LEFT BEHIND:
- LUFTHANSA CREW MEMBERS TRAVELLING WITH CONFIRMED
RESERVATIONS
- LUFTHANSA EMPLOYEES ON DUTY TRAVEL HOLDING CONFIRMED
RESERVATIONS
- SICK AND/OR HANDICAPPED PASSENGERS
- UNACCOMPANIED CHILDREN (12 YEARS AND UNDER)
- HEADS OF STATE AND OTHER LEADING STATESMEN, OFFICIAL
GOVERNMENT DELEGATIONS, DIPLOMATIC COURIERS
- HARDSHIP CASES AS DETERMINED BY THE MANAGER ON DUTY

AREA: ZZ TARIFF: IPRG CXR: LH RULE: 0090

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REFUNDS

(A) GENERAL

- (1) IN CASE OF REFUND, WHETHER DUE TO FAILURE OF
CARRIER TO PROVIDE THE ACCOMMODATION CALLED FOR BY
THE TICKET, OR TO VOLUNTARY CHANGE OF ARRANGEMENTS
BY THE PASSENGER, THE CONDITIONS AND AMOUNT OF
REFUND WILL BE GOVERNED BY CARRIER'S TARIFFS.
- (2) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (F) OF
THIS RULE, REFUND BY CARRIER FOR AN UNUSED TICKET
OR PORTION THEREOF OR MISCELLANEOUS CHARGES ORDER
WILL BE MADE TO THE PERSON NAMED AS THE PASSENGER
IN SUCH TICKET OR MISCELLANEOUS CHARGES ORDER
UNLESS AT THE TIME OF PURCHASE THE PURCHASER
DESIGNATES ON THE TICKET OR MISCELLANEOUS CHARGES
ORDER ANOTHER PERSON TO WHOM REFUND SHALL BE MADE
IN WHICH EVENT REFUND WILL BE MADE TO PERSONS SO
DESIGNATED, AND ONLY UPON DELIVERY OF THE
PASSENGER COUPON AND ALL UNUSED FLIGHT COUPONS OF
THE TICKET OF MISCELLANEOUS CHARGES ORDER. A
REFUND MADE IN ACCORDANCE WITH THIS PROCEDURE TO A
PERSON REPRESENTING HIM AS THE PERSON NAMED OR
DESIGNATED IN THE TICKET OR MISCELLANEOUS CHARGES
ORDER WILL BE CONSIDERED A VALID REFUND AND
CARRIER WILL NOT BE LIABLE TO THE TRUE PASSENGER
FOR ANOTHER REFUND.

EXCEPTION 1: REFUND IN ACCORDANCE WITH PARAGRAPH
(E) BELOW OF TICKETS FOR
TRANSPORTATION WHICH HAVE BEEN
ISSUED AGAINST A CREDIT CARD WILL