



April 17, 2013

VIA FAX (819.953.5686) & EMAIL (sylvie.giroux@otc-cta.gc.ca)

**CANADIAN TRANSPORTATION AGENCY
AIR AND ACCESSIBLE TRANSPORTATION BRANCH**
15, rue Eddy/15 Eddy Street
Gatineau, QC K1A 0N9

Attention: Ms. Sylvie Giroux

Dear Ms. Giroux,

We make the following submission in reply to those of Mr. Beliveau dated April 16, 2012 with respect to our request for an extension of two weeks from today's date for our submissions on that part of the Complaint requesting the Canadian Transportation Agency ("CTA") substitute certain language in Sunwing Airlines' scheduled international tariff Rule 18(g) and disallow tariff Rule 20.

Mr. Beliveau's allegations of misconduct on the part of Sunwing Airlines

We take great exception to Mr. Beliveau's allegations with respect to intentional misconduct on the part of Sunwing Airlines in utilizing an incorrect email address for delivery of its request for an extension.

The email used was lbeliveau@loogol.ca. This address was used simply through inadvertence and was directly copied from the CTA's cover letter dated March 27, 2012 which appeared on its face to read lbeliveau@loogal.ca rather than lbeliveau@loogol.ca. (copy attached).

It was mere inadvertence and an honest mistake; nothing more. To suggest otherwise and to the extent that Mr. Beliveau has alleged in his tone and words; including "pretended", "deceptive", "mischief", "ignored" and "reprehensible" is completely unreasonable and unwarranted.

We point out that while it is unfortunate we did use an incorrect email address, so too did the CTA when it responded to our email using the exact same incorrect address (copy attached).



We did not ignore any “error message” or bounce back to our email from the incorrect address, as Mr. Beliveau alleges as a matter of fact. We simply did not receive such a message. If we did, we would have corrected the address and resent the email immediately.

We understand as well that the CTA did not receive an “error message” that Mr. Beliveau is so certain and adamant must have been generated. In light of this, we query whether Mr. Beliveau’s language and aspersions are also directed at the CTA?

In our submission, Mr. Beliveau’s unwarranted remarks on this issue should be completely disregarded as they are nothing but inflammatory.

The extension should be granted

We have requested a short extension of two weeks. In so doing, we have informed the CTA that we are revising our Tariff Rules. Further, we expect that our revisions will directly address and resolve the Complaint with respect Rules 18(g) and Rule 20.

Perhaps this amounts to “exceptional” but in any event it should serve to eliminate much if not all of the opposition to this part of the Complaint and is, therefore, a reasonable request.

a) Prejudice to the Nawrots

This aspect of the Complaint is unrelated to the Nawrots’ passenger compensation aspect. The passenger compensation aspect depends completely on a determination of the facts. That is, whether they arrived in time for check-in. None of the Tariff Rules impugned in the Complaint respond to a factual finding that the Nawrots failed to arrive at check-in in time. In fact, the Complaint accepts that the Tariff and Terms and Condition setting out the 60 minute cut-off time for check-in and resulting denial of boarding for missing the cut-off are clear and reasonable.

If there is a finding of fact that the Nawrots did arrive prior to cut-off for check-in, they will be entitled to their damages.

While Mr. Beliveau contends that Sunwing Airlines’ refusal to compensate the Nawrots has been prejudicial, Sunwing Airlines is entitled to refuse on the basis of the information it has. Certainly, this is what the Complaint is all about.

We take exception to the allegation that Sunwing Airlines was aware of the “entire” claim on February 11, 2013. The first that Sunwing Airlines became aware of a challenge to its Tariff Rules was with the delivery of the Complaint.

Accordingly, there is no prejudice to the Nawrots.



Bifurcation of the Proceeding

The contention that bifurcating the issues will duplicate the work required is a fiction. Each of the issues must be dealt with separately in any event. Whether, Sunwing Airlines' response comes from one or two sources has no impact whatsoever on the Nawrots other than their having to send their submissions to an additional or two different addresses.

For the reasons set out above, bifurcation is reasonable and makes sense. The challenge to the Tariff Rules does not impact the resolution of the passenger complaint.

The Extension Request

All of the above said, we are amenable to providing our responding submissions with respect to the Tariff Rules and with our draft revisions to the Tariff Rules by Monday April 22, 2012 as requested by Mr. Beliveau in the alternative.

Yours truly,

SUNWING AIRLINES INC.

Office
des transports
du Canada



Canadian
Transportation
Agency

March 27, 2013

File No. M4120-3/13-01696

BY EMAIL: lbeliveau@loogol.ca

The Nawrots family
c/o Louis Béliveau, L.L.B.
Barrister & Solicitor
530-65 Queen Street West
M5H 2M5

BY FACSIMILE: 416-620-4433

Sunwing Airlines
27 Fasken Drive
Etobicoke, Ontario
M9W 1K6
Attention: Mark Williams, President

Dear Sirs:

Re: Complaint by the Nawrots Family against Sunwing Airlines

This refers to a complaint by Raymond Paul Nawrot, Kristina Marie Nawrot and Karolyn Theresa Nawrot (the Nawrots family) against Sunwing Airlines (Sunwing) filed with the Canadian Transportation Agency (Agency) on March 21, 2013 (see attached).

The Nawrots family has requested the Agency to proceed with the formal adjudication process and advised having no interest in mediation process. The parties can, however, opt for mediation at any point during the adjudication process and while mediation is taking place, the formal adjudication process will be on hold.

This application process is a quasi-judicial one carried out pursuant to the *Canada Transportation Act* (CTA) and the *Canadian Transportation Agency General Rules* (General Rules), which can both be accessed on line at <http://www.cta.gc.ca>.

The Agency strives to deal with all of its cases within 120 days. However, the Agency may take more than 120 days to issue a decision due to the complexity or the particular circumstances of a case. If any party has concerns that the time it may take to render a decision could exceed 120 days, please advise the undersigned promptly.

Sunwing has until April 17, 2013 to submit its answer to the Agency and provide a copy to the Nawrots family and upon receipt of Sunwing's answer, the Nawrots family will have 7 days to file a reply with the Agency, with a copy to Sunwing. **It is the parties' responsibility to ensure that their submissions are filed within the stated time frames.**

To ensure that Agency proceedings are effective, the Agency will only grant extensions of time in exceptional circumstances. The factors taken into consideration by the Agency for any extension request can be accessed on line at <http://www.cta-otc.gc.ca/eng/extensions>. Parties must provide clear and convincing evidence for any such request.

Furthermore, should Sunwing wish to dispute the facts alleged by the Nawrots family in the complaint, it should include with its answer:

- a copy of any documents which would support its statement of the facts, including reports prepared in relation to the incident, and signed statements from the individual employees and/or contracted personnel who have direct knowledge of the incident and/or who had direct contact with the person(s) involved.

Adjudications are generally completed in writing, although the Agency may decide that a public hearing is necessary. In addition, the Agency may seek further information and/or clarifications from the parties and from third parties (such as travel agents). The Agency may also ask parties to submit witness statements and/or affidavit evidence to complete the pleadings.

It is important to read the attached privacy information.

Should you have any questions you may contact the undersigned by email at sylvie.giroux@otc-cta.gc.ca.

Sincerely,



Sylvie Giroux

Analyst, Air & Marine Investigation Division
Air & Accessible Transportation Branch

Stephen White

From: Sylvie Giroux <Sylvie.Giroux@otc-cta.gc.ca>
Sent: April-16-13 10:04 AM
To: lbeliveau@loogol.ca; Stephen White
Cc: Mark Williams; Clay Hunter(CHunter@pmlaw.com); Sabah Mirza
Subject: Sunwing Airlines' request for an extension of time (case:Nawrot Family against Sunwing)

Dear Me White and Me Beliveau,

With respect to the above-noted subject, and at Member's direction, I wish to advise that the Canadian Transportation Agency (Agency) grants to Sunwing Airlines Inc. (Sunwing) an extension of time of 2 weeks from April 17, 2013, i.e until May 1, 2013, to file its response respecting the complainant's request that the Agency substitute certain language in Sunwing's international tariff Rule 18(g) and disallow Rule 20 of the same tariff. Sunwing must provide that response at the same time to the Nawrots family, who will then have 7 days from the date of receipt of the response to file a reply with the Agency, with a copy to Sunwing.

As a reminder, Sunwing has until April 17, 2013 to file a response respecting the other part of the complaint, i.e. the request that Sunwing pay monetary compensation for out-of-pocket expenses due to the alleged denied boarding situation. The Nawrots family will then have 7 days from the date of receipt of that response to file their reply.

Regards,

Sylvie Giroux
Air & Marine Investigation Division
Canadian Transportation Agency