



April 22, 2013

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

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

Attention: Ms. Sylvie Giroux

Dear Madam Secretary,

**Re: The Nawrots v. Sunwing Airlines Inc.
Your File: M 4120-3/13-01696; Complaint dated March 21, 2013
Our File: 100-006**

Further in the above-noted matter, this will respond to Issue III of the above-noted complaint (the "Complaint"), regarding Rules 18(g) and 20 of Sunwing Airlines' "Tariff Containing Rules Applicable to Scheduled Services for the Transportation of Passengers and Baggage or Goods Between Points in Canada on the one hand and Points Outside of Canada on the other hand" ("Scheduled International Tariff").

Sunwing Airlines is responding to Issue III of the Complaint by proposing to amend Rules 18(g) and 20 of its Scheduled International Tariff, as set out in the attached Exhibit "A".

We anticipate that the proposed amendments will meet with the approval of the Agency.

Yours truly,

SUNWING AIRLINES INC.

**Exhibit "A" to Sunwing Airlines Inc.'s Response
Dated April 22, 2013**

1. Rule 18(g) of Sunwing Airlines' Scheduled International Tariff shall be revised so as to delete the following sentence in its entirety:

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

2. Rule 20 of Sunwing Airlines' Scheduled International Tariff shall be revised and replaced in its entirety as set out in Schedule 1 hereto.

**Schedule 1 to Exhibit "A" to Sunwing Airlines Inc.'s Response
Dated April 22, 2013**

RULE 20. DENIED BOARDING COMPENSATION

For the purposes of this Rule 20, "alternate transportation" means air transportation with a confirmed reservation at no additional charge (by a scheduled airline licensed by Canada or another appropriate country), or other transportation accepted and used by the passenger in the case of denied boarding.

- (a) **General.** If a passenger has been denied a confirmed seat in the case on an oversold flight of the Carrier, the passenger has a choice between (i) a refund of the total fare paid for the unused portion of the passenger's ticket; or (ii) continuing his/her trip. If the passenger chooses (ii) above, then the Carrier shall:
- (1) arrange reasonable alternate transportation on its own services; or
 - (2) if reasonable alternative transportation on its own services is not available, the Carrier will arrange transportation on the services of another carrier.

Where the flight originates in the United States, the Carrier will provide denied boarding compensation as set forth below in this Rule 20.

- (b) **Volunteers and Boarding Priorities.** If a flight is oversold (more passengers hold confirmed reservations than there are seats available), no one may be denied boarding against his or her will until the Carrier's personnel first ask for volunteers who will give up their reservations willingly, in exchange for a payment of the Carrier's choosing. If there are not enough volunteers, other passengers may be denied boarding involuntarily, in accordance with the following boarding priority: the last passenger to arrive at the ticket lift point will be the first to be denied boarding, except:
- passengers travelling due to death or illness of a member of the passenger's family, or
 - unaccompanied minors, or
 - passengers who are disabled, or
 - elderly passengers.
- (c) **Compensation for Involuntary Denied Boarding (Applicable only on Flights Originating in the United States).** If you are denied boarding involuntarily on a flight originating from the United States, you are entitled to a payment of denied boarding compensation unless:
- you have not fully complied with the Carrier's ticketing, check-in or reconfirmation requirements, or you are not acceptable for transportation under the Carrier's usual rules or practices; or
 - you are denied boarding because the flight is cancelled; or
 - you are denied boarding because a small capacity aircraft was substituted for safety or operational reasons; or

- you are offered accommodations in a section of the aircraft other than specified in your ticket, at no extra charge, (a passenger seated in a section for which a lower fare is charged must be given an appropriate refund); or
- the Carrier is able to place you on another flight or flights that are planned to reach your final destination or your next stopover within one hour of the scheduled arrival of your original flight.

(d) **Amount of Denied Boarding Compensation.** Passengers travelling from the United States with a reserved seat on an oversold flight of the Carrier who are denied boarding involuntarily from an oversold flight originating at a U.S. airport are entitled to:

- (1) No compensation if the Carrier offers alternate transportation that is planned to arrive at the passenger's destination or first stopover not later than one hour after the scheduled arrival of the passenger's original flight;
- (2) 200% of the fare to the passenger's destination or first stopover, with a maximum of \$650 USD if the Carrier is able to place the passenger on alternate transportation that is planned to arrive at the passenger's destination or first stopover more than one hour but less than four hours after the scheduled arrival time of the passenger's original flight; and
- (3) 400% of the fare to the passenger's destination or first stopover, with a maximum of \$1,300 USD, if the Carrier does not offer alternate transportation that is planned to arrive at the airport of the passenger's destination or first stopover less than four hours after the scheduled arrival time.

For the purpose of calculating compensation under this Rule 20, the "fare" is the one-way fare for the flight including any surcharges and air transportation tax, minus any applicable discounts. All flights, including connecting flights, to the passenger's destination or first stopover of four hours or greater are used to calculate the compensation payable.

For flights to or from Canada (except flights from the United States), as the Carrier does not commercially oversell its aircraft, no denied boarding compensation will be provided.

- (e) **Method of Payment.** The Carrier must provide each passenger who qualifies for denied boarding compensation a payment by cheque or draft for the amount specified above, on the day and place the involuntary denied boarding occurs. However, if the Carrier 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 Carrier may offer free or discounted transportation vouchers in place of cash or cheque 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 relieves the Carrier from any further liability to the passenger caused by the failure to honour the confirmed reservation. However, the passenger may decline the payment and seek to recover damages in a court of law or in some other manner.