

April 23, 2013

VIA EMAIL

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

Attention: Ms. Sylvie Giroux, Analyst

Dear Madam Secretary:

Re: The Nawrots v. Sunwing Airlines
File No.: M 4120-3/13-01696 / Our reference: 0575-Nawrot
Complaint concerning denied boarding and/or failure to provide transportation
and/or delay on or around August 10, 2012
Notice of motion for directions, productions, and an extension

Please accept the following submissions as a motion in relation to the above-noted complaint pursuant to s. 32 of the *Canada Transportation Agency General Rules, S.O.R./2005-35*.

I. Request for directions from the Agency

Sunwing Airlines stated on page 7 of its April 17, 2013 answer to the complaint that:

We can see that there are purchases on the credit card payment summary between the time of the purchase of a railway ticket and the hotel at Gatwick which have been redacted. These are relevant and should be revealed and disclosed as well as any supporting invoices/receipts.

The Nawrots are asking for the Agency's directions with respect to these submissions:

- (a) should these submissions of Sunwing Airlines be treated as a request and/or notice for production of documents?
- (b) if so, should the Nawrots respond to this request and/or notice separately, or as part of their reply pursuant to Rule 44?

II. Request and/or notice for production of documents, and related timelines

The Nawrots are seeking the production of certain documents below pursuant to Rules 15 and 16 of the Agency. The Nawrots are asking the Agency to set timelines for Sunwing Airlines to produce the documents, and any related procedural steps that the Agency deems necessary.

(a) Unredacted exhibits to the affidavit of Ms. Joanne Dhue (sworn April 17, 2013)

The affidavit of Ms. Joanne Dhue contains a number of exhibits where the names of employees and/or agents were redacted:

Exhibit “H” is a 2-page “DESTINATIONS QCM” report. On its first page, the name of the “RAMP LEAD” was redacted at the top (and the information concerning “1x ELITE PLUS sold:” was redacted at the bottom). On the second page of the same document, the names of “no-show” and “go-show” passengers were redacted.

These individuals are potential witnesses, who may provide valuable evidence with respect to the circumstances that led to the Nawrots being denied boarding. While the undersigned recognizes the need to protect the privacy of passengers, it is submitted that the appropriate procedure for Sunwing Airlines to deal with such concerns is pursuant to Rules 23 and 24. This would not be the first time for the Agency to provide creative and balanced solutions that ensure access to evidence for parties, but protect confidential information from public disclosure.

Exhibit “I” is entitled “Passenger Services Supervisor Shift Report – North Terminal.” While Sunwing Airlines relies on the contents of the first paragraph of the “OTHER INFO” section of this document, the second paragraph was completely redacted, and the third paragraph was substantially redacted.

Since the contents of this document may be prejudicial to the Nawrots’ case, it is submitted that they are entitled to receive the entire document, and not only the portions that Sunwing Airlines has selectively chosen to disclose.

Exhibit “K” consists of several pages of cabin crew reports. On each page of this document, the name of each and every crew member was redacted (also all signatures were redacted). These individuals are potential witnesses, who may provide valuable evidence with respect to the circumstances that led to the Nawrots being denied boarding.

Exhibit “L” appears to be an email correspondence between Mr. John Murphy of Sunwing Airlines and some other individuals whose affiliations and email addresses were redacted. (The contents of this exhibit are double hearsay, and that the Nawrots will be making submissions about the weight of this document in their reply pursuant to Rule 44.) In the absence of the redacted information, which may identify the role and the affiliation of the authors of these emails, they are simply anonymous statements.

The present case is not the first time that an airline submits redacted exhibits to the Agency. In *Azar v. Air Canada*, LET-C-A-140-2012, the Agency considered a similar issue, and ordered Air Canada to produce unredacted copies of the documents.

Therefore, the Nawrots are seeking production of unredacted copies of Exhibits “H”, “T”, “K”, and “L” to the affidavit of Ms. Joanne Dhue.

(b) Sworn affidavit of Mr. Vic Tydeman

Sunwing Airlines stated in the last paragraph on page 3 of its April 17, 2013 answer that:

We are also awaiting receipt of a sworn Affidavit from Mr. Tydeman.

Sunwing Airlines has yet to produce the sworn affidavit in question, and has failed to respond to the inquiry of the undersigned as to when it will be producing same.

Since Sunwing Airlines intends to rely on the evidence of Mr. Tydeman to challenge the credibility of the Nawrots, Sunwing Airlines’ inability to produce a sworn affidavit by Mr. Tydeman may influence the weight of Mr. Tydeman’s evidence (see *Spence v. Perimeter Aviation*, 349-C-A-2012, para. 23), and is relevant to the present proceeding.

Therefore, the Nawrots are seeking production of the sworn affidavit of Mr. Tydeman, or in the alternative, an admission of Sunwing Airlines that it is unable to produce a sworn affidavit by Mr. Tydeman.

III. Extension

The present motion affects the evidence that is before the Agency, and which the Nawrots are to rebut in their reply pursuant to Rule 44.

Thus, the Nawrots are asking the Agency for 7 days from the receipt of the sought documents and/or determination of the present motion, whichever is later, to file their reply pursuant to Rule 44 in the main proceeding.

All of which is most respectfully submitted.

Louis Béliveau

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