

June 14, 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
Reply

Please accept the following submissions in relation to the above-noted matter as a reply to Sunwing Airlines' April 17, 2013 answer to the Nawrots' complaint as per the Agency's directions of today.

OVERVIEW

The Nawrot Family was denied transportation from London Gatwick to Toronto by Sunwing Airlines on August 11, 2012. The Nawrots' evidence is that they presented themselves for check-in 75 minutes before the departure of their flight, but found Sunwing Airlines' check-in counters to be closed. Sunwing Airlines alleges that the Nawrots were late to their flight.

The Nawrots are also challenging the reasonableness of Sunwing Airlines' denied boarding policy. In response, Sunwing Airlines proposed a new denied boarding policy.

In the present reply, the Nawrots make submissions and lead rebuttal evidence in reply to Sunwing Airlines' representations. The Nawrots will be making submissions on the reasonableness of Sunwing Airlines' proposed new denied boarding policy by June 21, 2013 as per the Agency's directions.

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I. Sunwing Airlines' evidence

For the reasons explained below, based on the evidence tendered by Sunwing Airlines, the Nawrots submit that the culprit for their being denied transportation is/are the ground handling agent(s) for Sunwing Airlines at London Gatwick airport, who not only closed and abandoned the check-in counters early, but also subsequently misinformed Sunwing Airlines about the incident in order to cover up their wilful negligence.

(a) Affidavit of Mr. Mark Williams

The Nawrots accept that Mr. Williams has substantial experience in the airline industry, and accept his evidence that closing a check-in counter early, before the cut-off time stipulated by the conditions of carriage, is an exceptional event.

Affidavit of Mr. Williams (April 17, 2013), para. 4

The Nawrots submit that the exceptional nature of such an event is precisely the reason that Sunwing Airlines' ground handling agent(s) attempted to cover it up, in the hope of escaping the consequences of such a serious incident.

At the same time, Mr. Williams was not present at the Gatwick Airport when the Nawrots were denied transportation, and he does not have any first-hand evidence as to the time the Nawrots presented themselves for check-in; instead, Mr. Williams simply reiterates the information that he received from others. Thus, the Nawrots submit that the evidence of Mr. Williams is of no assistance in determining the time when the Nawrots presented themselves for check-in.

It is worth observing that the affidavit of Mr. Williams fails to provide any explanation as to why the Nawrots were offered a free flight from Gatwick London to Toronto for August 16, 2012 if Mr. Williams and his employees genuinely believed that the Nawrots were late to their flight.

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

These actions of Sunwing Airlines were inconsistent with Sunwing Airlines' subsequent theory that the Nawrots were late to their flight. Indeed, airlines do not usually hand out free flights to no-show passengers. The absence of any explanation by Mr. Williams (or anyone else on behalf of Sunwing Airlines) for these actions strongly suggests that the theory that the Nawrots were late to their flight was created after the Nawrots began seeking compensation for the incident.

(b) Affidavit of Ms. Joanne Dhue

The affidavit of Ms. Dhue contains a wealth of information and exhibits, some of which are highly reliable and credible, while others are contradicted by the information in other reliable and credible documents.

(i) Swissport had severe staffing problems at the time of the incident

According to Exhibit “I” to the affidavit of Ms. Dhue (if this document is reliable at all), Swissport had some serious staffing problems on the night of the incident. Indeed, Exhibit “I” states that “3 staff overslept, and one had a car trouble.” According to Exhibit “I”, the staffing problem was so severe that some day shift workers “stayed on” and Swissport had to borrow 2 staff from another company (TCX).

These circumstances provide a logical explanation for the early closure of Sunwing Airlines’ check-in counters, well before 01:25 am (local time). Indeed, according to Exhibit “I”, some of the staff working for Swissport that night were “borrowed” from another company, so they were likely unfamiliar with Sunwing Airlines’ procedures or its updated departure time, while others “stayed on” from the day shift, and were likely very exhausted. Consequently, when “most” passengers had checked in already by 00:30 am (as Exhibit “I” states), it may have appeared logical (or convenient) to close the check-in counter earlier than 01:25 am.

(ii) Reports by aircraft crew (Exhibit “K”) are reliable

Exhibit “K” to the affidavit of Ms. Joanne Dhue is a collection of reports completed by the crew of Flight WG 201. These reports were completed by neutral individuals, who had no interest or stake in the dispute concerning the time Sunwing Airlines closed its check-in counters at the Gatwick Airport. Thus, the Nawrots submit that the contents of Exhibit “K” are reliable, and are helpful for testing the reliability of other documents and individuals whose evidence was tendered by Sunwing Airlines.

As explained below, of particular interest are the times that boarding of Flight WG 201 started and ended. According to Exhibit “K”, call for boarding took place at **1:40 am** local time, and boarding completed at **2:15 am**. Exhibit “K” also refers to a delay of 5 minutes due to missing passengers: “Delay 00:05 - 15PA boarding” (see Captain Report).

(iii) Swissport Passenger Services Supervisor Shift Report (Exhibit “I”) is not reliable

The Nawrots dispute the reliability and credibility of Exhibit “I” to the affidavit of Ms. Dhue not only because it contradicts their own evidence, but also because Exhibit “I” contradicts the neutral third-party evidence contained in Exhibit “K”.

Exhibit “I” is entitled “Passenger Services Supervisor Shift Report – North Terminal,” and it was signed by “Vic,” who is presumably Mr. Vic Tydeman. It states, among other things, that:

Sunwing flight ok most pax checked in by 0030 closed flight at 0125. 4 pax turned up 15 mins after closure time checked with dispatcher who advised most pax boarded so denied them travel. [...]

[Emphasis added.]

In other words, Exhibit “I” alleges that four passengers showed up at 01:40 am local time, and by that time “most” passengers had already boarded. This is clearly impossible and absurd, because Exhibit “K” confirms that the boarding only started at 01:40 am.

Thus, it is impossible that “most” passengers boarded Flight WG 201 by 01:40 am local time.

Therefore, the information in Exhibit “I” with respect to the time these four passengers presented themselves is unreliable and inconsistent with the evidence of disinterested third parties contained in Exhibit “K”.

(iv) Reliability of the Destinations QCM report (Exhibit “H”) is questionable

Exhibit “H” to the affidavit of Ms. Dhue is a “Destinations QCM” report, whose author is unknown, and which purports to list “no-show” and “go-show” passengers.

The Nawrots dispute the reliability of Exhibit “H” as it contradicts the information contained in Exhibit “K”. Indeed, while Exhibit “K” demonstrates that the boarding of Flight WG 201 completed only at 2:15 am, according to Exhibit “H”, the last passenger boarded the flight at 01:05 am (UTC), that is, 02:05 am local time.

The Nawrots submit that Exhibit “H”, which was likely completed by Swissport employees, reflects what *should have* happened, and not what *did* happen, and as such the Agency ought to give it little or no weight.

(v) Who was the fourth passenger? (Exhibit “I” vs. para. 14)

Although the Nawrot Family consisted of only three passengers, according to Exhibit “I”, there was also a fourth passenger allegedly presenting themselves for check-in at 01:40 am local time. Oddly, however, Exhibit “I” makes no mention of the name of any of the passengers involved, including this fourth passenger.

In paragraph 14 of her affidavit, Ms. Dhue states that she investigated all “no show” passengers other than the Nawrots, and found that none of them travelled or intended to travel following the substantial delay of the departure of Flight WG 201.

Affidavit of Ms. Dhue (April 17, 2013), para. 14

The Nawrots submit that this discrepancy is due to the questionable reliability of Sunwing Airlines' Destination QCM report (Exhibit "H"), which seems to be inaccurate in other aspects too.

(vi) The August 10, 2012 letter provided to the Nawrots months later (Exhibit "M")

Exhibit "M" to the affidavit of Ms. Dhue is a letter she states that Sunwing Airlines sent to passengers on Flight WG 201.

Affidavit of Ms. Dhue (April 17, 2013), para. 23

The affidavit is silent as to how this letter was delivered to passengers, the majority of whom were clearly away from their homes on August 10, 2012, and many of whom likely had no email access either.

Contrary to the recollection of Ms. Dhue, the Nawrots received this letter only on October 9, 2012, as one of the two PDF files attached to the email of Khadean Walker of October 9, 2012.

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

Ms. Dhue correctly states in paragraph 24 of her affidavit that the Nawrots never advised Sunwing Airlines that they chose not to travel. The reason for this is that the Nawrots had consistently intended to return to Toronto on Flight WG 201.

(vii) Exhibit "L" is inadmissible double-hearsay and should not be given any weight

Exhibit "L" to the affidavit of Ms. Dhue is an email correspondence between an employee of Sunwing Airlines and Dino Almeida, where the latter states that he spoke with the captain of Flight WG 201, who did not remember any "incident" about a passenger being denied boarding.

Exhibit "L" is a textbook example of double-hearsay. It is a statement by Dino Almeida about what he heard from the captain of the flight, which was then sent to Sunwing Airlines. The Nawrots submit that as such, Exhibit "L" is inadmissible, and anyway ought not be attributed any weight.

There is no reason for a captain to remember every detail about each and every flight. Moreover, from the captain's point of view, what happened with the Nawrots was not an "incident" (as phrased by Sunwing Airlines' question), because they were not unruly passengers who had to be denied transportation due to their behaviour.

Thus, the question sent by Sunwing Airlines to Dino Almeida was already formulated in a leading manner that no reasonable person would think of the Nawrots even if s/he remembered their case.

Therefore, the Nawrots submit that Exhibit "L" ought not be given any weight.

(c) The evidence of Mr. Vic Tydeman is self-serving and not reliable

Although Sunwing Airlines has been aware of the Nawrots' complaint that they presented themselves on time for check-in, but found the check-in counters closed since August 11, 2012, the only evidence tendered by Sunwing Airlines that directly speaks to the time when the Nawrots presented themselves for check-in is the affidavit of a single agent, Mr. Vic Tydeman.

In light of the evidence of Mr. Williams that such an incident, where agent(s) close the check-in counter before the official cut-off times, is unprecedented, one struggles to understand why Sunwing Airlines did not immediately launch a thorough investigation of the Nawrots' complaint, and in particular, why Sunwing Airlines did not request that the airport retain security camera footage, which would have provided conclusive and independent evidence of the time the Nawrots presented themselves at the check-in counter.

Regardless of the reasons for Sunwing Airlines failing to collect and retain independent evidence about incident, the Nawrots submit that the evidence of Mr. Tydeman is self-serving and not reliable.

(i) Mr. Tydeman has a stake in the present dispute

Swissport is the ground handling agent for Sunwing Airlines, and it has a substantial business interest in maintaining that contract. Mr. Tydeman was an employee in a supervisory role at the time of the incident. In particular, it would have been Mr. Tydeman's responsibility to ensure that the check-in counters of Sunwing Airlines at the Gatwick Airport were staffed until 1:25 am on August 11, 2012.

As the Nawrots' evidence demonstrates, Mr. Tydeman clearly failed in his supervisory role, and Sunwing Airlines' check-in counters closed earlier than permitted by Sunwing Airlines' tariff.

Thus, the Nawrots' complaint has a direct impact on the evaluation of Mr. Tydeman by his employer, and may expose Mr. Tydeman to disciplinary actions, including dismissal for having failed to discharge his duties as required.

Therefore, Mr. Tydeman is not an objective, neutral, and disinterested witness, but rather an employee who has far more to lose in relation to the Nawrots' complaint than a few thousand dollars. In particular, there is no reason to prefer his evidence to the recollection of the Nawrots. On the contrary, due to the high stakes for Mr. Tydeman, his evidence is far more likely to be self-serving than the evidence of the Nawrots.

Hence, it is submitted that the Agency ought to take into account that the recollection of Mr. Tydeman may well have been influenced by the desire to protect his own interests and ultimately his position with Swissport.

(ii) Mr. Tydeman's affidavit mentions no names of passengers

Mr. Tydeman states in his affidavit that he distinctly remembers "this incident."

Affidavit of Mr. Tydeman (April 26, 2013), para. 3

Nevertheless, Mr. Tydeman does not mention the name of any of the four passengers who allegedly presented themselves for check-in late. The absence of names of passengers in the affidavit of Mr. Tydeman raises very serious doubts about the reliability of his recollection.

One struggles to understand why Mr. Tydeman, who has reached a supervisory role in a company that provides customer service to passengers, would not ask for the tickets and/or names of passengers who were allegedly late for check-in, and not complete some kind of report about the incident.

It is not credible that a supervisor would not thoroughly document every irregularity related to passengers, including passengers who are late to the check-in or the boarding gate. It is self evident that such documentation ought to include the names of the passengers involved, and their reservation numbers.

While Mr. Tydeman seems to have reported in general terms that "4 pax turned up 15 mins after closure time," this report is also sorely wanting in particulars of the passengers involved, such as their names and reservation numbers.

Affidavit of Ms. Dhue (April 17, 2013), Exhibit "I"

It is submitted that these shortcomings put the reliability of Mr. Tydeman's evidence into doubt.

(iii) Inconsistency with Exhibit "I" Affidavit of Ms. Dhue

Exhibit "I" to the affidavit of Ms. Dhue is a Swissport Passenger Services Supervisor Shift Report, which was signed by "Vic," who is presumably Mr. Vic Tydeman. There are a number of inconsistencies between the affidavit of Mr. Tydeman and the shift report (Exhibit "I" to the affidavit of Ms. Dhue):

1. Time of arrival of the allegedly late passengers: While Exhibit "I" refers to "15 mins after closure" (i.e., 01:40 am), the affidavit of Mr. Tydeman refers to 01:45 am.
2. Grouping of allegedly late passengers: While Exhibit "I" simply refers to "4 pax turned up," the affidavit of Mr. Tydeman speaks about "three passengers... ..and a fourth passenger arrived 5 minutes later."
3. Alleged state of boarding: While Exhibit "I" speaks about "most pax boarded," the affidavit of Mr. Tydeman states that "all but 10 passengers had boarded the flight."

These inconsistencies are significant and put the reliability of Mr. Tydeman's evidence and recollection into question for two reasons: first, Mr. Tydeman claims to "distinctly" remember the incident, which took place 8 months earlier; and second, the version provided in Mr. Tydeman's affidavit, if it were true, may be more favourable to Sunwing Airlines.

In other words, Mr. Tydeman's affidavit can best be described as an upgraded version of his report (Exhibit "I" to the affidavit of Ms. Dhue), which was created with the clear purpose to assist Sunwing Airlines' case.

(iv) Can 285 passengers be boarded in 5 minutes? Contradiction with Exhibit "K" to the Affidavit of Ms. Dhue

According to the affidavit of Mr. Tydeman, the Nawrots presented themselves for check-in at 01:45 am.

Affidavit of Mr. Tydeman (April 26, 2013), para. 5

Mr. Tydeman also states in his affidavit that at this point in time, there were only 10 passengers who had not yet boarded Flight WG 201.

Affidavit of Mr. Tydeman (April 26, 2013), para. 7

Can this possibly be true...?

According to the undisputed and reliable evidence of the flight crew, there were a total of 295 passengers on board; boarding only started at 01:40 am (local time), and was completed only at 02:15 am

Affidavit of Ms. Dhue (April 17, 2013), Exhibit "K"

Thus, according to Mr. Tydeman's evidence, by 01:45 am, $295 - 10 = 285$ passengers had already boarded the aircraft, and there were only 10 passengers waiting to board the aircraft.

In other words, what follows from the evidence of Mr. Tydeman is that 285 passengers boarded Flight WG 201 within 5 minutes between 01:40 am and 01:45 am, but it took another 30 minutes to board the remaining 10 passengers.

This is obviously absurd, and physically impossible.

As everybody knows, the boarding of a passenger takes 5-10 seconds at the very least, resulting in a rate of 6-12 passengers per minute, even if there are multiple boarding queues.

Consequently, boarding 285 of the 295 passengers (i.e., "all but 10 passengers," as stated by Mr. Tydeman) takes almost 24 minutes at best, and if boarding started at 01:40 am, then so many passengers could not have boarded the flight before 02:04 am.

However, we know that at 02:05 am, the Nawrots checked in with the London Gatwick Sofitel, and so they could not have possibly been at the airport at that time.

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

Hence, it is plain and clear that the events described in Mr. Tydeman’s affidavit could not have possibly taken place at the time that he states, and that his recollection with respect to the time of the incident is not reliable.

(v) Conclusions

Although Sunwing Airlines wishes to paint Mr. Tydeman as an independent, disinterested, and neutral third party whose recollection is reliable, this is far from being the case. On the contrary, Mr. Tydeman has a substantial stake in the outcome of the present complaint, as it may seriously affect his career and future employment. Mr. Tydeman’s evidence is evidently self-serving, as he has far more to lose than the Nawrots.

There is nothing in the affidavit of Mr. Tydeman to even demonstrate that the four passengers whom he met included the Nawrots. Oddly, Mr. Tydeman did not record the names or reservation numbers of the passengers referred to in his affidavit.

Mr. Tydeman’s recollection of the incident described in his affidavit is unreliable, and inconsistent not only with his own report (Exhibit “I” of the affidavit of Ms. Dhue), but also with the evidence of reliable and independent third parties (Exhibit “K” of the affidavit of Ms. Dhue).

Giving any credence to Mr. Tydeman’s recollection would amount to accepting claims that are contrary to common sense, such as that 285 passengers can be boarded in 5 minutes, or that the Nawrots could have been both at the check-in counter and at their hotel at the same time.

Therefore, the Nawrots submit that, perhaps due to the lapse of time, Mr. Tydeman’s recollection of the events on August 11, 2012 is not reliable, and cannot be reconciled with reliable third-party documentary evidence such as the report of the crew of Flight WG 201 or the Nawrots’ credit card authorization slip.

II. Reply and rebuttal to Sunwing Airlines' submissions

The Nawrots agree with Sunwing Airlines that a key factual question to be determined is whether, on a balance of probabilities, the Nawrots presented themselves for check-in prior to 01:25 am local time on August 11, 2012.

(a) Misstatements of the law in Sunwing Airlines' answer

Before addressing the aforementioned question of fact, it is necessary to clarify the applicable law, and in particular, the burden of proof.

(i) Recommendations are not enforceable contractual terms

Sunwing Airlines appears to suggest, although it does not state so explicitly, that failure of a passenger to follow recommendations with respect to the time they should be at the airport can somehow be held against the passenger, and may justify refusing the passenger transportation. The Nawrots respectfully disagree with Sunwing Airlines.

The question of enforceability of recommendations of a carrier is not new, and was addressed by the Agency in *Craig McIntyre v. Air Canada*, 54-C-A-2006, a case that has many features in common with the present complaint. In that case, Scott and Eric McIntyre were denied transportation by Air Canada on the grounds that although they presented themselves for check-in before the 30-minute check-in cut-off of Sunwing Airlines, they failed to be at the airport at least 60 minutes before the departure, contrary to Sunwing Airlines' recommendations. The Agency disagreed with Air Canada, and held that:

[27] Only in the event that Scott and Eric had arrived at the check-in counter after 8:30 a.m. would the carrier have the right to refuse to complete the check-in process. The recommendation that passengers be available for check-in 60 minutes prior to the schedule departure is not an enforceable Tariff provision.

Thus, based on the Agency's findings in *Craig McIntyre v. Air Canada*, the Nawrots submit that the only enforceable provisions are the check-in cut-off times contained in Sunwing Airlines' tariff. Therefore, the Nawrots are asking the Agency to give no weight to Sunwing Airlines' submissions based on the "recommended time for arrival for check in."

(ii) Montreal Convention: Delay vs. non-performance

In paragraph 3 on page 10 of its answer, Sunwing Airlines seems to argue that the *Montreal Convention* is not applicable to the present case, or at least certain aspects of the present case, and cites authorities about complete non-performance in support of its position. The Nawrots respectfully disagree with Sunwing Airlines.

The distinction between delay and non-performance was analyzed in great detail by the Agency in *Lukács v. Air Canada*, LET-C-A-80-2011 and was upheld in *Lukács v. Air Canada*, 250-C-A-2012. In *Lukács v. Air Canada*, LET-C-A-80-2011, the Agency explained that:

[34] In the Canadian case of *Lukács v. United Airlines Inc.*, [Footnote: 2009 MBQB 29 (Application for leave to Appeal dismissed: 2009 MBCA 111).] the plaintiff had been informed by air carrier personnel before arriving at the airport that his flight was cancelled. He went to the airport on the understanding that his ticket would be endorsed by another airline providing a flight that afternoon, but the process took so long that he ultimately decided not to travel at all. After hearing the position of the parties as to whether this event constituted “delay”, the Manitoba Court of Queen’s Bench ultimately decided that it came within the scope of Article 19 of the Convention.

⋮

[36] In recent years, U.S. courts have begun to trace the outline of a principled distinction between delay and non-performance, which (1) recognizes the possibility that the alternative categorizations can coexist, although each is governed by a different legal regime; and (2) makes their characterization dependent on specific factors.

[37] Building on this distinction is the case of *In re Nigeria Charter Flights Contract Litigation*, [Footnote: 520 F. Supp. 2d 447 - (E.D.N.Y. 2007).] [...] in which the Court attempted to synthesize several key distinctions between delay and contractual non-performance. The Court stated that in the case law, courts tended to find “delay” where one of three conditions is met:

1. The defendant airlines ultimately provided transportation;
2. The plaintiffs secured alternate transportation without waiting to see whether the airline would transport them or they refused an offer of a later flight; or
3. Plaintiffs never alleged non-performance.

In the case of the Nawrots, not only one, but two of these three conditions are met: the Nawrots secured alternate transportation only after Sunwing Airlines offered them an unreasonable new flight (i.e., 6 days later than their original return); furthermore, the Nawrots allege in their complaint delay and that Sunwing Airlines failed to apply its tariffs correctly and failed to provide them return transportation, and not complete non-performance. The situation of the Nawrots has some features in common with *Mohammad c. Air Canada*, which was summarized by the Agency in *Lukács v. Air Canada*, LET-C-A-80-2011 as follows:

[77] In *Mohammad v. Air Canada*, [Footnote: 2010 QCCQ 6858.] a case brought against Air Canada and Kuwait Airlines for joint carriage between Canada and

Kuwait, the Court of Quebec Small Claims Division held that Air Canada, when faced with a flight cancellation, took all reasonable measures when it put passengers on its next available flight, described as a new flight created by the carrier. However, on a final segment of the same flight itinerary, Kuwait Airlines was found liable under the Convention on the grounds that it should have transferred passengers to another carrier given that its own flights were booked for the next several weeks. [...]

Thus, the Nawrots submit that, as in the case of *Mohammad v. Air Canada*, the failure of Sunwing Airlines offer to the Nawrots transportation to Toronto on the flight of another carrier was a breach of Sunwing Airlines' concomitant obligation under the *Montreal Convention*, and it falls within the scope of Article 19 of the *Montreal Convention*.

(iii) Burden of proof

Sunwing Airlines insists in its answer that the burden of proof to establish that the Nawrots presented themselves for check-in before 01:25 am is on the Nawrots. Although the Nawrots submit that they have done more than enough to discharge this onus, they also submit that Sunwing Airlines misstates the law in this point, and the burden of proof is on Sunwing Airlines to demonstrate that it was entitled to refuse to transport the Nawrots on Flight WG 201.

This point was also addressed by the Agency in *Craig McIntyre v. Air Canada*, 54-C-A-2006:

[29] [...] Air Canada failed to prove that it was entitled to cancel Scott's and Eric's reservation and that, in not allowing them the opportunity to present themselves at the boarding gate, Air Canada did not properly apply its Tariff in this matter and therefore has contravened subsection 67(3) of the CTA.

[Emphasis added.]

The *Craig McIntyre v. Air Canada* decision is also helpful in the present case, because of the remedy: the Agency ordered Air Canada to pay the cost of WestJet tickets that the passengers purchased after Sunwing Airlines refused to transport them.

The Agency's placing the burden of proof on the carrier in *Craig McIntyre v. Air Canada* was correct at law and logical, bearing in mind the purpose of the clauses that permit a carrier to refuse transportation in certain circumstances. Indeed, these provisions are exceptions to the contract of carriage and the general obligation of the carrier to transport the passenger. There is no doubt that a party to a contract who wishes to rely on such a provision must demonstrate the presence of the facts required for invoking such a provision.

(b) The Nawrots' journey from Victoria Station to Gatwick Airport

One of the most heavily disputed matters in the present complaint concerns the details of the Nawrots' journey from Victoria Station to the Gatwick Airport, a topic that Sunwing Airlines has addressed at great length in its April 17, 2013 answer, and made a wealth of representations on.

In light of the Agency's decision in *Spence v. Perimeter Aviation*, 349-C-A-2012 (para. 23), the Nawrots have both the obligation and the right to clarify their version of the events and rebut the representations made by Sunwing Airlines in its answer to the complaint.

The Nawrots' rebuttal also includes evidence that was not available to the Nawrots at the time of the filing of the complaint, and only became available to them after months of intensive efforts to locate independent third-party documentary evidence about their travel from Victoria Station to Gatwick Airport on August 11, 2012.

The Nawrots submit that these recently received documents confirm their account of the events, and provide the Agency with reliable and independent documentary evidence of a similar nature as the parking tickets were in *Craig McIntyre v. Air Canada*, 54-C-A-2006.

(i) The Nawrots purchased their train tickets at 11:56 pm on August 10, 2012

According to the affidavit of Mr. Nawrot, the Nawrots purchased their train tickets before 11:59 pm on August 10, 2012.

Affidavit of Mr. Nawrot (February 28, 2013), para. 7, Exhibit "G"

At the bottom of page 6 of Sunwing Airlines' April 17, 2013 answer, Sunwing Airlines questions the accuracy of Mr. Nawrot's recollection on this point.

On May 14, 2013, the Nawrots received from Southern Railway a copy of the credit card usage history of Mr. Nawrot (Annex "A"), showing the dates and times he purchased train tickets. Annex "A" was received on May 14, 2013 as an attachment to an email (Annex "B").

Annex "A" confirms that the Nawrots' train tickets were purchased on August 10, 2012 at 11:56 pm for travel from London Victoria to Gatwick Airport, and it fully confirms the Nawrots' account of the events.

(ii) Details of the Nawrots' train ticket

At the bottom of page 5 of its April 17, 2013 submissions, Sunwing Airlines appears to suggest that Mr. Nawrot purchased only one ticket, and not three tickets, and also suggests that there is no record of when or where the tickets were purchased.

First, we note that Sunwing Airlines misstates the evidence, because the credit card statement of Mr. Nawrot (which was an exhibit to his affidavit) clearly identifies the date and the postal code of the location where the ticket was purchased:

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”

We note that as the public record shows, “SW1V” are the first 4 letters of the postal code of Victoria Station in London, precisely as Mr. Nawrot stated in his affidavit.

Fortunately, however, there is no need to rely solely on the recollection of Mr. Nawrot. Thanks to the dedicated efforts of numerous members of the Southern Railway escalation team, the full transaction record of the ticket purchase was recovered.

On May 17, 2013, the Nawrots received from Southern Railway a copy of the transaction logs of the purchase of the tickets by the Nawrots on August 10, 2013 (Annex “C”).

Annex “C” provides a complete and independent record of the tickets the Nawrots purchased, specifically:

- (a) the tickets were purchased from “Victoria Window 96” (i.e., Victoria Station);
- (b) the Nawrots purchased “off peak day singles” for 1 adult and 2 children;
- (c) the tickets were marked “SOUTHERN ONLY” (i.e., not Gatwick Express).

(iii) The Nawrots could not have taken the Gatwick Express (GX)

Sunwing Airlines argues at the bottom of page 5 of its April 17, 2013 answer that Southern Railway owns and operates the Gatwick Express, and thus the Nawrots could have also taken the Gatwick Express, notwithstanding that they paid a total of 15.20 GBP for their tickets.

This submission of Sunwing Airlines is woefully misguided, and fails to disclose to the Agency the well-known fact that Gatwick Express has an entirely different and substantially higher fare structure than Southern Railway.

A copy of the fares for Gatwick Express for the year 2012 is attached as Annex “D” to the present reply.

As Annex “D” confirms, adult fares start at 16.85 GBP. Since the Nawrots paid a total of 15.20 GBP for their tickets, they could not have purchased Gatwick Express tickets, and consequently they could not have travelled on Gatwick Express.

(iv) Trains from Victoria Station to Gatwick Airport were on time on August 11, 2012 between midnight and 02:00 am

Sunwing Airlines argues on page 5 of its April 17, 2013 answer that the British rail system is notorious for not running on time and that the train taken by the Nawrots from Victoria Station to Gatwick Airport may have been late.

These submissions of Sunwing Airlines, and the meaning Sunwing Airlines attempts to attribute to Appendix “B” to their answer in particular, is misleading.

Annex “E” to the present reply is an email Mr. Nawrot received from Southern Railway on June 13, 2013, which states that:

Following our conversations over the phone last week I am happy to inform you that I have personally contacted our Performance Dept who handle the history of the performances of our trains services and I can confirm the following based on that conersation

Between the hours of 00:00 - 02:00 on the morning of 11.08.12 there were no delays or disruption to our services between London Victoria and Gatwick Airport

Annex “E” (p. 34 of the present reply)

While this is conclusive evidence in and on its own, we also note that Sunwing Airlines’ allegations as to the British rail system are patently false, as the punctuality report for the period from July 22, 2012 to August 18, 2012 (Annex “F”) demonstrates.

(v) Which train did the Nawrots take?

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	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 1 d		00 24	00 27	00 32	00 57		01 22	01 32	02 22
Gatwick Airport	← 1 a	00 37	00 41	00 48	00 59	01 18	01 20	01 46	01 51	02 44

Annex “A” to the Nawrots’ complaint, p. 5 (p. 40 of the complaint)

There is no doubt that the Nawrots purchased their tickets at Victoria Station at 11:56 pm on August 10, 2012. Moreover, in light of the difference in the fares of Southern and Gatwick Express, it is plain and clear that the Nawrots' tickets could not have been used on Gatwick Express. This leaves only 3 possibilities:

1. departing London Victoria at 00:05 am, and arriving at Gatwick Airport at 00:41 am;
2. departing London Victoria at 00:14 am, and arriving at Gatwick Airport at 00:59 am;
3. departing London Victoria at 01:00 am, and arriving at Gatwick Airport at 01:46 am.

The third possibility, however, can easily be eliminated based on Sunwing Airlines' own evidence, which states that the Nawrots were already at Sunwing Airlines' check-in counter at the Gatwick Airport 15 minutes after 01:25 am, that is, by 01:40 am.

Affidavit of Ms. Dhue (April 17, 2013), Exhibit "I"

This leaves only two possibilities:

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 submit that it is not necessary to decide which train they took in order to determine the present complaint; it suffices to observe that they took one of these two trains, and as both trains were on time (Annex "E"), the Nawrots were at the Gatwick Airport's train stop at 1:00 am or shortly thereafter, as Mr. Nawrot stated in his affidavit:

8. The train ride to the airport lasted approximately 50 minutes, and my daughters and I arrived at the London Gatwick Airport on August 11, 2012 shortly after 1:00 am.

Affidavit of Mr. Nawrot (February 28, 2013), para. 8

Thus, the only question that remains is what is more probable: that the Nawrots reached Sunwing Airlines' check-in counters approximately 10 minutes later (as the Nawrots claim), or that somehow it took then Nawrots about 40 minutes to get from the train stop at Gatwick Airport to the terminal building and the check-in counter of Sunwing Airlines (as Sunwing Airlines believes to be the case).

(c) The Nawrots' journey from the South Terminal to the North Terminal

The Nawrots were at the Gatwick Airport train stop, which is located at the South Terminal, at or shortly after 1:00 am on August 11, 2012. In his affidavit, Mr. Nawrot stated that:

9. My daughters and I arrived at the check-in area at the London Gatwick Airport (North Terminal) at approximately 1:10 am, and found all check-in counters to be closed, unattended, with the lights dimmed. [...]

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

At the top of page 5 of Sunwing Airlines' April 17, 2012 answer, Sunwing Airlines questions the method of transportation the Nawrots used to reach the North Terminal, where Sunwing Airlines' check-in counters are located.

The Gatwick Airport operates a free shuttle between the terminals. According to the airport's website (Annex "G"):

Transferring between terminals at Gatwick couldn't be easier. Our shuttle train service runs every few minutes 24 hours a day and the journey takes just two minutes. The service is free to use.

In other words, the journey takes only two (2) minutes, and the shuttle runs very frequently. This corroborates the evidence of Mr. Nawrot that it took the Nawrots about 10 minutes to reach the "check-in area at the London Gatwick Airport (North Terminal)."

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

(d) Minor points and/or irrelevant points

In its April 17, 2013 answer, Sunwing Airlines raised a number of minor points whose relevance is not clear. For the sake of completeness, the Nawrots will address these too.

(i) Communications with the captain

Contrary to what stems from Sunwing Airlines' answer, Mr. Nawrot never stated that he spoke to the captain of Flight WG 201. His evidence was that he was *told* that a third person spoke with the captain:

The airport staff at the other end of the line said that she would have to ask the captain of our flight whether my family could board, and subsequently told me that the captain refused to allow us to board the aircraft. I asked to speak to a supervisor.

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

Mr. Nawrot's evidence is confined to what he was told on the telephone. With utmost respect, we fail to see the relevance of this point.

(ii) 4th passenger

On page 7 of Sunwing Airlines' April 17, 2013 answer, Sunwing Airlines refers to a 4th passenger who may have also been denied boarding in the same circumstances as the Nawrots.

With utmost respect to Sunwing Airlines, this is a dispute between two witnesses of Sunwing Airlines, namely, Ms. Joanne Dhue and Mr. Vic Tydeman, and not between the Nawrots and Sunwing Airlines.

Indeed, the evidence of Sunwing Airlines is self-contradictory on this point. While Mr. Tydeman consistently refers to four passengers who allegedly were late for check-in, Ms. Dhue stated that she was unable to confirm the identity of the 4th passenger.

**Affidavit of Mr. Tydeman (April 26, 2013), paras. 5 and 7
Affidavit of Ms. Due (April 17, 2013), para. 14**

The Nawrots submit that in light of the clear and consistent documentary evidence about their journey from Victoria Station to the Gatwick Airport, the existence of a 4th passenger who may have also been denied boarding is irrelevant, and need not be determined.

(iii) Dimmed lights

Sunwing Airlines appears to question the credibility of Mr. Nawrot based on his recollection that the lights were "dimmed" when he arrived at the check-in counter for Sunwing Airlines at the Gatwick Airport.

Mr. Nawrot's evidence is not contradicted by the affidavit of Mr. Tydeman, who states that "the check in counter is never in darkness." Although this is a minor and immaterial point, the Nawrots submit that the statements of Mr. Nawrot and Mr. Tydeman are both true on this point.

Indeed, Mr. Nawrot was not suggesting that the check-in counter was in darkness, but rather that the lighting was reduced in the area, which is a common practice at all airports to conserve energy.

(e) Conclusions

It is common ground that Sunwing Airlines' check-in cut-off is 60 minutes before the scheduled departure. The parties agree that in the case of Flight WG 201 on August 11, 2012, the check-in cut-off was at 01:25 am local time.

Sunwing Airlines failed to prove, on a balance of probabilities, that it was entitled to refuse to transport the Nawrots on Flight WG 201 on August 11, 2012.

At the same time, there is a wealth of independent third-party documentary evidence to corroborate the Nawrots' account of the events:

1. The Nawrots purchased their train tickets from Victoria Station to the Gatwick Airport at 11:56 pm on August 10, 2012 (Annexes "A" and "C");
2. Their tickets were not valid for Gatwick Express, but only for Southern Railway regular trains (Annexes "C" and "D");
3. According to the train timetables, there were only two trains that the Nawrots could have taken on August 11, 2012: the 00:05 am train, arriving at 00:41 am, and the 00:14 am train, arriving at the Gatwick Airport at 00:59 am (Annex "A" to the Nawrots' complaint);
4. On August 11, 2012 between midnight and 2:00 am, there were no delays or disruptions of the train service between Victoria Station and the Gatwick Airport (Annex "E").

Therefore, there can be no doubt that the Nawrots arrived at the Gatwick Airport train stop at or shortly after **1:00 am** on August 11, 2012, at the latest. This is more than 25 minutes before Sunwing Airlines' check-in cut-off time.

The shuttle between the North and the South terminals of the Gatwick Airport operates 24 hours a day and run frequently, and the journey takes only 2 minutes (Annex "G").

Hence, on a balance of probabilities, the Nawrots presented themselves for check-in at 1:10 am or shortly thereafter, and certainly several minutes before the 1:25 am check-in cut-off time.

Consequently, the Nawrots presented themselves for check-in on time, and Sunwing Airlines had no valid reason to refuse to transport the Nawrots on Flight WG 201 on August 11, 2012.

III. Quantum of compensation payable to the Nawrots

Sunwing Airlines' entire answer of April 17, 2013 is based on the false premise that the Nawrots were late to check-in to their flight, and missed the check-in cut-off time. In particular, Sunwing Airlines failed to make any submissions on the quantum of compensation payable to the Nawrots if the Agency finds that they did present themselves for check-in on time, but were nevertheless denied transportation.

(a) Out-of-pocket expenses

At the bottom of page 10 of its April 17, 2013 answer, Sunwing Airlines indicated that it does not dispute the Nawrots' claim with respect to \$157.99 of hotel accommodation on August 10, 2012 and \$120.00 of meals due to the 14-hour delay of Flight WG 201.

The Nawrots submit that Sunwing Airlines denied them transportation and boarding on Flight WG 201 without any justifiable reason, and as such Sunwing Airlines is liable for their out-of-pocket expenses both under the *Montreal Convention* and pursuant to the *Air Transportation Regulations*.

Sunwing Airlines made no submissions as to the quantum of the Nawrots' out-of-pocket expenses should the Agency find in their favour with respect to the denial of transportation and/or boarding.

Thus, the Nawrots are asking the Agency to find that they incurred out-of-pocket expenses in the amount of \$4,963.32 as a result of the delay and/or Sunwing Airlines' failure to apply its tariff correctly.

(b) Denied boarding compensation

Although Sunwing Airlines wishes to distinguish the present case from a typical "bumping," it led no evidence to show that Flight WG 201 was not oversold. Indeed, although there were a number of no-show passengers, there were also a number of go-show passengers. All we know is that there were a total of 295 passengers on board, but Sunwing Airlines led no evidence as to the aircraft's capacity.

The Nawrots submit that in the circumstances of their denied boarding on Flight WG 201, it is immaterial whether Flight WG 201 was oversold, and the only material facts are that they presented themselves for check-in more than 60 minutes before the scheduled departure time, and that Sunwing Airlines nevertheless denied them boarding on Flight WG 201.

The purpose of providing denied boarding compensation to passengers is to compensate for inconvenience caused by the denied boarding. The inconvenience does not depend on the reason that the airline denies boarding, and it is the same whether the flight was oversold or, as in the present case, the check-in counter was closed earlier than the official check-in cut-off time. The impact on the passengers is exactly the same.

Thus, the Nawrots submit that “denied boarding” and the entitlement to denied boarding compensation does not depend on the cause that the airline denies a passenger with a confirmed reservation her/his seat, as long as the passenger was available to check-in and board the flight as required by the tariff (including required travel documents, etc.).

Therefore, the Nawrots respectfully submit that they are entitled to denied boarding compensation in addition to their out-of-pocket expenses.

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. *Craig McIntyre v. Air Canada*, Canadian Transportation Agency, 54-C-A-2006.
7. *Lukács v. Air Canada*, Canadian Transportation Agency, LET-C-A-80-2011.
8. *Lukács v. Air Canada*, Canadian Transportation Agency, 250-C-A-2011.
9. *Spence v. Perimeter Aviation*, Canadian Transportation Agency, 349-C-A-2012.

**Annex "A" to the reply
of the Nawrots**

June 14, 2013
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UserID	NLC	Host Name	Mach NO.	Description	Amount	FirstItem	Num Issues	DateTime	Card Trans No	Trans Head No	Type	HolderName	Start Expiry	Auth Msg
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98	9132	GTWF98	5605	36 Visa Credit	36	30-JUL SOR (ACD) GATWICK AIRPORT to LONDON BRIDGE	3	30/07/2012 12:31	23605	32177	Visa Credit	NAWROT/RAYMOND P	0 Nov 30 2014	AUTH CODE:008757

Ray NAWROT

From: SR_Escalations <Southern.Escalations@postroom.com>
Sent: May-14-13 8:44 AM
To: ray.nawrot@gmail.com
Subject: Southern and Gatwick Express * IMPORTANT-CANADA**REQ Transaction Info*
Attachments: CC History Nawrot.pdf

Dear Ray

Attached is a copy of your card history with the dates and times you purchased your tickets. The manager you spoke to is on leave till next week, so thought I would pass this on sooner.

Hope this helps

Many Thanks

Terri Owen

Escalations Team
Southern

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**Annex "B" to the reply
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June 14, 2013
Page 27 of 38

Delivered-To: ray.nawrot@gmail.com
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Tue, 14 May 2013 06:45:42 -0700 (PDT)
X-Received: by 10.68.65.134 with SMTP id x6mr34063660pbs.219.1368539142089;
Tue, 14 May 2013 06:45:42 -0700 (PDT)
Return-Path: <Southern.Escalations@postroom.com>
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by mx.google.com with ESMTP id zq4si4174906pbc.195.2013.05.14.06.45.39
for <ray.nawrot@gmail.com>;
Tue, 14 May 2013 06:45:42 -0700 (PDT)
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<Tabafe997cd3ead7749648@mstgate01.contact24.co.uk> for <ray.nawrot@gmail.com>;
Tue, 14 May 2013 14:45:29 +0100
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Message-ID: <67727E210902E947910D92BAE7C7966B0568C4DC@mstexch03.Core.Internal>
X-MS-Has-Attach: yes

**Annex “B” to the reply
of the Nawrots**

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X-MS-TNEF-Correlator:

Thread-Topic: Southern and Gatwick Express * IMPORTANT-CANADA**REQ Transaction Info*

Thread-Index: Ac5GlvQ0TSt4AF8yQgWtHkVIXcfD4wABLs/0AAAT8GACfC5ToAAE+jvgAAACli0=

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From: "SR_Escalations" <Southern.Escalations@postroom.com>

To: <ray.nawrot@gmail.com>

X-Antispam: clean, score=2

X-Antivirus: avast! (VPS 130514-0, 05/14/2013), Inbound message

X-Antivirus-Status: Clean

Ray NAWROT

From: SR_Escalations <Southern.Escalations@postroom.com>
Sent: May-17-13 10:12 AM
To: Ray NAWROT
Subject: RE: Southern and Gatwick Express * IMPORTANT-CANADA**REQ Transaction Info*

Dear Ray

The below which is the log taken from Victoria Window 96 states that 3 tickets were issued. These are from Victoria to Gatwick off peak day singles for 1 adult at £13.20 and 2 children at £1 each.

RFE INFO: 23:55:22.184 TravelTicket: £13.20 null rsp null 1ad,0ch LONDON VICTORIA (5426) to GATWICK AIRPORT (5416) via SOUTHERN ONLY (00777) XLdn?false standard OFF-PEAK DAY S (CDS) B1 (OFF-PEAK) PUBLIC () min?false 10/08/12 00:00 RTN null

RFE INFO: 23:55:22.199 TravelTicket: £1.00 null rsp null 0ad,1ch LONDON VICTORIA (5426) to GATWICK AIRPORT (5416) via SOUTHERN ONLY (00777) XLdn?false standard CHILD FLTFARE S (TKS) B1 (OFF-PEAK) PUBLIC () min?false 10/08/12 00:00 RTN null

RFE INFO: 23:55:22.199 TravelTicket: £1.00 null rsp null 0ad,1ch LONDON VICTORIA (5426) to GATWICK AIRPORT (5416) via SOUTHERN ONLY (00777) XLdn?false standard CHILD FLTFARE S (TKS) B1 (OFF-PEAK) PUBLIC () min?false 10/08/12 00:00 RTN null

RPE INFO: 23:55:39.729 Sale 4836:58 Started

RPE INFO: 23:55:39.729 Sale 4836:58 Print sundry issue coupons set to true

RPE INFO: 23:55:39.744 Sale 4836:58 Print sundry payment coupons set to true

RPE INFO: 23:55:44.032 Sale 4836:58 Set payment method card

RPE INFO: 23:55:44.062 Sale 4836:58 Added issue of 10-AUG CDS LONDON VICTORIA to GATWICK AIRPORT: £13.20

RPE INFO: 23:55:44.062 Sale 4836:58 Added issue of 10-AUG TKS LONDON VICTORIA to GATWICK AIRPORT: £1.00

RPE INFO: 23:55:44.062 Sale 4836:58 Added issue of 10-AUG TKS LONDON VICTORIA to GATWICK AIRPORT: £1.00

RPE INFO: 23:55:44.092 Sale 4836:58 Started issuing

Hope this is suffice to your

claim. Many Thanks

Terri Owen

***Escalations Team
Southern***

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**Annex "C" to the reply
of the Nawrots**

June 14, 2013
Page 31 of 38

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From: "SR_Escalations" <Southern.Escalations@postroom.com>
To: "Ray NAWROT" <ray.nawrot@gmail.com>
X-Antispam: clean, score=2
X-Antivirus: avast! (VPS 130517-0, 2013-05-17), Inbound message
X-Antivirus-Status: Clean

ially improved and meets the needs of its visitors, we would like to
an reader. Please email your feedback to
read our Accessibility statement. Thank you. [Skip navigation](#)

Fares - buy online and save

Travelling between Gatwick Airport and London Victoria

Buying online is the best way to buy your Gatwick Express train tickets as you save time and money.

Gatwick Express is currently offering [Free Airport Lounge entry](#) for [First Class Anytime Returns](#) purchased online, and [10% OFF Single tickets](#).

Prices from 2 January 2012

Ticket Name	Adult Child*	RRP	Online Fare
Anytime Single	Adult	£18.90	£16.85
	Child	£9.45	£8.40
Anytime Return	Adult	£33.20	£33.20
	Child	£16.60	£16.60
Web Duo Anytime Return <i>Online promotion:</i> 35% off when 2 adults travel from London Victoria	2 x Adult	£66.40	£43.10
Anytime Day Return** Off-Peak Day Return***	Adult	£25.00	£25.00
	Child	£12.50	£12.50
First Class Anytime Single	Adult	£27.50	£24.50
	Child	£13.75	£12.25
First Class Anytime Return <i>Online price includes:</i> Free Airport Lounge Entry	Adult	£53.00	£53.00
	Child	£26.50	£26.50
First Class Off-Peak Day Return****	Adult	£31.80	£31.80
	Child	£15.90	£15.90
Carnet (10 for 8)	Adult	£151.00	N/A
First Class Carnet (10 for 8)	Adult	£220.00	N/A

*Children between five and 15 years old inclusive.

** Anytime Day Return tickets are only available from London Victoria to Gatwick Airport. First Class Anytime Day Return tickets are not available.

*** Off-Peak Day Return tickets are only available from Gatwick Airport to London Victoria. Valid after 09.35 on weekdays, and anytime on weekends and Bank Holidays.

**** First Class Off-Peak Day Return tickets are available in both directions. From London Victoria to Gatwick Airport they are valid anytime on weekdays, but from Gatwick Airport to London Victoria they are only valid after 09.35 on weekdays. These tickets are valid anytime on weekends and Bank Holidays.

Ray NAWROT

From: Southern Rail Customer Services <comments@southernrailway.com>
Sent: June-13-13 1:21 AM
To: ray.nawrot@gmail.com
Subject: Confirmation Of Services - Case Reference : 20130604-646218

Dear Mr Nawrot

Following our conversations over the phone last week I am happy to inform you that I have personally contacted our Performance Dept who handle the history of the performances of our trains services and I can confirm the following based on that conersation

Between the hours of 00:00 - 02:00 on the morning of 11.08.12 there were no delays or disruption to our services between London Victoria and Gatwick Airport

I do apologise in the delay of getting you this information and hopes this resolves your query.

If you have any further questions, please feel free to contact us directly at: comments@southernrailway.com or www.southernrailway.com/your-journey/contact-us/contact-us-form/ you can also contact our Customer Service team by phone on (08451 27 29 20), fax (08451 27 29 30) or in writing (Southern Customer Services, PO Box 3021, Bristol, BS2 2BS).

Kind regards

Matthew Cliff
Southern Customer Services

Southern is the trading name of Southern Railway Ltd. Registered in England under number: 06574965 Registered offices: 3rd Floor, 41-51 Grey Street, Newcastle upon Tyne, NE1 6EE.

This email is sent subject to our email disclaimer which can be accessed at: <http://www.southernrailway.com/emaildisclaimer>

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

June 14, 2013
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Delivered-To: ray.nawrot@gmail.com
Received: by 10.224.126.9 with SMTP id a9csp1664qas;
Wed, 12 Jun 2013 22:44:10 -0700 (PDT)
X-Received: by 10.66.119.35 with SMTP id kr3mr1222351pab.149.1371102249537;
Wed, 12 Jun 2013 22:44:09 -0700 (PDT)
Return-Path: <comments@southernrailway.com>
Received: from mail1.bemta3.messagelabs.com (mail1.bemta3.messagelabs.com.
[195.245.230.168])
by mx.google.com with ESMTP id e8si13194877pao.107.2013.06.12.22.44.08
for <ray.nawrot@gmail.com>;
Wed, 12 Jun 2013 22:44:09 -0700 (PDT)
Received-SPF: neutral (google.com: 195.245.230.168 is neither permitted nor denied by best
guess record for domain of comments@southernrailway.com) client-ip=195.245.230.168;
Authentication-Results: mx.google.com;
spf=neutral (google.com: 195.245.230.168 is neither permitted nor denied by best guess
record for domain of comments@southernrailway.com)
smtp.mail=comments@southernrailway.com
Return-Path: <comments@southernrailway.com>
Received: from [195.245.230.115:47210] by server-8.bemta-3.messagelabs.com id 62/D4-
25864-D1C59B15; Thu, 13 Jun 2013 05:43:57 +0000
X-Env-Sender: comments@southernrailway.com
X-Msg-Ref: server-3.tower-57.messagelabs.com!1371102236!18300962!3
X-Originating-IP: [62.173.119.73]
X-StarScan-Received:
X-StarScan-Version: 6.9.6; banners=-,-,-
X-VirusChecked: Checked
Received: (qmail 4321 invoked from network); 13 Jun 2013 05:43:56 -0000
Received: from cc2mailgate1.contact24.co.uk (HELO mstgate01.contact24.co.uk)
(62.173.119.73)
by server-3.tower-57.messagelabs.com with SMTP; 13 Jun 2013 05:43:56 -0000
Received: from mstexch02.Core.Internal (mstexch02.core.internal) by
mstgate01.contact24.co.uk (Clearswift SMTPRS 5.4.1) with ESMTP id
<Tac48ae38c63ead7749ff0@mstgate01.contact24.co.uk> for
<ray.nawrot@gmail.com>; Thu, 13 Jun 2013 06:42:32 +0100
Received: from 10.12.4.86 ([10.12.0.206]) by mstexch02.Core.Internal with
Microsoft SMTPSVC(6.0.3790.4675); Thu, 13 Jun 2013 06:21:25 +0100
MIME-Version: 1.0
Content-Type: text/plain; charset="utf-8"
Content-Transfer-Encoding: base64
To: ray.nawrot@gmail.com
From: Southern Rail Customer Services <comments@southernrailway.com>
Subject: =?UTF-8?B?Q29uZmlybWF0aW9uIE9mIFNlcnZpY2VzIC0gQ2E=?=
=?UTF-8?B?c2UgUmVmZXJlbmNlIDogMjAxMzA2MDQtNjQ2MjE4?=
Date: Thu, 13 Jun 2013 06:21:25 +0100

**Annex “E” to the reply
of the Nawrots**

June 14, 2013
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Importance: Normal

X-SMTP-Client: Infinity Email Module

X-SMTP-SendAsHTML: False

Message-ID: <MSTEXCH02pXX50yki4j0000c0e8@mstexch02.Core.Internal>

X-OriginalArrivalTime: 13 Jun 2013 05:21:25.0542 (UTC)

FILETIME=[D9956C60:01CE67F5]

X-Antispam: clean, score=25

X-Antivirus: avast! (VPS 130613-0, 2013-06-13), Inbound message

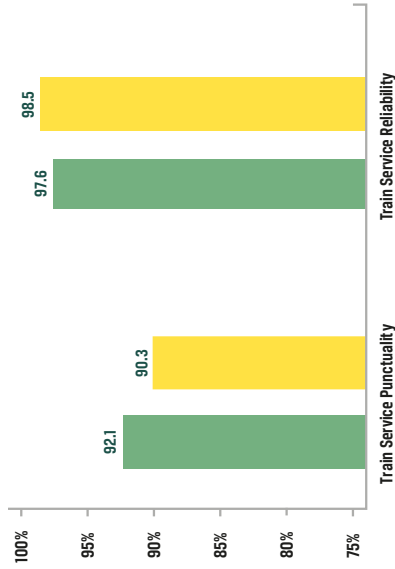
X-Antivirus-Status: Clean

PUNCTUALITY: How are we doing?

Results Period 05, 22 July 2012 to 18 August 2012

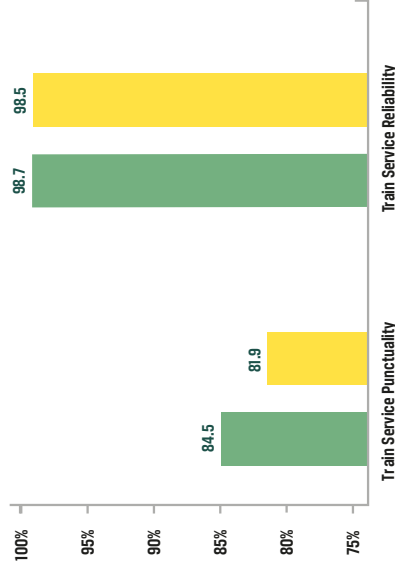
■ Performance on average this period
 ■ Performance on average this past year

SOUTH LONDON



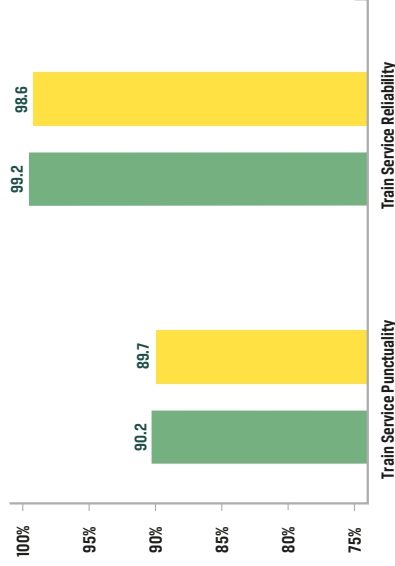
Major incidents excluded: None
 Annual number of void days: None

SUSSEX COAST



Major incidents excluded: None
 Annual number of void days: None

GATWICK EXPRESS



Major incidents excluded: None
 Annual number of void days: None

YOUR LONDON AIRPORT
Gatwick

Home > At the Airport > Terminal shuttle

Terminal shuttle

- North Terminal
- South Terminal
- Airport maps
- Which terminal?
- Terminal shuttle**
- Travelling with children
- PRM - special assistance
- Shopping & Eating
- Hotels at Gatwick
- Car rental
- Meeting at the airport
- Porters
- Keep in touch with Gatwick
- Gatwick First
- Concierge

Terminal shuttle

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Transferring between terminals at Gatwick couldn't be easier. Our shuttle train service runs every few minutes 24 hours a day and the journey takes just two minutes. The service is free to use.

The mainline train station is located in the South Terminal. To take the shuttle simply follow signs for North Terminal. If you've arrived at North Terminal and need to take the train, simply follow signs for South Terminal.

P Airport parking Help

You can't park closer!
Pre-book and save...

Entry UK
Time

Exit UK
Time

Choose a terminal

Know the rules

Security Customs

See what you can carry as hand baggage or departing flights

-- select destination --



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