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September 1, 2014

VIA EMAIL

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

Attention: Mr. Mike Redmond, Chief, Tariff Investigations

Dear Madam Secretary:

Re: Dr. Gábor Lukács v. WestJet
Complaint concerning WestJet's policies and practices relating to claims for delay, damage, and loss of baggage
File No.: M 4120-3/14-02973
Motion for an order to answer questions, produce documents, and for an extension
Reply

Please accept the following submissions as a reply to WestJet's answer dated August 28, 2014, in relation to the above-noted motion.

Preliminary matter: WestJet misstates the nature of the complaint

WestJet grossly misstates the substance of the present complaint on page 2 of its submissions by suggesting that the present proceeding is "in relation to the applicant's \$25 claim."

As the Applicant has explained time after time in his submissions, the present proceeding concerns WestJet's systemic refusal to process and settle certain types of baggage-related claims, using various pretexts (reference to IATA Resolution 780 being one of these). The remedies being sought are corrective measures to put an end to WestJet's unlawful practice, and not an order for the payment of any amount to the Applicant.

The failure of WestJet to process and settle the Applicant's claim and the claim of Ms. Jones are examples and instances of the aforementioned systemic unlawful conduct of WestJet, which WestJet is apparently determined to continue unless the Agency intervenes.

I. Payment allegedly made by British Airways to the Applicant

In the present motion, the Applicant is asking the Agency to order WestJet to answer certain questions and produce documents related to an unsubstantiated allegation made in WestJet's answer dated July 11, 2014, namely, that the Applicant's claim had already been settled. In the alternative, the Applicant is asking the Agency to order British Airways, whom WestJet is attempting to blame for the failure to pay the Applicant, to produce certain records.

These questions and documents are relevant to the complaint because they speak to WestJet's credibility, and demonstrate the nature of the problem that WestJet's conduct creates for the travelling public: passengers incurring expenses in relation to delay of their baggage and not being compensated for many months.

The Applicant submits that Section I of WestJet's answer contains nothing that would have any bearing on the question of whether WestJet should be required to answer these questions or whether the documents should be produced.

If WestJet is prepared to retract its allegation that the Applicant's claim has already been paid, then of course it is no longer necessary to answer further questions or produce further documents in relation to this matter; however, in the absence of a clear admission by WestJet to this effect, the Applicant submits that full scrutiny of this question is necessary.

The question is quite simple: if WestJet is correct and the Applicant was paid by a cheque, then British Airways must have a copy of the endorsed cheque (i.e., a signature of the Applicant on its back), and must be able to provide evidence as to when and where the cheque was cashed. If WestJet and/or British Airways is unable to produce such evidence, then clearly no such payment occurred. After all, in the 21st century, money is traceable.

Finally, the Applicant asks the Agency to ignore WestJet's unsubstantiated allegations as to what it can allegedly confirm in relation to British Airways' alleged actions. WestJet has chosen to provide no evidence in support of these allegations, and as such, they remain what they are: bald allegations.

II. Systemic refusal to process and settle claims

The issue is not merely what pretext WestJet used in refusing to process and settle baggage-related claims, but rather the outcome: that, without any lawful excuse, certain types of claims were neither processed nor settled by WestJet.

One struggles to understand WestJet's argument that there is an inconsistency in the Applicant's position. The Applicant did not allege that WestJet refuses to process *every* baggage-related claim, but only those where WestJet was not the last carrier. The Applicant also alleges that one of the pretexts used for such unlawful denial of the rights of passengers is a reference to IATA Resolution 780; however, the actual pretext used by WestJet is immaterial. The main question is whether there is such a systemic refusal to process claims or not.

WestJet's submissions of August 28, 2014 confirm the existence of a dispute between the Applicant and WestJet: the Applicant alleges that WestJet has been systematically refusing to process and settle certain baggage-related claims, while WestJet denies this allegation.

(a) The method to resolve this dispute: production of documents

Thus far, WestJet has been making bare and bald denials, but has produced no evidence to support anything that it has stated in its submissions.

The only way to test how WestJet has been handling baggage-related claims of passengers in cases where it was not the last carrier is to produce and analyze historic communications between WestJet and passengers in relation to such claims.

WestJet's argument that producing and analyzing such historic communications will have no benefit is preposterous and defies common sense. Indeed, the only way a tribunal can make findings is based on the evidence. In this case, the evidence happens to be documents that are in the possession, care, or control of WestJet. As such, the appropriate vehicle for ensuring that the evidence is placed before the Agency is by way of a production order.

(b) Relevance

WestJet's claim that such a production order "will merely confirm WestJet has historically advised guests to make their initial claim with the final carrier" is a mere speculation of a party as to what findings the Agency may make about evidence that it has yet to produce and place before the Agency. With due respect, WestJet cannot dictate to the Agency what findings to make.

It is submitted that such speculations cannot be a proper basis for the deciding relevance of documents sought. The correct question to be asked is whether the documents are capable of showing that WestJet has been refusing to process certain claims, and the answer to that question is obviously in the affirmative.

(c) Privacy concerns

It was already noted in the motion that in Decision No. LET-C-A-23-2014, in File No. M4120-3/13-03258, the Agency ordered WestJet to provide full answers to certain questions that related not only to the complainant himself, but to other passengers as well. Answers to these questions included communications between WestJet and other passengers.

WestJet has made no submissions to explain how the present case differs from File No. M4120-3/13-03258, and indeed, they do not differ: in both cases, the production of documents is necessary to test whether there is a systemic problem that many passengers face.

As WestJet conceded, *PIPEDA* permits the disclosure of such information if the production is ordered by the Agency. Thus, the only question is what is the appropriate way to protect the privacy of the passengers.

The Applicant submits that the privacy of the passengers involved can be adequately protected by way of a carefully crafted confidentiality order limiting the public disclosure of the contents of the documents.

III. WestJet's refusal to process and settle the claim of Ms. Jones

Although WestJet "reiterates" its denial of the fact that it refuses to process and settle certain baggage-related claims, reiterating a denial does not turn the denial into evidence.

As WestJet has acknowledged on page 3 of its August 28, 2014 submissions, the Applicant intends to rely on the details of the claim Ms. Jones made to WestJet as evidence that WestJet refuses to process and settle claims in cases where it is not the last carrier.

The Applicant is seeking answers to questions Q8-Q11, because they are capable of demonstrating that WestJet is misleading the Agency with respect to its processing and settling of baggage-related claims.

The Applicant's position is that under the *Montreal Convention*, the duty of WestJet to Ms. Jones and other passengers where WestJet was the first carrier is not to "assist" a passenger in contacting another carrier, but rather to process and settle the claim.

The fact that WestJet has failed to process and settle the claim of Ms. Jones in spite of her repeated demands is capable of demonstrating that WestJet is effectively refusing to process and settle claims of this type.

Therefore, the Applicant submits that answers to questions Q8-Q11 are relevant to the main question, which is whether WestJet has been refusing to process and settle baggage-related claims when it was not the last carrier.

All of which is most respectfully submitted.

Dr. Gábor Lukács
Applicant

Cc: Jeff Landmann, Senior Legal Counsel for WestJet
Lorne Mackenzie, Director of Regulatory and Government Affairs for WestJet