



Halifax, NS

lukacs@AirPassengerRights.ca

March 25, 2016

VIA EMAIL

The Secretary
Canadian Transportation Agency
Ottawa, ON K1A 0N9

Dear Madam Secretary:

**Re: Dr. Gábor Lukács v. Wow Air
Complaint concerning failure to set out in the tariff conditions governing
denied boarding compensation for travel to and from Canada**

Please accept the following application pursuant to ss. 26, 27, and 37 of the *Canada Transportation Act* (“CTA”), S.C. 1996, c. 10, s. 122 of the *Air Transportation Regulations*, S.O.R./88-58 (“ATR”), and Rule 19 of the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, S.O.R./2014-104.

I. THE FACTS

1. A copy of Wow Air’s International Tariff Rule 87, entitled “Denied Boarding Compensation,” is attached and marked as Document No. 1.
2. Wow Air’s International Tariff Rule 87 (Document No. 1) fails to address denied boarding compensation for travel to and from Canada; it addresses only denied boarding compensation for flights departing from the United States.

II. SUBMISSIONS

3. The *ATR* requires air carriers operating international service to and from Canada to create, file with the Agency, and publish a tariff setting out the terms and conditions of carriage. The tariff is a contract between the carrier and its passengers.

Air Transportation Regulations, ss. 110, 116, and 116.1

4. Subsection 122(c) of the *ATR* stipulates that carriers are required to include in their tariff terms and conditions relating to schedule irregularities and liability limits:

122. Every tariff shall contain

⋮

- (c) the terms and conditions of carriage, clearly stating the air carrier's policy in respect of at least the following matters, namely,

⋮

- (iii) compensation for denial of boarding as a result of overbooking, failure to operate the service or failure to operate on schedule,

⋮

Air Transportation Regulations, s. 122(c)

5. It is settled law that the tariff must contain terms and conditions that clearly state the carrier's policy in respect of denied boarding compensation for travel to and from Canada.

Nathanson v. LACSA, Decision No. 201-C-A-2005, para. 26

Lukács v. WestJet, Decision No. 227-C-A-2013, para. 39

Ahmad v. Pakistan International Airlines Corporation, Decision No. 148-C-A-2015, para. 29

Lukács v. British Airways, Decision No. 49-C-A-2016

6. Therefore, Wow Air contravened paragraph 122(c) and subparagraph 122(c)(iii) of the *ATR*.

III. RELIEF SOUGHT

7. The Applicant is asking the Agency to order Wow Air to file with the Agency and publish on its website a revised International Tariff that clearly states Wow Air's policy with respect to denied boarding for travel to and from Canada.

All of which is most respectfully submitted.

Dr. Gábor Lukács
Applicant

NTA(A) No. 552 D.O.T. No. 890

Airline Tariff Publishing Company, Agent
INTERNATIONAL PASSENGER RULES AND FARES TARIFF
NO. WW-1

1st Revised Page WW-31
Cancels Original Page WW-31

RULE SECTION I - GENERAL RULES

C87 +[DENIED BOARDING COMPENSATION

For the purpose of this rule, except as otherwise specifically provided herein:

AIRPORT means the airport at which the direct or connecting flight, on which the passenger holds confirmed reserved space, is planned to arrive or some other airport serving the same metropolitan area, provided that transportation to the other airport is accepted (i.e. used) by the passenger.

ALTERNATE TRANSPORTATION is air transportation (by an airline licensed by the Department of Transportation) or other transportation used by the passenger which, at the time the arrangement is made, is planned to arrive at the passenger's next scheduled stopover (of 4 hours or longer) or if none at the airport of final destination no later than 4 hours after the passenger's originally scheduled arrival time.

CARRIER means

(A) a direct air carrier, except a helicopter operator, holding a certificate issued by the Department of Transportation pursuant to section 401(d)(1), 401(d)(2), 401(d)(5), or 401(d)(8) of the Act, or an exemption from section 401(a) of the Act, authorizing the scheduled foreign air transportation of persons.

(B) a foreign route air carrier holding a permit issued by the Department of Transportation pursuant to section 402 of the Act, or an exemption from section 402 of the Act, authorizing the scheduled foreign air transportation of persons.

COMPARABLE AIR TRANSPORTATION means transportation provided to passenger at no extra cost by a carrier as defined above.

CONFIRMED RESERVED SPACE means space on a specific date and on a specific flight and class of service of a carrier which has been requested by a passenger and which the carrier or its agent has verified, by appropriate notation on the ticket or in any other manner provided therefore by the carrier as being reserved for the accommodation of the passenger.

STOPOVER means a deliberate interruption of a journey by the passenger, scheduled to exceed four hours, at a point between the place of departure and the place of final destination.

THE SUM OF THE VALUES OF THE REMAINING FLIGHT COUPONS means the sum of the applicable one-way fares including any surcharges and air transportation taxes, less any applicable discounts.

VOLUNTEER means a person who responds to carrier's request for volunteers and who willingly accepts carrier's offer of compensation, in any amount, in exchange for relinquishing his confirmed reserved space. Any other passenger denied boarding is considered for the purposes of this rule to have been denied boarding involuntarily, even if he accepts denied boarding compensation.

(A) APPLICABLE ONLY TO FLIGHTS OR PORTIONS OF FLIGHTS ORIGINATING IN THE UNITED STATES

(1) CONDITIONS FOR PAYMENT OF COMPENSATION

Subject to the exceptions in this subparagraph, carrier will tender to the passenger the amount of compensation specified in subparagraph (2) when:

- (a) Passenger holding a ticket for confirmed reserved space presents himself/herself for carriage at the appropriate time and place, having complied fully with carrier's requirements as to ticketing check-in (See Rule 12(F)) and reconfirmation procedures and being acceptable for transportation under carrier's tariff; and
- (b) The flight for which the passenger holds confirmed reserved space is unable to accommodate the passenger and departs without him/her.

EXCEPTION: The passenger will not be eligible for compensation if:

- (1) The flight upon which the passenger holds confirmed reserved space is unable to accommodate him/her because of substitution of equipment of lesser capacity when required by operational and/or safety reasons; or
- (2) Passenger is accommodated on the flight for which he/she holds confirmed reserved space, but is offered accommodations or is seated in a compartment of the aircraft other than that specified on his/her ticket, provided that a passenger seated in a section for which a lower fare is charged shall be entitled to an appropriate refund.
- (3) If the carrier arranges comparable air transportation accepted by the passenger which at the time such arrangement is made, is planned to arrive at the airport of the passenger's destination not later than one hour after the time the direct connecting flight on which the confirmed space is held.

(Continued on next page)

ISSUED: October 29, 2015

EFFECTIVE: December 13, 2015

(Except as Noted)

+ - Effective October 30, 2015 and issued on not less than one (1) day's notice under NTA(A) Special Permission No. 75367.

NTA(A) No. 552 D.O.T. No. 890

Airline Tariff Publishing Company, Agent
INTERNATIONAL PASSENGER RULES AND FARES TARIFF
NO. WW-1

1st Revised Page WW-32
Cancels Original Page WW-32

RULE

SECTION I - GENERAL RULES

C87

+DENIED BOARDING COMPENSATION (Continued)

(A) APPLICABLE ONLY TO FLIGHTS OR PORTIONS OF FLIGHTS ORIGINATING IN THE UNITED STATES (Continued)

(2) AMOUNT OF COMPENSATION PAYABLE

- (a) Subject to the provisions of subparagraph (1) of this rule, carrier will tender liquidated damages at the rate of 200 percent of the sum of the values of the passenger's remaining flight coupons up to the passengers next stopover or, if none, to his/her final destination, with a \$400.00 maximum. Provided, however, that the compensation shall be one-half the aforesaid amount, with a \$200.00 maximum, if the carrier arranges for comparable air transportation or other transportation accepted, (i.e., used) by the passenger, which at the time either such arrangement is made, is planned to arrive at the airport of the passenger's final destination not later than 4 hours after the time the direct or connecting flight on which the confirmed space is held is planned to arrive.
- (b) Said tender will be made by carrier on the day and at the place where the failure occurs, and if accepted will be receipted for by the passenger. Provided, however, that when carrier arranges for the passenger's convenience, alternate means of transportation which departs prior to the time such tender can be made to the passenger, tender shall be made by mail or other means within 24 hours after the time the failure occurs.

(3) BOARDING PRIORITY

- (a) Passengers holding a confirmed reservation will always be boarded before any passenger not holding a confirmed reservation or not entitled to a firm reservation.
- (b) Passengers holding a confirmed reservation who have fully paid a fare (including special fares, excursion fares, discounted fares such as for children) approved by the U.S. C.A.B. for publication and sale to the general public, will be boarded in the sequence in which they have presented themselves, properly documented for the flight and at the appropriate time and place, for check-in.

EXCEPTION: The following passengers cannot be left behind:

- (a) WW crew members traveling with confirmed reservations.
- (b) WW employees on duty travel with confirmed reservations.
- (c) Unaccompanied children (under 12 years of age).
- (d) Sick and handicapped passengers.
- (e) Heads of States and other leading Statesmen, official Government delegations, Diplomatic couriers.
- (f) Inaugural Flight Invitees.
- (g) Hardship cases as determined by the manager on duty.

(4) WRITTEN EXPLANATION OF DENIED BOARDING COMPENSATION AND DENIED BOARDING PRIORITIES:

- (a) Compensation for Denied Boarding - If you have been denied a reserved seat on a carrier, you are probably entitled to monetary compensation. This notice explains the Airlines obligations and the passenger's rights in case of an oversold flight, in accordance with regulations of the Civil Aeronautics Board.
- (b) Volunteer and Boarding Priorities - If a flight is oversold, no one may be denied boarding against his will until airline personnel first ask for volunteers who will give up their reservations willingly, in exchange for compensation at the choice of the airline. If there are not enough volunteers, other passengers may be denied boarding involuntarily in accordance with the following boarding priorities of carrier:
 - (i) Passengers holding a confirmed reservation will always be boarded before any passenger not holding a confirmed reservation, or not entitled to a firm reservation.
 - (ii) Passengers holding a confirmed reservation who have fully paid a fare (including special fares, excursion fares, discounted fares - such as for children) approved by the U.S. C.A.B. for publication and sale to the general public, will be boarded in the sequence in which they have presented themselves, properly documented for the flight and at the appropriate time and place for check-in.

EXCEPTION The following passengers cannot be left behind:

- (a) WW crew members traveling with confirmed reservations
- (b) WW employees on duty travel with confirmed reservations
- (c) Unaccompanied children (under 12 years of age)
- (d) Sick and handicapped passengers
- (e) Heads of States and other leading Statesmen, official Government delegations, Diplomatic Couriers
- (f) Inaugural Flight Invitees
- (g) hardship cases as determined by the manager on duty

(Continued on next page)

ISSUED: October 29, 2015

EFFECTIVE: December 13, 2015

(Except as Noted)

+ - Effective October 30, 2015 and issued on not less than one (1) day's notice under NTA(A) Special Permission No. 75367.

NTA(A) No. 552 D.O.T. No. 890

Airline Tariff Publishing Company, Agent
INTERNATIONAL PASSENGER RULES AND FARES TARIFF
NO. WW-1

1st Revised Page WW-33
Cancels Original Page WW-33

RULE

SECTION I - GENERAL RULES

C87

†IN DENIED BOARDING COMPENSATION (Continued)

(A) APPLICABLE ONLY TO FLIGHTS OR PORTIONS OF FLIGHTS ORIGINATING IN THE UNITED STATES (Continued)

(4) WRITTEN EXPLANATION OF DENIED BOARDING COMPENSATION AND DENIED BOARDING PRIORITIES

(Continued)

- (c) Compensation for Denied Boarding (Involuntary) - If you are denied boarding, you are entitled to a payment of denied boarding compensation from the airline unless;
 - (i) you have not fully complied with the airline's ticketing, check-in, and reconfirmation requirements or you are not acceptable for transportation under the airline's tariff filed with the C.A.B., or
 - (ii) you are denied boarding because the flight is cancelled, or
 - (iii) you are denied boarding because a smaller capacity aircraft was substituted for safety or operational reasons, or
 - (v) you are offered accommodations in a section of the aircraft other than that specified on your ticket, at no extra charge (a passenger seated in a section for which a lower fare is charged, will be given an appropriate refund).
- (d) Amount of Denied Boarding Compensation - Passengers who are eligible for denied boarding compensation must be offered a payment equal to the sum of the face values of their ticket coupons, with a \$200.00 USD maximum. However, if the airline cannot arrange alternate transportation (see above) for the passenger, the compensation is doubled (\$400.00 USD maximum). The value of a ticket coupon is the one-way fare for the flight shown on the coupon, including any surcharge and air transportation tax, minus any applicable discount. All flight coupons, including connecting flights, to the passenger's destination or first 4-hour stopover are used to compute the compensation.
- (e) Method of Payment - The airline will give to each passenger who qualifies for denied boarding compensation, a payment by check, or cash, or MCO, or voucher for the amount specified, on the day and place the involuntary denied boarding occurs. However, if the airline 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 air carrier may offer free tickets in place of the cash 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 may relieve the carrier from any further liability to the passenger caused by its failure to honor the confirmed reservations. However, the passenger may decline the payment and seek to recover damages in a court of law or in some other manner.

ISSUED: October 29, 2015

EFFECTIVE: December 13, 2015

(Except as Noted)

† - Effective October 30, 2015 and issued on not less than one (1) day's notice under NTA(A) Special Permission No. 75367.