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March 18, 2016

VIA EMAIL

The Secretary
Canadian Transportation Agency
Ottawa, ON K1A 0N9

Dear Madam Secretary:

Re: Mr. Christopher C. Johnson and Dr. Gábor Lukács v. Air Canada
Application concerning failure to apply the tariff and application of terms and conditions not set out in the tariff and with respect to delayed passengers
Case No.: 15-05627
Notice of Written Questions and Production of Documents

The Applicants direct the questions and requests for production of documents set out below to Air Canada pursuant to Rule 24(1) of the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, SOR/2014-104 (“*Dispute Rules*”).

The Applicants rely on the documents that have already been served and filed with the Agency.

Production of Document A-2 in its entirety, without erasure

On Friday, March 11, 2016, well after normal business hours, Air Canada provided Dr. Lukács with a legible but incomplete copy of its revised expense policy (Document A-2). In response to the protest of the Applicants about the erasure, Air Canada acknowledged that the document is incomplete, and stated on March 17, 2016 that:

The undisclosed passages relate to Denied Boarding situations, which are not relevant to the present Application.

Q9. Air Canada is requested to produce the complete and unredacted copy of Document A-2, including the portions referring to the expenses of passengers who were involuntarily denied boarding.

Relevance: The present Application alleges that Air Canada has been applying the Impugned Policy with respect to the reimbursement of expenses of passengers who were delayed instead of applying the provisions of the *Montreal Convention* (see Application, p. 1, item (iii)). Passengers can be delayed and incur expenses for a number of reasons, including by way of being denied boarding as a result of overbooking (see *Lukács v. Air Canada*, Decision No. 250-C-A-2012, para. 34). Thus, Air Canada's entire policy with respect to reimbursement of expenses occasioned by delay of passengers is relevant to the present Application.

Difference between Air Canada's past and revised expense policy

Q10. Air Canada is requested to provide an itemized list of the differences between its past expense policy (A-1) and the revised expense policy (A-2).

Relevance: Air Canada's answer to the Application creates the false impression that it has significantly revised the expense policy that it had been using up until December 2015 (A-1), and Air Canada relies on it in support of its request that the Agency dismiss the Application. An itemized list of the changes will tend to show that the revision was only cosmetic.

Air Canada's policy with respect to expenses in the case of a "schedule change"

Q11. What is the difference between "Irregular Operations" and "Schedule Change"?

Q12. Is it Air Canada's position that it is not liable under Article 19 of the *Montreal Convention* for the expenses of passengers who are delayed as a result of a schedule change?

Relevance: The Applicants seek clarification about Air Canada's position, given that Document A-1 states in the "Schedule Change" section that "All compensation is goodwill and costs should never exceed amounts above." The answers will tend to show that Air Canada failed to apply the provisions of the *Montreal Convention* (see Application, p. 1, items (ii) and (iii)).

“Controllable” vs. “Uncontrollable” situations

Q13. On the basis of what criteria is it decided whether a situation is “controllable” or “uncontrollable” and who makes this decision?

Q14. Is it Air Canada’s position that its liability for damages occasioned by delay of passengers depends on whether the cause for the delay is within Air Canada’s control?

Relevance: Air Canada argues that Article 19 of the *Montreal Convention* imposes no liability on it in “uncontrollable” situations, and thus compensation of passengers in such situations is a mere goodwill gesture. The validity of Air Canada’s position depends on what Air Canada means by “uncontrollable,” and as such it is crucial for the determination of the Application.

Q15. Does Air Canada consider mechanical problems with the aircraft “controllable” or “uncontrollable”?

Relevance: The Applicants seek clarification about Air Canada’s position, because Air Canada appears to be advancing contradictory positions. On the one hand, it argues at paragraphs 16-17 of its Answer to the Application that it is not liable for a delay caused by mechanical problems. On the other hand, according to the example shown at the bottom of page 1 of Document AQ2-1 (provided on January 19, 2016), mechanical issues are viewed as “controllable.” Answers to these questions are relevant to whether Air Canada failed to apply the provisions of the *Montreal Convention* (see Application, p. 1, issue (iii)).

The statement of Mr. Liepins (Document A-5)

Q16. Air Canada is requested to produce the Work Order relating to the repair of the malfunction identified in paragraph 5 of the Statement of Mr. Liepins.

Q17. Air Canada is requested to produce the Aircraft Log Book, or equivalent, that is the basis of paragraph 6 of the Statement of Mr. Liepins.

Relevance: Air Canada disputes its liability for the expenses incurred by Mr. Johnson, and wishes to establish its Article 19 defense based on the statement of Mr. Liepins. The requested documents are capable of verifying or refuting the claims of Mr. Liepins, who is not an independent expert but an employee of Air Canada, that the flight was cancelled because of “low hydraulic system pressure” caused by “wiring fault” and that it was an unforeseen malfunction. As such, answers to the questions can increase or diminish the likelihood of the facts alleged by Air Canada.

The statement of Ms. Robinson (Document A-6)

Q18. According to the statement of Ms. Robinson (para. 10):

In the case of a delay which is within Air Canada's control, the recommended limit is often exceeded as per the Lead's authorization [...]

Air Canada is requested to provide particulars of this statement, including:

- (1) In the years 2013-2015, how many claims for expenses occasioned by delay did Air Canada receive?
- (2) How many of these claims were in relation to delays that Air Canada considered to be within its control?
- (3) Air Canada is requested to provide a list of the amounts of compensation it paid out to these passengers.

Relevance: There is a live dispute between the parties as to whether Air Canada has systematically failed to apply the provisions of the *Montreal Convention* (Application, p. 1, items (ii) and (iii) as well as paras. 12-13 and 40-41). This dispute is relevant to the remedy of corrective measures being sought by the Applicants. The Applicants wish to exercise their right to test Air Canada's bold claim that it has been compensating passengers in accordance with the liability limits of the *Montreal Convention*. Answers to these questions are capable of showing that: (a) Air Canada labels most delays as "uncontrollable" in order to evade liability; and (b) even in cases that Air Canada considers controllable, it usually follows the maximums set out in its expense policies, and does not provide compensation in accordance with Article 19 of the *Montreal Convention*.

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