

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Moving Party

– and –

**CANADIAN TRANSPORTATION AGENCY and
BRITISH AIRWAYS PLC**

Respondents

**REPLY OF THE MOVING PARTY
(Motion for Leave to Appeal, Rule 352)**

Dated: July 25, 2014

DR. GÁBOR LUKÁCS

Halifax, NS

lukacs@AirPassengerRights.ca

Moving Party

TO: **CANADIAN TRANSPORTATION AGENCY**
15 Eddy Street
Gatineau, Quebec J8X 4B3

Ms. Cathy Murphy, Secretary
Tel: 819-997-0099
Fax: 819-953-5253

AND TO: **PATERSON MACDOUGALL LLP**
1 Queen Street East Suite 900
Toronto, ON M5C 2W5

Carol McCall

Tel: (416) 643-3309
Fax: (416) 366-3743

**Counsel for the Respondent,
British Airways Plc**

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Moving Party

– and –

**CANADIAN TRANSPORTATION AGENCY and
BRITISH AIRWAYS PLC**

Respondents

REPLY OF THE MOVING PARTY

1. The main and primary ground for the proposed appeal is that the Final Decision of the Agency is unreasonable and inconsistent with subsection 122(c)(iii) of the *Air Transportation Regulations* (the “*ATR*”).
2. The issue is not that Lukács wanted the Agency to impose a different denied boarding compensation policy, but rather, that the Agency neglected to impose *any* denied boarding compensation policy at all for flights departing from the European Union to Canada. Lukács submits that no interpretation of subsection 122(c)(iii) of the *ATR* is capable of supporting this omission.
3. British Airways has failed to make any submissions concerning the consistency of the Final Decision with subsection 122(c)(iii) of the *ATR*, nor has it been able to point to any portion of the Final Decision that would explain the failure of the Agency to establish new denied boarding compensation rules for flights from the European Union to Canada.

4. British Airways' submissions on standard of review are of no assistance in the present case, because Lukács argues that the Final Decision is unreasonable, and as such, standard of review is not in issue. Curial deference to the expertise of a tribunal means the examination of the tribunal's reasons, bearing in mind that there can be many reasonable outcomes. In the present case, however, no interpretation of subsection 122(c)(iii) of the *ATR* is capable of supporting the Final Decision.

5. British Airways misrepresents Decision No. 10-C-A-2014 (the "Show Cause Decision") in paragraph 24 of its factum. The Show Cause Decision did not approve any wording for a new denied boarding compensation policy; instead, the Agency invited additional submissions to address this issue, while offering several options to British Airways.

British Airways factum, para. 24
Decision No. 10-C-A-2014, para. 144

Motion Record, Tab 3, P31

6. The fact that the Agency refused to impose on British Airways one specific denied boarding compensation policy does not relieve the airline from establishing its own policy for flights departing from the European Union to Canada. On the contrary, the old Tariff Rule 87(B)(3)(B) addressed denied boarding compensation on both flights from Canada and to Canada. Thus, common sense dictates that the scope of the show cause order was the entire old tariff rule, that is, both flights from Canada and to Canada.

Decision No. 10-C-A-2014, para. 144

Motion Record, Tab 3, P31

7. British Airways' argument that Lukács is indirectly challenging the Show Cause Decision is defeated by the admission that the Show Cause Decision did not resolve with finality the issue of the denied boarding compensation policy.

British Airways factum, para. 5

8. Even if British Airways were correct that the proposed ground of appeal indirectly challenges the Show Cause Decision (a position that Lukács disputes), the proposed appeal is not time barred, because it would have been premature to seek leave to appeal prior to the final determination of the issue of denied boarding compensation policy, which was done in the Final Decision.

Zündel v. Canada (Human Rights Commission),
[2000] 4 FC 255, paras. 10-13, 17

Motion Record,
App. “B”, P167

9. The final outcome of the proceeding was that the Agency imposed a “one sided” denied boarding compensation policy on British Airways, which applies only to flights from Canada, but not to flights to Canada. This state of affairs is inconsistent with subsection 122(c)(iii) of the *ATR*. Lukács is asking for the appellate intervention of this Honourable Court to remedy this unreasonable final outcome.

10. Lukács submits that no costs should be awarded against him if he is unsuccessful on the present motion, because the motion is in the nature of public interest litigation and the issues raised in the motion are not frivolous.

Lukács v. Canada (Transportation Agency),
2014 FCA 76, para. 62

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

July 25, 2014

DR. GÁBOR LUKÁCS

Halifax, NS

lukacs@AirPassengerRights.ca

Moving Party