

Federal Court of Appeal



Cour d'appel fédérale

Date: 20161215

Docket: A-242-16

Citation: 2016 FCA 314

**CORAM: NADON J.A.
DAWSON J.A.
SCOTT J.A.**

BETWEEN:

DR. GÁBOR LUKÁCS

Appellant

and

**CANADIAN TRANSPORTATION AGENCY
and NEWLEAF TRAVEL COMPANY INC.**

Respondents

Heard at Ottawa, Ontario, on December 14, 2016.

Judgment delivered at Ottawa, Ontario, on December 15, 2016.

REASONS FOR JUDGMENT BY:

DAWSON J.A.

CONCURRED IN BY:

**NADON J.A.
SCOTT J.A.**

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REASONS FOR JUDGMENT

DAWSON J.A.

[1] In the airline industry entities who do not operate aircraft, but who purchase the seating capacity of an air carrier and subsequently resell the seats to the public are referred to as “resellers” or “indirect air service providers”.

[2] The Canadian Transportation Agency determined that resellers do not operate an “air service” as that term is defined in subsection 55(1) of the *Canada Transportation Act*, S.C. 1996, c.10 (Act) so long as they do not hold themselves out to the public as an air carrier operating an air service (Decision No. 100-A-2016). It followed from this conclusion that resellers are not required to hold an air licence and that, based on its proposed business model, NewLeaf Travel Company Inc. would not operate an air service.

[3] On this appeal from the decision of the Agency, the appellant argues that the decision is unreasonable and that in reaching its decision the Agency exceeded its jurisdiction.

[4] I respectfully disagree.

[5] The Agency based its interpretation of subsection 55(1) of its home statute on a textual, contextual and purposive analysis. The Agency particularly noted that while section 57 of the Act prohibits a person from operating an air service unless the person holds a licence in respect of that service, section 59 does not require a person selling an air service to be a licensee. Section 59 simply requires “a person” to hold a licence in respect of the air service. Read together, these sections were found to evidence Parliament’s intent that selling an air service to the public does not equate to operating an air service, notwithstanding that resellers exercise commercial control over an air service with respect to things such as routes, scheduling, pricing and equipment, while licenced carriers operate the aircraft on the resellers’ behalf.

[6] This was a reasonable interpretation of the Act. It is to be remembered that when the words of a provision are precise and unequivocal the ordinary meaning of the words plays a dominant role in the interpretive process (*Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at paragraph 10). Nor was the decision unreasonable by virtue of the Agency's failure to provide a comprehensive exposition of all of the indicia of what it means to operate an air service. It was sufficient for the Agency to find that "what it means to operate an air service does not capture resellers, as long as they do not hold themselves out to the public" as operating aircraft or a domestic or international air service.

[7] In my view, the appellant's most cogent argument is that together sections 65 and 66 of the Act reflect Parliament's intent that persons with control over the fares, routes, schedules and frequency of service of an air service be licensees. Because resellers exert such control the appellant submits they should be licenced. However, the sections relied upon by the appellant are remedial provisions. It was not unreasonable for the Agency to interpret the Act to the effect that these remedial provisions are directed to the licensee in a reselling arrangement, even if the reseller controls things such as fares and schedules. Nothing in the Act expressly requires that a licensee control matters such as fares, routes and schedules.

[8] I also reject the appellant's argument that because of the absence of any contractual relationship between the licensee and the passengers, the licensee in a reselling arrangement owes no obligations to the passengers. As the Agency found, passengers will still be covered, and so protected, by the terms and conditions of carriage set out in the tariff issued by the licenced air carrier operating the aircraft on which the passengers travel. Further, the licenced air

carrier will be required to hold the prescribed liability insurance. Put more broadly, licenced air carriers are regulated under the Act when they provide an air service. The involvement of a reseller does not obviate the requirement that licensees comply with all of the obligations imposed upon them under the Act.

[9] This last point answers the appellant's assertion, made in his written submissions, that the Agency exceeded its jurisdiction by relieving a person from the requirement to have in place prescribed liability insurance. The consequence of the Agency's decision is that resellers are not required to hold prescribed liability insurance. This is a requirement imposed on the licenced air carrier. Resellers cannot be relieved of an obligation which does not apply to them. Thus there is no jurisdictional issue.

[10] Nor did the Agency circumvent the requirement of Canadian ownership. As the Agency observed, if a non-Canadian reseller acquired ownership or control in fact of a licenced air carrier, that carrier would cease to be Canadian and would cease to be eligible to hold a licence.

[11] Finally, as the Agency noted, not requiring resellers to obtain a licence does not equate to leaving consumers without protection. In addition to the protection provided through the obligations imposed on licenced air carriers, resellers are subject to any existing provincial travel protection and consumer rights legislation.

[12] It follows that I would dismiss this appeal. In circumstances where there is a public interest in having the Agency's decision reviewed, I would not award costs against the appellant. Given that the appellant's challenge failed, I would not award costs in his favour.

“Eleanor R. Dawson”

J.A.

“I agree.
M. Nadon J.A.”

“I agree.
A. F. Scott J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-242-16

STYLE OF CAUSE: DR. GÁBOR LUKÁCS v.
CANADIAN TRANSPORTATION
AGENCY and NEWLEAF
TRAVEL COMPANY INC.

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: DECEMBER 14, 2016

REASONS FOR JUDGMENT BY: DAWSON J.A.

CONCURRED IN BY: NADON J.A.
SCOTT J.A.

DATED: DECEMBER 15, 2016

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