BEFORE THE DEPARTMENT OF TRANSPORTATION OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS WASHINGTON, D.C.

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)	
Naomi M. Horovitz)	
)	
v.)	Docket DOT-OST-2020-0063
)	
Air Canada)	
)	
)	

REPLY OF NAOMI M. HOROVITZ

Comments with respect to this document should be addressed to:

Naomi Mandel Horovitz

Dated: 07/16/2020

BEFORE THE DEPARTMENT OF TRANSPORTATION OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS WASHINGTON, D.C.

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REPLY OF NAOMI HOROVITZ

- 1. Air Canada incorrectly asserts that its practices are consistent with its own contracts of carriage and tariffs (dated January 6 2020; attachment 1).
 - a. I draw the Department's attention to Rule 100, Section D (page 104)
 titled "Involuntary Refund"
 - D. Involuntary Refund
 - (1) For the purpose of this paragraph, the term "Involuntary Refund" shall mean any refund:
 - a) that is made if, due to reasons within Air Canada's control or required for safety purposes, the passenger experiences a delay of three hours or more, a denial of boarding or cancellation, and refuses alternate travel arrangements offered because they do not accommodate their travel needs. If the delay of three hours or more or cancellation is within Air Canada's control, the passenger will also be compensated in accordance with APPR, if passenger submits a claim within one year from the date on which the flight delay or flight cancellation occurred.
 - I argue that the cancellation of my tickets was "due to reasons within
 Air Canada's control or required for safety purposes"

- (1) Air Canada does not provide compelling evidence that a law or regulation prohibited trans-border flights on May 23-31 2020. In fact, by its own admission, other flights operated during those dates.

 Furthermore, the flight cancellations were not under my control, as the customer/passenger, and thus I should not have to bear the financial loss for them.
- (2) By its own admission, Air Canada offered refunds to customers for cancelled flights until March 19, 2020. I purchased my tickets on March 5, when Air Canada's refund policy was in effect. The change in policy is entirely under Air Canada's control. Air Canada should not be applying its new voucher-only policy retroactively to customers who purchased tickets when the refund policy was in effect.
- (3) Since Air Canada cannot demonstrate the cancellation was due to reasons beyond its control, the cancellation is subject to the "Involuntary Refund" clause of the tariff.
- (4) Should Air Canada refute the above arguments, I present the alternative conclusion that the cancellations were "required for safety purposes" to prevent the spread of COVID-19 and therefore subject to the "Involuntary Refund" clause of the tariffs.
- (5) Both arguments above lead to the same conclusion, namely that the "Involuntary Refund" clause applies.
- c. I "refused all travel arrangements."

- (1) For the cancelled flights, I was only given the option to "accept" a travel voucher for travel within the next 24 months (attachments 3-4). Therefore, I did not accept any of the options presented to me.
- (2) The original flight from Vancouver to Chicago was scheduled to depart on 5/31 at 15:40 and arrive on 5/31 at 21:42 (see attachments 5-
- 6). The rerouted flight was scheduled to depart Vancouver on 5/31 at 17:30 and arrive in Chicago (via Toronto) on 6/1 at 9:20am (see attachments 7-8). This qualifies as a delay of well over three hours, as required by Rule 100, section D. In fact, the arrival was delayed by nearly ten hours. The only options I was offered were rebooking or cancelling the flight (and losing my money). I did not accept either of these options.
- d. Therefore, the "Involuntary Refund" clause applies, and I am due a refund. The amount of said refund is determined as follows under section D.(2), page 104:
- "Air Canada will refund the unused portion of the ticket"
- 2. Air Canada incorrectly asserts that its practices are compliant with Canadian law, which is both irrelevant and disputed. Even if Air Canada's practices complied with Canadian law, that fact would not suffice to dispose of the complaint because the complaint's allegation is non-compliance with US law. Nevertheless, even Air Canada's compliance with Canadian law is very much in doubt and certainly in dispute.

- a. Air Canada cites a Canada Transport Agency ("CTA") statement dated
 March 25, 2020 but fails to mention the clarifying statement issued on April
 22, 2020 which stated
 - (1) "The Statement on Vouchers, although not a binding decision, offers suggestions to airlines and passengers in the context of a once-in-a century pandemic"
 - (2) "The Statement on Vouchers suggests what could be an appropriate approach in extraordinary circumstances, but doesn't affect airlines' obligations or passengers' rights."
- b. The Canadian Federal Court of Appeal in its dismissal of an interlocutory injunction against the CTA (see Attachment 2), paragraphs 26, 27 and 35 confirm that the Statement on Vouchers has no legal authority.
- c. Subsections 17(2) and 17(7) of the Canadian Air Passenger Protection Regulations mandate refunds to the original form of payment when alternate travel arrangement are refused by the passenger.
- d. Based on the two preceding facts presented, we conclude that the decision to issue vouchers is solely a business decision on Air Canada's part and has no basis in Canadian laws and regulations.
- 3. Air Canada's compliance with Canadian law, which is disputed, is irrelevant to its commercial conduct in the United States.
- 4. My fare type is irrelevant to the applicability of the guidance issued by the

 Department. In addition to the Department's enforcement notices, which

 speak for themselves regarding airlines' refund obligations, we draw attention

to the following guidance available on the Department's website, which states:

- a. "Cancelled Flight A passenger is entitled to a refund if the airline cancelled a flight, regardless of the reason, and the passenger chooses not to travel."
- b. "Non-refundable tickets Passengers who purchase non-refundable tickets are not entitled to a refund unless the airline makes a promise to provide a refund or the airline cancels a flight or makes a significant schedule change."
- c. Air Canada offers nothing to counter the Department's longstanding enforcement notices, which are plain as can be, and should speak for themselves.
- d. The department explained in no uncertain terms "Since at least the time of an Industry Letter of July 15, 1996 the Department's Aviation Enforcement Office has advised carriers that refusing to refund a non-refundable fare when a flight is canceled and the passenger wishes to cancel is a violation of 49 U.S.C. 41712 (unfair or deceptive practices) and would subject a carrier to enforcement action." Reference to this quote was used in the Department's enforcement notice, dated April 3, 2020. Air Canada never challenged this assertion in the 24 years since it was made public.
- e. Air Canada now incorrectly argues that the relevant Department protections are mere guidance and are not binding. U.S. carriers have been abiding by the Department guidance regarding refunds to customers for cancelled flights. If the Department fails to hold Air Canada accountable, it

- will, in effect, give an unfair advantage to foreign carriers who thumb their noses at U.S. regulatory authority.
- 5. All of Air Canada's affirmative defenses, numbered 1-5, are without merit and should be stricken. I am not an attorney and am not represented by an attorney in this matter. I am also not a "third party," as Air Canada claims in their document. Unlike Air Canada, who is willing to pay untold sums for professional legal representation, I am representing myself as an American passenger/customer of a foreign carrier doing business in the United States, merely trying to redress a wrong under the relevant U.S. Department protections. My standing to bring this complaint should be self-evident as a United States citizen and resident and customer of Air Canada whose flights between the U.S. and Canada were cancelled by the carrier.
- 6. Moreover, Air Canada's defenses that I have "not suffered any harm" and that my "complaint is moot" are egregious, considering that I have lost \$1,894.58 due to Air Canada's cancellation of my flights. Air Canada continues to demonstrate the contempt it holds towards its customers and the very real financial ramifications of its refusal to issue refunds for services not provided.

Naomi Horovitz Reply – Air Canada

Respectfully submitted,

Naomi M. Horovitz

Naomi Mandel

From: Air Canada Notification <flightnotification@aircanada.ca>

Sent: Thursday, April 2, 2020 10:53 PM

To: Naomi Mandel

Subject: Air Canada - FLIGHT CANCELLATION - VEAM6P - AC8039/May 23, 2020

We regret to inform you that AC8039 from Chicago, O Hare International (ORD) to Vancouver, International (YVR) on May 23, 2020 has been cancelled due to the impacts of COVID-19, government travel advisories and/or health and safety concerns.

The full value of what you paid will become a future travel credit valid for 24 months. To store this value, if you booked with:

1. Air Canada: Visit https://urldefense.proofpoint.com/v2/url?u=https-

3A__www.aircanada.com_mybookings&d=DwIFAw&c=I45AxH-

kUV29SRQusp9vYR0n1GycN4_2jInuKy6zbqQ&r=KhpskQlHxZCyWNkRgrkSxk6d56FMZjhQaaHp5qOHOOk&m=tWlBMLhX_cQJhIMPCR0BZfSrCLNyzf7oqoCZr44q0-E&s=ekLVDw3kkcG0-WYZ0YWMnD5HZtdV18iDr4GLlkMVpFA&e= and enter your booking details. Select "Cancel Booking" and when you select confirm, any change fees will be waived.

- 2. A travel agency: They will process this for you on your behalf.
- 3. Air Canada Vacations: Your credit will be stored automatically.
- 4. Aeroplan: Visit https://urldefense.proofpoint.com/v2/url?u=https-3A__www.aeroplan.com&d=DwIFAw&c=l45AxH-kUV29SRQusp9vYR0n1GycN4_2jInuKy6zbqQ&r=KhpskQJHxZCyWNkRgrkSxk6d56FMZjhQaaHp5qOHOOk&m=tWIBMLhX_cQJhIMPCR0BZfSrCLNyzf7oqoCZr44q0-E&s=WRX3qx4X_vZaB0ft17XamXyGtCpVLHCEQGbC7XXaZ2M&e= and select "Manage Your Bookings" to return the Aeroplan Miles into your account.

When you're ready to rebook within 24 months, if you booked with:

- Air Canada: Please call us and make sure to provide your original ticket number starting with "014".
- A travel agency: Please contact them directly.
- Air Canada Vacations: Please contact them directly.
- Aeroplan: You can rebook anytime at https://urldefense.proofpoint.com/v2/url?u=https-

3A_www.aeroplan.com&d=DwIFAw&c=l45AxH-

 $kUV29SRQusp9vYR0n1GycN4_2jInuKy6zbqQ\&r=KhpskQJHxZCyWNkRgrkSxk6d56FMZjhQaaHp5qOHOOk\&m=tWlBMLhX_cQJhIMPCR0BZfSrCLNyzf7oqoCZr44q0-E&s=WRX3qx4X_vZaB0ft17XamXyGtCpVLHCEQGbC7XXaZ2M&e= .$

Booking Reference: VEAM6P Horovitz Naomi M

This is an automated message - Please do not reply to this email.

Naomi Mandel

From:
Sent: Thursday, May 21, 2020 1:49 PM

To: Naomi Mandel

Subject: FW: Air Canada - FLIGHT CANCELLATION - VAOZMP - AC8229/May 23, 2020

-----Original Message-----

From: Air Canada Notification [mailto:flightnotification@aircanada.ca]

Sent: Thursday, April 2, 2020 8:03 PM

To

Subject: Air Canada - FLIGHT CANCELLATION - VAOZMP - AC8229/May 23, 2020

We regret to inform you that AC8229 from Phoenix, Sky Harbor Intl (PHX) to Vancouver, International (YVR) on May 23, 2020 has been cancelled due to the impacts of COVID-19, government travel advisories and/or health and safety concerns

The full value of what you paid will become a future travel credit valid for 24 months. To store this value, if you booked with:

1. Air Canada: Visit https://urldefense.proofpoint.com/v2/url?u=https-

3A__www.aircanada.com_mybookings&d=DwIFAw&c=I45AxH-

kUV29SRQusp9vYR0n1GycN4_2jInuKy6zbqQ&r=KhpskQlHxZCyWNkRgrkSxk6d56FMZjhQaaHp5qOHOOk&m=TKvwg-BgaaV3qhQlqAAqiD-cdUuoRi0yOBmY6ZEVHyo&s=E0R46dDxY_1QfNL7QibNjz4i1jpMI--mt-vOZ5pIDaU&e= and enter your booking details. Select "Cancel Booking" and when you select confirm, any change fees will be waived.

- 2. A travel agency: They will process this for you on your behalf.
- 3. Air Canada Vacations: Your credit will be stored automatically.
- 4. Aeroplan: Visit https://urldefense.proofpoint.com/v2/url?u=https-3A__www.aeroplan.com&d=DwIFAw&c=l45AxH-kUV29SRQusp9vYR0n1GycN4_2jInuKy6zbqQ&r=KhpskQJHxZCyWNkRgrkSxk6d56FMZjhQaaHp5qOHOOk&m=TKvwg-BgaaV3qhQJqAAqiD-cdUuoRiOyOBmY6ZEVHyo&s=PtFt6RXWb1S08s7_MeL-Gv6Psqx57NdqNxEpV2JTUcg&e= and select "Manage Your Bookings" to return the Aeroplan Miles into your account.

When you're ready to rebook within 24 months, if you booked with:

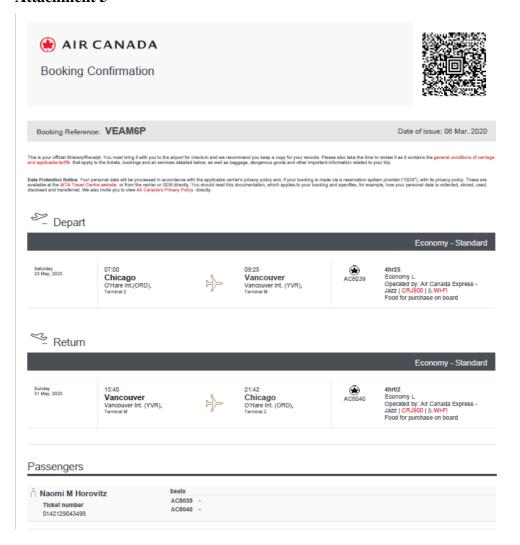
- Air Canada: Please call us and make sure to provide your original ticket number starting with "014".
- A travel agency: Please contact them directly.
- Air Canada Vacations: Please contact them directly.
- Aeroplan: You can rebook anytime at https://urldefense.proofpoint.com/v2/url?u=https-

3A__www.aeroplan.com&d=DwIFAw&c=l45AxH-

 $kUV29SRQusp9vYR0n1GycN4_2jInuKy6zbqQ&r=KhpskQJHxZCyWNkRgrkSxk6d56FMZjhQaaHp5qOHOOk&m=TKvwg-BgaaV3qhQJqAAqiD-cdUuoRiOyOBmY6ZEVHyo&s=PtFt6RXWb1S08s7_MeL-Gv6Psqx57NdqNxEpV2JTUcg&e= .$

Booking Reference: VAOZMP Horovitz Cezar, Horovitz Miranda

This is an automated message - Please do not reply to this email.



Purchase summary

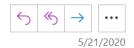
Visa *******4676 Amount paid: \$629.10 Tax Information GST no. 10009-2287 RT0001 \$0.94 1 adult Base fare (including surcharges and U.S. Transportation Tax) - Depart - Economy -Base fare (including surcharges and U.S. Transportation Tax) - Return - Economy - Standard Animal and Plant Health Inspection Service (APHIS) User Fee - United States Immigration User Fee - United States Customs User Fee - United States September 11th Security Fee - United States 5.60 Air Travellers Security Charge - Canada Goods and Services Tax - Canada - 100092287 RT0001 0.94 Airport Improvement Fee - Canada 18.72 4.50 \$82810 Passenger Facility Charge - United States Total before options (per passenger) GRAND TOTAL (US dollars) \$629¹⁰



Air Canada - REVISED ITINERARY - VEAM6P/Jun 01, 2020



Air Canada Notification <flightnotification@aircanada.ca>
To Naomi Mandel



(i) We removed extra line breaks from this message.

One or more flights in your itinerary cannot be operated as planned. Please find your revised itinerary. We apologize for any inconvenience.

AC735

Departing Toronto, Lester B. Pearson Intl (YYZ) on June 01, 2020 @ 08:30*

-- Departure Terminal 1

Arriving in Chicago, O Hare International (ORD) on June 01, 2020 @ 09:20*

-- Arrival Terminal 2

Reason: Government travel advisory

If the revised itinerary does not suit your travel plans, you can also look for alternative flight options using the link provided below, or cancel your itinerary. No change fees will apply**

 $\frac{https://urldefense.proofpoint.com/v2/url?u=https-3A_book.aircanada.com_bkgd-3Fref-3DVEAM6P-26n-3DHorovitz\&d=DwlFAw\&c=l45AxH-$

kUV29SRQusp9vYR0n1GycN4_2jInuKy6zbqQ&r=KhpskQlHxZCyWNkRgrkSxk6d56FMZjhQaaHp5qOHOOk&m=kQ jZEPgK0VLNkwa5QF7JJ2Uv9qdLpQLSkz7 9Ygt-cM&s=IY4KTGCBU9QBkP9kVn qs3Pc4jnlxzhO6 b2AYh245c&e=

Booking Reference: VEAM6P

Horovitz Naomi M

FW: Air Canada - REVISED ITINERARY - VBFZJL/Jun 01, 2020





I just got this

----Original Message-----

From: Air Canada Notification [mailto:flightnotification@aircanada.ca]

Sent: Thursday, May 21, 2020 10:37 AM

Subject: Air Canada - REVISED ITINERARY - VBFZJL/Jun 01, 2020

One or more flights in your itinerary cannot be operated as planned. Please find your revised itinerary. We apologize for any inconvenience.

AC735

Departing Toronto, Lester B. Pearson Intl (YYZ) on June 01, 2020 @ 08:30*

-- Departure Terminal 1

Arriving in Chicago, O Hare International (ORD) on June 01, 2020 @ 09:20*

-- Arrival Terminal 2

Reason: Government travel advisory

Certificate of Service

I hereby certify that I have, this 16 day of July caused a copy of the foregoing Complaint to be served by electronic mail on the following persons:

Anita Mosner Kimberly Graber, Esq. Blane Workie, Esq. Robert Gorman, Esq. Anita.Mosner@hklaw.com kimberly.graber@dot.gov blane.workie@dot.gov robert.gorman@dot.gov

Clasmi Horovils

Naomi M. Horovitz