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

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	)	
Brandon Miller	)	
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v.	)	Docket DOT-OST-2020-0071
	)	
Air Canada	)	
	)	
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**REPLY OF BRANDON MILLER**

Comments with respect to this document should be addressed to:

Brandon Miller

  
E-mail: brandonjrm@gmail.com

Dated: 2020-08-10

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**REPLY OF BRANDON MILLER**

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.

b. 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 April 2-6, 2020. In fact, by its

own admission, other flights operated during those dates. Furthermore, the flight cancellations were not under my control (see attachment 3), 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 February 11, 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.

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 bases 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 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 as 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 the 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, lettered a-e, 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 a 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 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 I have lost \$525.00 due to Air Canada’s cancellation of my flights, along with the numerous hours

fighting for my right to receive a refund. 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.

Respectfully submitted,

*Brandon Miller*

Brandon Miller

## Attachment 3

Air Canada - FLIGHT CANCELLATION - UOXJGW - AC1056/Apr 02, 2020



**Air Canada Notification** <flightnotification@aircanada.ca>  
to me

Mon, Mar 23, 7:39 PM ☆ ↶ ⋮

We regret to inform you that AC1056 from Calgary, Calgary Intl (YYC) to Phoenix, Sky Harbor Intl (PHX) on April 02, 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://www.aircanada.com/mybookings> 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://www.aeroplan.com> 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://www.aeroplan.com>.

Booking Reference: [REDACTED]  
Miller, Brandon

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Air Canada - FLIGHT CANCELLATION - UOOSUB - AC1057/Apr 06, 2020

Inbox x



**Air Canada Notification** <flightnotification@aircanada.ca>  
to me

Mon, Mar 23, 7:38 PM ☆ ↶ ⋮

We regret to inform you that AC1057 from Phoenix, Sky Harbor Intl (PHX) to Calgary, Calgary Intl (YYC) on April 06, 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://www.aircanada.com/mybookings> 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://www.aeroplan.com> 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://www.aeroplan.com>.

Booking Reference: [REDACTED]  
Miller, Brandon

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**Certificate of Service**

I hereby certify that I have, this 10<sup>th</sup> day of August 2020 caused a copy of the foregoing Complaint to be served by electronic mail on the following persons:

Evelyn D. Sahr	esahr@eckertseamans.com
Mark A. Johnston	mjohnston@eckertseamans.com
Drew M. Derco	dderco@eckertseamans.com
Kimberly Graber	kimberly.graber@dot.gov
Blane Workie	blane.workie@dot.gov
Robert Gorman	robert.gorman@dot.gov

*Brandon Miller*

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