

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

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Jeffrey Stricker)	
)	
v.)	Docket DOT-OST-2020-0074
)	
Air Canada)	
)	
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COMPLAINT OF JEFFREY STRICKER

Comments with respect to this document should be addressed to:

Jeffrey Stricker



Original Dated: June 17, 2020

Addendum Dated: July 24, 2020

BEFORE THE DEPARTMENT OF TRANSPORTATION
OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS
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ADDENDUM TO COMPLAINT OF JEFFREY STRICKER

1. This addendum is filed to clarify which contract provisions apply and when they took effect, and is filed with the consent of Air Canada per correspondence on July 20, 2020.

I. FACTS

A. Applicable Tariff

2. The ticket referenced in the complaint was purchased on August 26, 2019, and was for one-way travel from Detroit (U.S.) to Vancouver (Canada). The current Air Canada International Tariff at the time was dated July 15, 2019. This is the contract that applies, as confirmed in Rule 5, Part E, Section 1 (Page 17), which includes the provision “For tickets issued for carriage between Canada and the U.S. and where required by local law or regulation, carriage of passengers and/or baggage shall be subject to the carrier's rules, regulations, and tariffs in effects on the date of the ticket issuance.” Air Canada agrees in its response (p.16) that the Conditions of Carriage and Tariff in effect on the date of the ticket purchase control.

B. Air Canada’s refund policy for cancelled flights

3. The cancellation of the ticketed flights constitutes a “Schedule Irregularity” per the definition in 80.C.1.b (p. 93), “Flight Cancellation”, which is the term used in the notification from Air Canada on April 2, 2020 (Attachment 2 on p.12 of Original Complaint).
4. The airline’s policy in the event of a Schedule Irregularity per 80.C.4 (pp.93-94) is to rebook the passenger onto alternative transportation, if possible (paragraphs a through c). Since this was not possible as the airline’s service to the original ticketed departure point (Detroit) had been suspended entirely and remains suspended to this day, the policy as outlined in paragraph d (p.94) applies: “If the passenger chooses to no longer travel or if carrier is unable to perform the option stated in (a) (b) or (c) above within a reasonable amount

time, make involuntary refund in accordance with RULE 100 - REFUNDS (an exception to the applicability of a refund occurs where the passenger was notified of the schedule irregularity prior to the day of departure and the schedule irregularity is of 60 minutes or less)". The exception does not apply since the Schedule Irregularity in this complaint was a cancellation, not a delay. The above applies to Schedule Irregularities for any reason, not just those within the carrier's control, as the carrier's additional responsibilities for the latter are described in the subsequent section 80.C.5 (pp.94-95).

5. In section 100.D.1, an "involuntary" or "carrier-caused" refund is defined a refund for reasons within the carrier's control, but this conflicts with the language in Rule 80, which states an "Involuntary Refund" would be provided in the event of a cancellation for any reason. An Involuntary Refund is a full refund of the amount paid if no portion of the trip has yet been made, per 100.D.2.a (p.105). In light of this ambiguity in the contract, the interpretation most favorable to the customer should apply, which is an Involuntary Refund.
6. If DOT believes an "Involuntary Refund" does not apply due to the above wording, a "General Refund" would instead apply, as defined in 100.E.1 (p.106). The amount would be, per 100.E.2.b, "When a ticket is fully unused, the amount of refund will be the fare, fees, charges and surcharges paid less any applicable cancellation/change fee or penalty set out in the applicable fare rules." Therefore, the offer of only a voucher with no option of at least a partial refund constitutes a breach of contract under either interpretation.

7. The response of Air Canada to the complaint erroneously states that the ticket was purchased on August 26, 2020, rather than 2019, and further states that a refund is not owed in the event of a cancellation outside the carrier's control. This language as cited was added to Rule 80 – Schedule Irregularities in the Tariff revision dated January 6, 2020, and did not exist in the Tariff dated July 15, 2019, which is the revision that applies to the ticket in this complaint. The current Tariff's wording that a "General Refund" (100.E.1) "is subject to fare refundability in accordance to the fare rules" (that is, not applicable for a non-refundable ticket) was also added later and did not exist in the July 15, 2019 revision.
8. Furthermore, Air Canada has not proven that the cancellation was outside its control. While travel restrictions were in place due to the COVID-19 pandemic, travel was not barred entirely, and flights between the U.S. and Canada were still operating, by both Air Canada and U.S.-based airlines. In fact, service by Air Canada to the originally ticketed departure point (Detroit) remains suspended even as a competitor does currently operate service between Detroit and Toronto (Attachment 1 in this Addendum).

C. Air Canada's non-compliance and violations

9. Air Canada's policy of not issuing prompt refunds for flights ticketed prior to January 6, 2020, and cancelled for reasons outside its control, and regardless of the nonrefundability and cancellation penalty provisions of the purchased, is in direct violation of its obligations and of the consumers right to be refunded as per the rules detailed in its own Tariff in addition to applicable law as cited in the original complaint.

10. Furthermore, Air Canada did violate the Department's COVID-19 Refund

FAQs as cited in the airline's response (p.15): "Airlines and ticket agents can offer consumers alternatives to a refund, such as credits or vouchers, so long as the option of a refund is also offered and clearly disclosed if the passenger is entitled to a refund." Under the provisions of both Involuntary Refunds and General Refund, a refund is owed in the event of a cancellation by the carrier for any reason, but this was not disclosed when the voucher was offered.

II. REQUESTED RESOLUTION

11. See original submission of complaint.

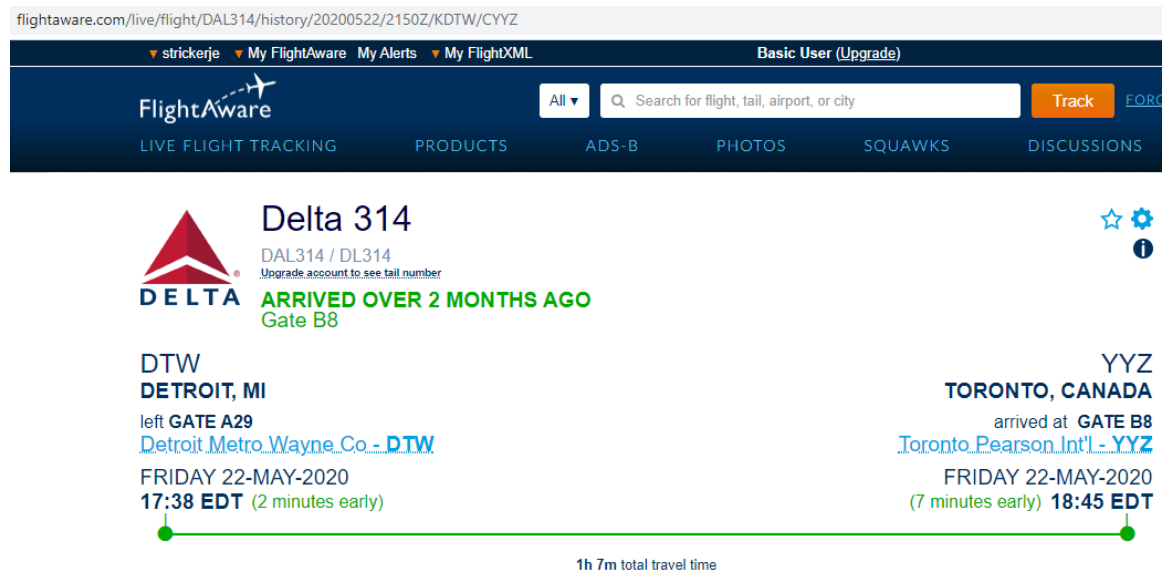
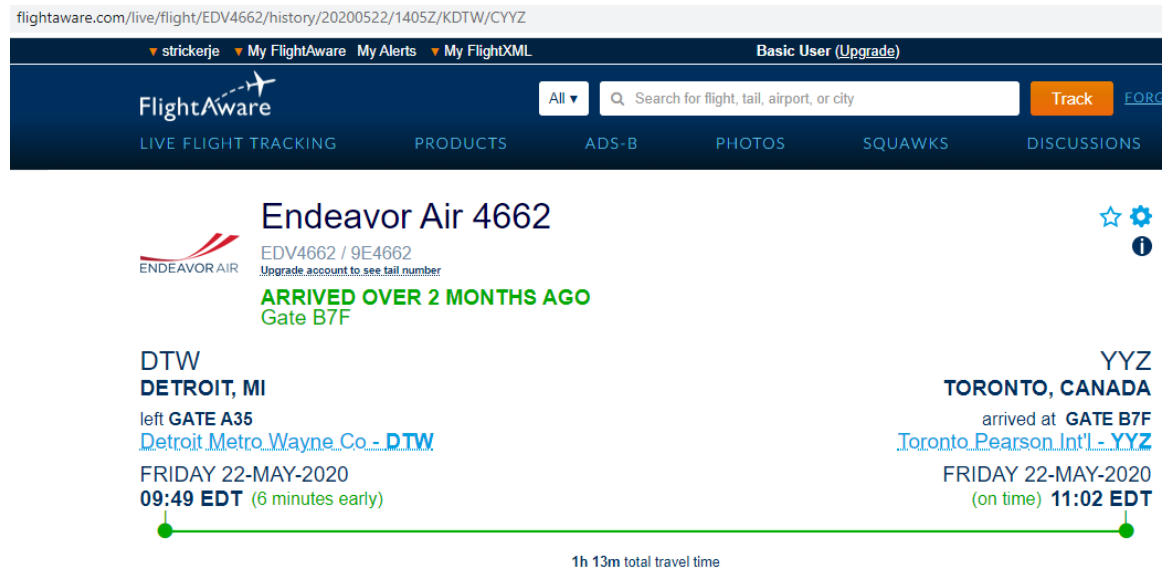
Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jeffrey Stricker', is positioned above the printed name.

Jeffrey Stricker

Attachment 1

Competitors operated service between Detroit (DTW) and Toronto (YYZ) on the date of the canceled ticket (May 22, 2020) and continue to this day even as Air Canada does not:







Jeffrey Stricker
Complaint Addendum – Air Canada

flightaware.com/live/flight/EDV4662/history/20200724/1440Z/KDTW/CYYZ

▼ strickerje ▼ My FlightAware My Alerts ▼ My FlightXML Basic User (Upgrade)

FlightAware All Search for flight, tail, airport, or city Track FORG

LIVE FLIGHT TRACKING PRODUCTS ADS-B PHOTOS SQUAWKS DISCUSSIONS

 **Endeavor Air 4662**  
EDV4662 / 9E4662
[Upgrade account to see tail number](#) 

ARRIVED 1 HOUR 58 MINUTES AGO
Gate B7F

DTW **YYZ**
DETROIT, MI **TORONTO, CANADA**

left **GATE C19** arrived at **GATE B7F**
[Detroit Metro Wayne Co. - DTW](#) [Toronto Pearson Int'l - YYZ](#)

FRIDAY 24-JUL-2020 FRIDAY 24-JUL-2020
10:23 EDT (7 minutes early) **11:23 EDT** (13 minutes early)





1h total travel time

flightaware.com/live/flight/DAL314/history/20200724/0100Z/KDTW/CYYZ

▼ strickerje ▼ My FlightAware My Alerts ▼ My FlightXML Basic User (Upgrade)

FlightAware All Search for flight, tail, airport, or city Track FORG

LIVE FLIGHT TRACKING PRODUCTS ADS-B PHOTOS SQUAWKS DISCUSSIONS

 **Delta 314**  
DAL314 / DL314
[Upgrade account to see tail number](#) 

ARRIVED OVER 15 HOURS AGO
Gate B11

DTW **YYZ**
DETROIT, MI **TORONTO, CANADA**

left **GATE A64** arrived at **GATE B11**
[Detroit Metro Wayne Co. - DTW](#) [Toronto Pearson Int'l - YYZ](#)

THURSDAY 23-JUL-2020 THURSDAY 23-JUL-2020
20:33 EDT (17 minutes early) **21:25 EDT** (30 minutes early)

52m total travel time