

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

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Howard H. Chen)	
)	
v.)	Docket DOT-OST-2020-0077
)	
Air Canada)	
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REPLY OF HOWARD H. CHEN

Comments with respect to this document should be addressed to:

Howard Han Chen

Dated: 07/22/2020

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REPLY OF HOWARD H. CHEN

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 as of the refund cut-off date of March 19, 2020, a law or regulation prohibited trans-border flights. In fact, by its own admission, other flights operated before March 19, 2020. 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 February 25, 2020, 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 regardless if the tickets were non-refundable by name since they were cancelled by Air Canada.

(3) Air Canada states my refund requests are subject to the policies, terms, and conditions of the travel agency which is untrue as when I had contacted my travel agency for a refund, they had deferred to Air Canada's refund policies which were retroactively changed weeks after my date of purchase. Additionally, the charges on my credit card statements show as Air Canada as they were the party to have received my payments.

(4) 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.

(5) 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.

(6) Both arguments above lead to the same conclusion, namely that the “Involuntary Refund” clause applies.

c. 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.

d. Therefore, the “Involuntary Refund” clause applies, and I am due a refund. The amount of said refund is determined as follows in attachment 1 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 intentionally misleading, considering that I have lost \$900.94 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.

Howard Chen
Reply – Air Canada

Respectfully submitted,

Howard Chen

Howard H. Chen

Attachment 3

We have issued an airline credit for your flight

You are receiving this email as either your airline has cancelled your flight, or it was noted that you did not take your trip as scheduled because of the current situation related to COVID-19. No need to call us, we've got you covered. Your safety and peace of mind are of utmost importance to us, and we want to let you know we have issued an airline credit for your flight.

All the details of your airline credit, such as traveler name, amount, and expiration date, will be emailed to you in a confirmation email that you will receive soon.

Cancelled itinerary: Newark to Barcelona



Travel dates

Jun 28, 2020 - Jul 13, 2020

Itinerary

[REDACTED]

Airline confirmation
QQKXZ8 (Air Canada)

When you're ready to book a new trip, we're happy to help.

[Go to itinerary](#)

[Redeem airline credit](#)

Flight overview

✈ Departure Sun, Jun 28

Lufthansa 7968 operated by Lufthansa

Newark (EWR)



Barcelona (BCN)

7:25PM

7h 35m duration

9:00AM +1 day

Total duration 7h 35m

✈ Return Mon, Jul 13

Air Canada 1959 operated by Air Canada

Porto (OPO)



Toronto (YYZ)

12:20PM

8h 0m duration

3:20PM

Air Canada 720 operated by Air Canada

Toronto (YYZ)



New York (LGA)

5:25PM

1h 41m duration

7:06PM

Total duration 11h 46m

Traveler(s)

HOWARD HAN CHEN

Ticket # [REDACTED]

MICHELLE ALYSSA TRAN

Ticket # [REDACTED]

Attachment 4

Multi-city Flight

Jun 28, 2020 - Jul 13, 2020 | Itinerary [REDACTED]

Trip Details

Jun 28, 2020 - Jul 13, 2020 , 2 tickets

CANCELLED

Air Canada **QKXZ8**
Lufthansa **QKXZ8**

This reservation has been fully cancelled. We're sorry your plans didn't work out. When you're ready to book a new trip, we'll be happy to help.

Traveler Information

HOWARD HAN CHEN Adult	No frequent flyer details provided	Ticket # [REDACTED]
MICHELLE ALYSSA TRAN Adult	No frequent flyer details provided TSA Known Traveler Number [REDACTED]	Ticket # [REDACTED]

Price Summary

Traveler 1: Adult	\$448.24
Flight	\$223.00
Taxes & Fees	\$225.24
Traveler 2: Adult	\$448.24
Flight	\$223.00
Taxes & Fees	\$225.24
Expedia Booking Fee	\$4.46
Total:	\$900.94

All prices quoted in US dollars.

* Seat assignments, special meals, frequent flyer point awards and special assistance requests should be confirmed directly with the airline.

Jun 28, 2020 - Departure Nonstop

Newark	Barcelona	7 h 35 m
EWJ 7:25pm	BCN 9:00am	
Lufthansa	+1 day (Arrives on Jun 29, 2020)	
Lufthansa 7968		
Economy / Coach (L)		

Jul 13, 2020 - Return 1 stop

Porto	Toronto	8 h 0 m
OPO 12:20pm	YYZ 3:20pm	
Air Canada	This flight departs from OPO not BCN	
Air Canada 1959		
Economy / Coach (K)		

Layover: 2 h 5 m

Toronto	New York	1 h 41 m
YYZ 5:25pm	LGA 7:06pm	
Air Canada	This flight arrives at LGA, not EWR	
Air Canada 720		
Economy / Coach (K)		

Additional Flight Services

- The airline may charge additional fees for checked baggage or other optional services.
 - [Additional fees for your flight to Barcelona](#)
 - [Additional fees for your flight to New York](#)

If you are denied boarding or your baggage is lost or damaged, you may be entitled to certain standards of treatment and compensation under the Air Passenger Protection Regulations. For more information about your passenger rights please contact your air carrier or visit the Canadian Transportation Agency's website. Si l'embarquement vous est refusé ou que vos bagages sont perdus ou endommagés, vous pourriez avoir droit à certains avantages au titre des normes de traitement et de compensation, en vertu du Règlement sur la protection des passagers aériens (Air Passenger Protection Regulations). Pour plus d'informations sur les droits des passagers, veuillez contacter votre compagnie aérienne ou bien vous rendre sur le site Internet de l'Office des transports du Canada (Canadian Transportation Agency).

Airline Rules & Regulations

Fare Rules and Restrictions

Restrictions include:

- Pay to choose your seat
- Bring a carry-on bag
- Pay to bring a checked bag
- No refund 24 hours after booking
- Change your flight for free
- Bring a personal item

Certificate of Service

I hereby certify that I have, this 22 day of July caused a copy of the foregoing Complaint to be served by electronic mail on the following persons:

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Howard Chen

Howard H. Chen