

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

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Nina Carpenter	)	
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v.	)	Docket DOT-OST-2020-____
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Air Canada	)	
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**COMPLAINT OF NINA CARPENTER**

Comments with respect to this document should be addressed to:

Nina Carpenter

E-mail: carpenter9862@gmail.com

Dated: June 29, 2020

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS  
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Nina Carpenter, )  
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Air Canada )  
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**COMPLAINT OF NINA CARPENTER**

1. This complaint arises out of Air Canada’s non-compliance with the Department’s rules regarding consumers’ right to be refunded for flights cancelled by airlines, even for reasons outside the carriers’ control, as described in the Department’s “Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel”<sup>1</sup>, hereinafter referred to as the “Enforcement Notice”.

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<sup>1</sup> Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel (April 3, 2020) at [https://www.transportation.gov/airconsumer/enforcement\\_notice\\_refunds\\_apr\\_3\\_2020](https://www.transportation.gov/airconsumer/enforcement_notice_refunds_apr_3_2020).  
*See also* 14 CFR § 259.5(b)(5), and Enhancing Airline Passenger Protections, 76 Fed. Reg. 23110-01, at 23129 (Apr. 25, 2011).

2. This complaint also arises out of Air Canada's retroactive application of changes to its refund policies, which constitutes an unfair or deceptive practice within the meaning of 49 U.S.C. § 41712<sup>2</sup>.

## **I. FACTS**

### **A. Flight cancelled by Air Canada**

3. On December 28<sup>th</sup>, 2019 I purchased a ticket for an Air Canada flight from Seattle, Washington USA to Thunder Bay, Ontario Canada via Vancouver, British Columbia Canada and Toronto, Ontario Canada departing on May 9<sup>th</sup>, 2020 (Attachment 1).
4. On April 23, 2020, I learned that my flight was cancelled by Air Canada (Attachment 2).
5. On [date], I contacted Air Canada to request a refund for the cancelled flight, but my request was denied, and I was only offered a flight voucher/credit (Attachment 3)

### **B. Air Canada's refund policy for cancelled flights**

6. Air Canada's current policy is that customers who purchased nonrefundable flight tickets are not entitled to receive full refunds for flights cancelled or changed by the carrier due to reasons outside its control, including cancellations attributed to the COVID-19 pandemic. Air Canada only offers flight vouchers or credits in such situations and claims in its Unites States

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<sup>2</sup> Under 49 USC § 41712, the Department is authorized to investigate and decide whether a U.S. air carrier, foreign air carrier, or ticket agent engaged in an unfair or deceptive practice in air transportation or the sale of air transportation. The Department is also authorized to issue orders to stop an unfair or deceptive practice after notice and opportunity for a hearing.

English website that “in accordance with government regulations”, that such bookings are ineligible for a refund (Attachments 4 and 5).

**C. Air Canada’s obligations**

7. Air Canada is an airline that is authorized to operate flights from and to the United States and is therefore subject to the Department’s jurisdiction and bound by the rules enunciated in the Enforcement Notice, which apply to U.S. and foreign airlines operating flights from, to and within the United States.
8. In its Enforcement Notice, and based on existing federal regulation, the Department reminds airlines about their obligation to refund consumers for flights cancelled by the carriers themselves, even if the reason of the flight disruptions are outside the carrier’s control, and regardless of the nonrefundability/penalty provisions of the ticket purchased by the consumers.
9. In page 2 of its Enforcement Notice, the Department lists the actions non-complying airlines must take to avoid enforcement action, as follows:
  - a. the carrier contacts, in a timely manner, the passengers provided vouchers for flights that the carrier cancelled or significantly delayed to notify those passengers that they have the option of a refund;
  - b. the carrier updates its refund policies and contract of carriage provisions to make clear that it provides refunds to passengers if the carrier cancels a flight or makes a significant schedule change;
  - c. the carrier reviews with its personnel, including reservationists, ticket counter agents, refund personnel, and other customer service professionals, the circumstances under which refunds should be made.

10. On May 12, 2020, the department issued a notice<sup>3</sup> in the form of answers to frequently asked questions regarding airline ticket refunds. In the answer to question 4 of the notice, the Department reiterates that airlines may not retroactively apply changes to their refund policies and must honor the policies in place at the time of ticket purchase.

**D. Air Canada's non-compliance and violations**

11. Air Canada's policy of not issuing prompt refunds for flights 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 the Department's Enforcement Notice.

12. Before March 19, 2020 (Attachments 6), Air Canada's policies indicated that consumers can receive refunds for schedule changes and cancellations attributed to the COVID-19 pandemic. However, and since that date, Air Canada changed its refund policies for cancellations and schedule changes in a way that negatively affects consumers by no longer permitting refunds (Attachments 7A, 7B and 8). The new policy is applied by Air Canada based on the date of the cancellation or schedule change, and regardless of the policy in place at the time the passenger purchased the ticket. This represents a retroactive change in policy and represents an unfair or deceptive practice within the meaning of 49 U.S.C. § 41712.

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<sup>3</sup> U.S. Department of Transportation, Office of Aviation Enforcement and Proceedings, Frequently Asked Questions Regarding Airline Ticket Refunds Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel (See answer to question 4: "May airlines and ticket agents retroactively apply new refund policies?") [https://www.transportation.gov/airconsumer/FAQ\\_refunds\\_may\\_12\\_2020](https://www.transportation.gov/airconsumer/FAQ_refunds_may_12_2020).

13. Many airlines are complying with their obligations to refund passengers, especially after the issuance of the Enforcement Notice on April 3<sup>rd</sup>. These airlines will be in an unfairly disadvantageous financial situation if other airlines, such as Air Canada are allowed to continue practices that violate the same obligations without incurring any penalty.

## **II. REQUESTED RESOLUTION**

14. I ask that the Department of Transportation:

- (1) Exercise its authority under 49 USC 41712 to open an investigation of Air Canada for its non-compliance with the Department's Enforcement Notice and the regulations on which the notice is based;
- (2) Order Air Canada to comply with its obligation to promptly refunds for flights cancelled or significantly delayed, regardless of the reason of such flight disturbances.
- (3) Order Air Canada to:
  - a. contact, in a timely manner, the passengers provided vouchers for flights that the carrier cancelled or significantly delayed to notify those passengers that they have the option of a refund;
  - b. update its refund policies, contract of carriage and tariff provisions to make clear that it provides full refunds to passengers if the carrier cancels a flight or makes a significant schedule change, regardless of the reason and the nonrefundability and cancellation penalty provisions of the tickets purchased by the passengers;

- c. review with its personnel, including reservationists, ticket counter agents, refund personnel, and other customer service professionals, the circumstances under which refunds should be made.
- (4) Impose appropriate civil penalties on Air Canada.

Respectfully submitted,  
/s/  
Nina Carpenter

**Attachment 1**



**Attachment 2**

**Attachment 3**

## Attachment 4

Captured on May 24, 2020 from

<https://www.aircanada.com/us/en/aco/home/fly/customer-support/cancellation-options.html#/current-booking>

If you booked directly with Air Canada, please select one of the following:

### Air Canada has already cancelled my booking

If you have a booking cancelled by Air Canada for travel prior to March 1, 2020, please [click here](#) to learn more about your options.

If you have a booking cancelled by Air Canada for travel after March 1, 2020, you have several options available to you depending on the type of fare you purchased and whether the cancellation was within Air Canada's control.

### Cancellations outside of Air Canada's control

If Air Canada has already cancelled your booking, and the cancellation is outside of Air Canada's control (for example, due to the impacts of COVID-19, government travel advisories and/or health and safety concerns), you have two expanded options to choose from:

1. **Air Canada Travel Voucher** – Transfer the remaining value of all tickets in a booking and associated services to an Air Canada Travel Voucher. The voucher has no expiry date, is fully transferable and can be used multiple times.
2. **Aeroplan Miles** – Convert and transfer the remaining value of all tickets and associated services in a booking, minus any taxes, into Aeroplan Miles, and get an additional 65% bonus miles.

If you purchased a non-refundable fare, please note that in accordance with government regulations, non-refundable bookings that are cancelled due to the impacts of COVID-19, government travel advisories and/or health and safety concerns are outside of Air Canada's control and ineligible for a refund.

If you purchased a refundable fare, you have the additional option of returning the remaining refundable value of all tickets and associated services in a booking, minus any applicable fees, back to your original form of payment.

[How to process a cancellation](#)

### Cancellations within Air Canada's control

For both refundable fares and non-refundable fares, if Air Canada has already cancelled your booking, and the cancellation is within Air Canada's control, you have three expanded options to choose from:

1. **Air Canada Travel Voucher** – Transfer the remaining value of all tickets in a booking and associated services to an Air Canada Travel Voucher. The voucher has no expiry date, is fully transferable and can be used multiple times.
2. **Aeroplan Miles** – Convert and transfer the remaining value of all tickets and associated services in a booking, minus any taxes, into Aeroplan Miles, and get an additional 65% bonus miles.
3. **Return to original form of payment** – Return the remaining refundable value of all tickets in a booking and associated services back to your original form of payment.


[How to process a cancellation](#)

## Attachment 5

Captured on May 18, 2020 from <https://www.aircanada.com/us/en/aco/home/fly/flight-information/delayed-flights-and-cancellations/refund-options.html>

[Home](#) | [Fly](#) | [Flight Information](#) | [Delayed Flights / Cancellations](#) | [Refund Options](#) ^

## Refund Options

 For flight cancellations due to the impacts of COVID-19, government travel advisories and/or health and safety concerns, click [here](#).

In the event of a flight cancellation or a delay of more than three hours, **for situations other than those outside our control**, Air Canada offers you the option of requesting a refund for the unused portion of your ticket, or using the unused portion toward future travel with us. **Cancellations resulting from the COVID-19 crisis are considered outside our control.**

### To Request a Refund

If your flight is cancelled or delayed by more than 3 hours for reasons other than those outside Air Canada's control, and you'd like to obtain a refund for the unused portion of your ticket (including some fees and/or purchased travel options), please call **Air Canada Reservations**. You'll be directed to present your refund request via your original point of purchase.

If you choose to request a refund, the method with which you are refunded will accord with the method in which you paid. Your refund will include your fare and all taxes, as well as certain charges paid for added travel options.

### To Retain the Ticket Value for Future Travel

To retain the value of your ticket for future travel:

- Contact **Air Canada Reservations**. Please provide the booking reference number or ticket number. A customer service agent will cancel your current reservation.
- Air Canada will retain the value of all unused portions of your ticket and certain related travel options. (Fares available online are not necessarily available through Air Canada Reservation.)
- You may also cancel your entire reservation or all remaining portions of your ticket online. Please keep your booking reference number so we can better assist you when you are ready to use the value of your ticket.

When you're ready to use the unused portion of your ticket for travel with us:

- Please contact **Air Canada Reservations**, and make sure to have your **booking reference** handy.
- Please keep in mind that:
  - Any change fee associated to your original ticket will be waived.
  - The value can be used for future travel on Air Canada, Air Canada rouge or Air Canada Express.
  - Unused non-refundable travel options, such as assigned seat selection, Maple Leaf Lounge access, and Air Canada Bistro snack or meal vouchers may be used on future flights, subject to availability.
  - If your ticket is fully unused, you must commence your travel within 12 months of the original issue date.
  - If your ticket was partially used, you must complete your travel within 12 months of the first used portion.
  - Tickets are non-transferable: the original booking passenger(s) must use their respective amount(s).
  - Any amount remaining unused after booking a new flight is forfeited.

## Attachment 6

Captured on March 17, 2020 from

<https://www.aircanada.com/us/en/aco/home/book/travel-news-and-updates/2020/covid-19.html>


Note: Air Canada removed the information displayed in this attachment on or around March 19, 2020.

**My flight has been cancelled. What should I do?** ▼

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For flight cancellations, we will contact you via the email address or phone number you provided when you booked your flight.

At a later time, when you decide you want to travel, you can apply your credit to a future booking. Please call Air Canada at **1-888-247-2262** to book your new flight with your credit.

If you decide to have your credit refunded to the original payment method, please fill out the refund form and submit it [here](#) .

**Attachment 7A**

Captured on May 21, 2020 from pagepages 2 of

[https://www.aircanada.com/content/dam/aircanada/portal/documents/PDF/agents/en/ca/policies/SKCH\\_EN\\_V13.pdf](https://www.aircanada.com/content/dam/aircanada/portal/documents/PDF/agents/en/ca/policies/SKCH_EN_V13.pdf)

**Overview**

Air Canada has revised the Schedule Change policy, effective immediately, for schedule changes processed as of March 19, 2020.

This policy and these procedures cover Air Canada operated flights affected by schedule changes. A schedule change (SKCH) is a flight cancellation, time change, flight number change, routing/airport change or operating carrier change which occurs **more than 48 hours prior to the original scheduled departure time.**

## Attachment 7B

Captured on May 21, 2020 from page 8 of

[https://www.aircanada.com/content/dam/aircanada/portal/documents/PDF/agents/en/ca/policies/SKCH\\_EN\\_V13.pdf](https://www.aircanada.com/content/dam/aircanada/portal/documents/PDF/agents/en/ca/policies/SKCH_EN_V13.pdf)

### Refunds

Schedule Change **occurred on/before** March 18, 2020

A refund is permitted and applies only for a 014 ticket if an acceptable protection cannot be found due to a schedule change on Air Canada, Air Canada Rouge, Air Canada Express (Jazz, Sky Regional, Air Georgian, EVAS), AC\*/OAL or OAL that is:

- A schedule change of 60 minutes or more.
- A change of operating carrier.
- A routing/airport change.
- Not permitting a same-day connection.
- An aircraft change that results in a cabin change.
- Refunds are processed back to the original form of payment.
- Apply waiver code: **ACUSKEDCHG** along with the flight number.

Schedule Change **occurred on/after** March 19, 2020

**Full refunds are not permitted.**

Please refer to the *Save as Future Credit* and *Cancel and Refund as per Fare Rules* sections below.

Exception: Refunds are permitted for flights originating from the below countries; apply waiver code **ACUSKEDCHG** along with the flight number (e.g. **ACUSKEDCHGXXXX**).

Flight Origin	Refund of Unused Coupons	Deadline to request refund after SKCH
From Algeria	Yes + return to origin	8 days

Information subject to change without notice. \*Altitude Super Elite 100K, Air Canada Express and Air Canada rouge are trademarks of Air Canada. ®Aeroplan is a registered trademark of Air Canada Inc. \*Star Alliance is a trademark of the Star Alliance Members. May 14, 2020. V12.

To/From Israel	Yes	21 days
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## Attachment 8

Captured on May 18, 2020 from  
[https://www.aircanada.com/content/dam/aircanada/portal/html/flash-files/20/200323\\_en.html](https://www.aircanada.com/content/dam/aircanada/portal/html/flash-files/20/200323_en.html)

### As of May 7, 2020 - V8

We've waived changes for new and existing bookings made by customers worldwide. See below for additional details.

For quick reference on which policy to apply (Goodwill or Schedule Change), please refer to our helpful [one-page document](#).

## AIR CANADA CANCELLED YOUR FLIGHTS?

### NO

#### Apply Goodwill Policy

not cancelled.  
k.

cancelled up to 2 hours prior to the departure flight.

	MAY 31, 2020
	Between March 1, 2020 and up to May 31, 2021
	24 months from the date you cancel your booking
	As per fare rule
	Waived - one time
OL)	Applies
	<b>CHNGFEE20</b>

### YES

#### Involuntary Changes - Apply Schedule Change Policy

Applies when there is a flight cancellation, time change, flight number change, cabin change, routing/airport change or operating carrier change, which occurs more than 48 hours prior to the original scheduled departure time.

	SCHEDULE CHANGE PRIOR TO MARCH 19, 2020	SCHEDULE CHANGE ON/AFTER MARCH 19, 2020
<b>Rebooking:</b>	Permissible as per policy guidelines (allowed OAL). Add <b>DUE SKCH</b> in ticket endorsement.	Permissible as per policy guidelines (does not allow OAL*). Add <b>DUE SKCH</b> in ticket endorsement.
<b>Refund:</b>	Permissible, and applies only for a 014 ticket if an acceptable protection cannot be found.	As per fare rules. Non-refundable amounts will be lost (including non-refundable taxes). Any cancellation fees will apply.
	Add <b>ACUSKEDCHG + flight number</b> in waiver code field.	<b>or</b> Credit** ONLY for 24 months. Add <b>CV20VL22</b> in ticket endorsement. Change fee waived – ADCOL collected if applicable.
*	Over-the-water re-protection flight must be Air Canada-operated and Air Canada-marketed.	
**	Ticket will need to be exchanged prior to the ticket expiry. Instructions can be found in the Schedule Change policy located at <a href="https://www.aircanada.com/agents">aircanada.com/agents</a> , on the Online DRS or by contacting the GDS Help Desk.	

Version 4: May 7, 2020

For complete details, please refer to the Schedule Change policy.



**Certificate of Service**

I hereby certify that I have, this 29 day of 2020 caused a copy of the foregoing Complaint to be served by electronic mail on the following persons:

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

/s/

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Nina Carpenter