

Comments on proposed regulations published in Canada Gazette, Part I, Volume 158, Number 51: Regulations Amending the Air Passenger Protection Regulations

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Issues

The issues section omits completely a significant issue that has been the subject of litigation and of ruling by the CTA: it is the use of ‘refusal to transport’ as a mechanism to ‘game the system’ and ensure compensation for denial of boarding (under the current, narrow, Canadian definition) does not have to be paid. The solution to this issue is to harmonize to the EU definition for denial of boarding.

Objective

The objective should be more than to “better align refund requirements with those in the United States and the European Union” The objective should be to “better align regulatory requirements with those of United States and the European Union”. This would include refunds, but also compensation, standards of treatment, and definitions of legislative terms, for example “denied boarding”

Description

A “labour dispute involving the carrier”:

A legal labour dispute is predictable, remediable, and obviously within the direct control of the carrier. It therefore should not be an exceptional circumstance. Under existing and proposed regulations, if an airline chooses to illegally lock out a union, then the airline is rewarded for breaking the law. A union could also illegally strike, but would be liable for costs incurred by the airline for compensation for cancelled flights. Passengers will be the victims of the labour dispute, but refusing them normal compensation that is otherwise payable is grossly unfair to the passenger.

Government of Canada issuing or upgrading a travel advisory:

The phrase "Government of Canada issuing or upgrading a travel advisory to the level of "avoid all travel", or "avoid all non-essential travel" to a country " is ambiguous. Travel advisories are often different within one country. The Regulations need to specify that they apply only if an airport en route or at the final destination is part of a travel advisory. For example, the state of Chiapas, Mexico is currently under a "avoid all non-essential travel" advisory but two large airports in the state are within 2 cities to which the advisory does not apply. CTA will need to work with Global Affairs to have the travel advisories included airport codes, when an advisory does not cover an entire country.

Bumping (denial of boarding)

The proposed amendments are not harmonized to the European definition for denied boarding and are not logical. The CTA has never presented any reasons as to why the definition of 'denied boarding' in the APPR cannot be harmonized to the European definition.

The requirement

(2) the bumping occurs because the number of confirmed reservations for the flight exceeds the number of seats that may be occupied.

Should be removed.

The European definition recognizes that a customer with a confirmed reservation can be arbitrarily and wrongfully denied boarding for many reasons other than an overbooked flight.

Wrongful refusal to transport can occur at check-in, or at the gate. If at check-in, then the passenger cannot get a boarding pass to the gate, and therefore cannot be "denied boarding" on an overbooked flight, under current rules in Canada. If at the gate, and the plane is not oversold, then also, the customer wrongfully refused transport is not "denied boarding" and not entitled to compensation, according to the proposed narrow definition of "denied boarding".

Refusal to transport, at check-in, ensures that an airline will not have too many customers reach to gate, on an oversold flight. The customers who are wrongfully denied boarding passes cannot claim any compensation. The loophole assures that airlines almost never have to pay denied boarding compensation for an overbooked

flight. In my case, I was refused transportation on a connecting flight, so I would not arrive at YYZ at the gate of the (presumably overbooked) international flight.

Generally, the airline -whether by incompetence or “wilful blindness” will cite some sort of non-existent “rule” so as to deny transport to the customer holding a valid boarding pass, but it may be any number of reasons.

Examples are

CTA decision 100-C-A-2022 : the carrier’s “rule” did not exist but the only compensation for wrongful refusal to transport was a refund of airfares

CTA decision 95-c-a-2021 where carrier wrongfully refused to transport due to a long and convoluted set of circumstances, none of which had anything to do with the passenger.

CTA decision 6-c-a-2020 where the carrier wrongfully refused transport because the passenger did not have the credit card used to buy the ticket, even though there was no basis to demand the card.

CTA decision 7-C-A-2020 where the passenger was wrongfully refused transport at the gate, completely the fault of the carrier. But because the plane was not oversold – no compensation.

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CTA decision let-c-a-48-2019 where the passenger was wrongfully refused transport because the airline did not know the proper rules and refused to consider documents presented by the passenger.

Court decisions:

Ontario Small Claims Court File: SC-22-00161182-0000, November 26, 2024 Douglas vs. Westjet: the carrier’s ‘rule’ did not exist, the carrier refused to consider authoritative government documentation showing the rules, the carrier refused to pay a refund.

Court orders that refund and expenses be paid but no compensation for inconvenience is payable.

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petites creances wrongful refusal to transport allege the passenger is sick but she was not.

Business decision by the airline: I have seen an instance (YYZ-YOW) when passengers have been denied boarding at the gate, and the plane is NOT overbooked, when a large group of wealthy and influential politicians arrived for a flight, and insisted they needed the entire aircraft. The plane left with empty seats, but other passengers with confirmed reservations were denied boarding -- according to the European definition - but not according to the Canadian definition, because the plane was not oversold. The airline made a business decision to cater to a particular group of wealthy and influential "gold" customers, but why should this excuse the airline from paying compensation to the "stowage" customers left behind at the gate just because the plane left with empty seats?

Having an "seat counting" requirement means that the passenger faces an impossible task: to prove that a flight was overbooked, when such data is confidential to the airlines. Airlines do NOT like to share their flight-loading data, as it is a crucial part of their business model. Also, "exceeds the number of seats that may be occupied" is ambiguous: if a plane has oversold the economy seats, but business class seats remain empty, has it exceeded "the number of seats that may be occupied"? The flight will abandon customers with confirmed reservations at the gate, but does not have more confirmed reservations than seats that "may be occupied" so no compensation is payable. The seats "may be occupied" - that is, it is possible for someone to occupy the seats - but the airline chooses to fly with the seats empty.

There are many circumstances when a passenger holding a confirmed reservation and meeting all travel requirements is denied access to the aircraft. Whether it is because he is wrongfully denied transport at check-in, or wrongfully refused access to the plane at the gate, the result to the passenger is exactly the same as being denied access to an overbooked flight. If the airline chooses to fly the flight with empty seats, or deny

customers a boarding pass, then the stranded passengers should have the same right to compensation as if the flight had left full.

A “ labour dispute involving the carrier “:

A legal labour dispute is predictable, remediable, and and obviously within the direct control of the carrier. It therefore should not be an exceptional circumstance. Under existing and proposed regulations, if an airline chooses to illegally lock out a union, then the airline is rewarded for breaking the law. A union could also illegally strike, but would be liable for costs incurred by the airline for compensation for cancelled flights. Passengers will be the victims of the labour dispute, but refusing them normal compensation that is otherwise payable is grossly unfair to the passenger.

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Regulatory development

Comments on refunds for Government of Canada travel advisories

It appears that no one has noticed the inconsistency with “the advisory risk level has risen since the passenger bought their ticket ” and “a requirement that the passenger cancel a reservation before the check-in period for the first flight of their itinerary begins. ”. Since check-in begins up to 48 hours before a flight, it is possible to purchase a ticket during the check-in period but before an advisory is issued.

Regulatory analysis

Travel advisories: It would be useful to know how many passengers have purchased non-refundable fares, as only these fares are affected by the legislation. Other fares are refundable anyway.

Amendments

Section 1 (3) should be modified to read:

(3) For the purpose of these Regulations, there is a denial of boarding when, no earlier than 24 hours before the scheduled departure time of a flight, a carrier cancels a passenger's confirmed reservation for the flight, or otherwise does not permit a passenger who holds a confirmed reservation to occupy a seat on the flight, without proper justification and without the passenger's consent.

The phrase:

because the number of confirmed reservations for the flight exceeds the number of seats that may be occupied.

should be struck out. I have given detailed reasons, based on CTA decisions 100-C-A-2022 95-c-a-2021 6-c-a-2020 7-C-A-2020 88-C-A-2019 41-c-a-2019 let-c-a-48-2019 and EU rules, in my comments on "bumping" in the Description Section of the Gazette Publication.

The phrase

"without proper justification" clarifies that, if there is proper justification for denying a passenger checkin or boarding, no compensation is payable. For example, a passenger with a confirmed reservation who arrives at the gate late, is not eligible for compensation. But a passenger who is denied a boarding pass, or entrance to the airplane, because the airline refuses to follow (or is wilfully blind) to travel requirements, should be eligible for compensation. CTA has adjudicated many such cases.

Refunds

Section 2.2 (1) (b)

should be amended to read

the refund is paid using any other method mutually agreeable to the carrier and the passenger.

That is "that does not expire" should be deleted. It prevents the option of an airline and a passenger coming to agreement on compensation using Flyer Points of the airline, since such points necessarily expire (either because of airline policy or because the airline itself goes bankrupt)

Regulations should not prevent airlines and passenger in coming to a mutually beneficial agreement. If an airline is in a cash crunch, it may opt to give generous points concessions to customers who are willing to risk them. This same logic should be used for compensation [Section 17(c)].

Provision of Information

Passenger on aircraft

10 (4) The carrier must not deny boarding to a passenger who is already on board the aircraft, unless the denial is required for reasons of safety.

By definition of “denial of boarding” this is not “denial of boarding” since the passenger is already on the plane. Sometimes a passenger is removed from a plane because only just before take-off authorities realize a passenger does not have legal papers to fly to the destination.

Section 10(4) should be amended to:

Removal of Passenger from aircraft

(4) The carrier must not remove a passenger who is already on board the aircraft, unless the removal is required for reasons of safety or legality.

Eligible passengers - Section 12 (2)

Section 12 (2) (a):

unless they were informed of the delay or cancellation at least 12 hours before the departure time that is indicated for that flight on their ticket;

Section 12 (2) (a) should be amend to:

unless they were informed of the delay or cancellation at least 12 hours before the departure time that is indicated for that flight on their ticket, or in the case of a connecting flight, at least 12 hours before the departure time of the connecting flight to the delayed or cancelled flight.

“12 hours” is not sufficient time for a country the size of Canada. A passenger leaves Whitehorse for Vancouver then Toronto, with 8 hours in the air on flights, and 14 hours of stayover times. If the departing Toronto flight is cancelled 12 hours before

scheduled departure, the passenger is by that time already travelling, either in the Vancouver airport or in the air flying to Toronto, only to arrive in Toronto to find the flight cancelled and his eligibility for assistance disqualified. The regulations should apply to the first flight taken, of connecting flights

Compensation for delay or cancellation

Form of compensation

The wording

Section 17 (c)

“the other form of compensation does not expire;”

should be deleted, on the same logic that Section 2.2(1)(b) should delete this requirement: airlines and passengers should be free to come to their own agreement regarding compensation paid as Flyer Points that may expire. Section (d) already provides that the passenger must be advised that the Points expire.

Exceptional circumstances

Section 18 (L) “a labour dispute involving the carrier or an essential service provider such as an airport managing body, air navigation service provider or ground handling service provider “

should be amended to read

18 (L) “a labour dispute over which the carrier has no control, and affects an essential service provider, such as an airport managing body, air navigation service provider or ground handling service provider “

A legal labour dispute is predictable, remediable, and obviously within the direct control of the carrier, as each carrier is fully responsible for its workplace labour relations. A carrier’s labour relations problem is not an exceptional circumstance beyond the control of the carrier. Under existing and proposed regulations, if an airline chooses to illegally lock out a union, then the airline is rewarded for breaking the law because it would no longer have to pay compensation to passengers. A union could also illegally strike, but would be liable for costs incurred by the airline for compensation payable for cancelled flights. Passengers will be the victims of the labour dispute, and refusing victims normal compensation that is otherwise payable is grossly unfair.

Travel Advisory

Refund on request 19 (1)

Section 19(1) should be amended to read:

If, after a reservation is made, a Government of Canada travel advisory is issued recommending avoiding all travel to a geographical area, and one or more of the airports listed on the reservation fall within such an area, , the carrier that issued the ticket must, on request of the passenger, refund the ticket, without charge or penalty, unless the passenger has already checked in.

if the passenger cancels the reservation before the check-in period for the first flight of their itinerary begins.

Rationale:

The phrase “to a country” should be deleted because travel advisories apply to regions, not countries.

Check-in begins as much as 48 hours before flight time. If an advisory is issued a day before the flight, but still within check in time, the passenger should have the right to cancellation

, if the passenger cancels the reservation before the check-in period for the first flight of their itinerary begins.

Should be amended to read:

unless the passenger has already checked in

For example, if an advisory has been issued 23 hours before check in, and yet the passenger still chooses to check in, then the passenger is not entitled to a refund. It is the passenger’s responsibility to check federal government travel advisories.
