

BEFORE THE CANADIAN TRANSPORTATION AGENCY

IN THE MATTER OF

Notice of Fee Proposal for the Cost Recovery of Air Travel Complaints

Submitted via online the feedback form on October 18, 2024

COMMENTS OF TURK HAVA YOLLARI ANONIM ORTAKLIGI OPERATING AS TURKISH AIRLINES

Background and Overview

Turk Hava Yollari Anonim Ortakligi, operating as Turkish Airlines (“**THY**”), welcomes the opportunity to participate in a response to the Canadian Transportation Agency’s (the “**Agency**”) consultation process on the Air Travel Complaints Fee Proposal launched by the Agency on September 18, 2024 further to amendments to the *Canada Transportation Act* (the “**Act**”) introduced by the *Budget Implementation Act 2023*.

THY is committed to customer care and excellent service throughout their passengers’ journeys. THY operates flights out of Vancouver, Toronto, and Montreal. Customer satisfaction is THY’s top priority and THY puts the utmost care into ensuring each customers’ journey runs as smooth as possible. THY is a member of the Star Alliance network, which is founded on customer value proposition with global reach, worldwide recognition, and seamless service.

THY believes that regulatory changes, including the implementation of a new complaint’s resolution fee, should be balanced and fair as between the passengers and the airlines.

Agency Fee Proposal

The Agency is proposing a fixed fee of \$790 to be charged per closed eligible air travel complaint. This will include complaints received prior to September 30, 2023. An eligible complaint is a complaint that falls under subsections 85.04(1) and 85.04(2) of the Act. A closed complaint is one that has been processed and resolved either through a resolution officer mediation or a resolution officer decision.

THY Comments

Fixed Fee: THY agrees that the fee should be a fixed fee and should only be charged for eligible and closed complaints.

Relevant Time Period: THY disagrees that the proposed fee should be paid for complaints received prior to September 30, 2023. THY believes that the proposed fee should only be implemented and paid for new eligible complaints received and closed by the Agency as of September 18, 2024.

Requiring airlines, or passengers, to pay the fee prior to the opening of consultations is unfair to the parties. Prior to opening up consultations, the parties had no knowledge of the amount of the fee or the requirements for when the fee would be charged. As a result, the parties had no incentive or ability to avoid the fee through alternative resolution methods such as private negotiation. There is a strong presumption against retroactive application of legislation. The rule of law in Canada requires that people – in this case passengers and airlines – are able to conduct their affairs in light of established laws. Making the proposed fee retroactive and payable for all complaints, particularly those filed prior to September 30, 2023, means the law becomes known to the parties after it is too late to do anything about it.

Eligible: The Agency and resolution officers should conduct a preliminary review of all complaints and summarily dismiss complaints that do not fall within the scope of the Act, where it is clear the airline has complied with its obligations, or if the complaint is frivolous or vexatious. No fee should be charged to the airline for non-eligible complaints.

Closed: THY further agrees that the fee should be charged only where the complaint has been closed by the Agency. However, the “closed” should mean those instances where the resolution officer issues a decision and not in instances where the parties reach a resolution at mediation. Removing mediation from the definition of “closed” encourages the parties to come to an agreement at mediation so as to avoid the risk of paying the fee if the resolution officer is required to render a decision. In addition, the fee should not be charged if the parties are able to resolve the complaint outside of the Agency complaints process (through private negotiation or private mediation), even if the passenger initiated a complaint through the Agency.

Both Parties Should Pay: THY believes that it is unfair and unbalanced to mandate that the airlines pay the proposed fee, even in circumstances where the resolution officer decides in favour of the airline. A CBC analysis of data published by the Agency found that only 50% of resolved airline passenger disputes favour passengers.¹

On average, THY receives over 135 Agency complaints annually. To date, in 2024, THY has received 184 complaints. While there are instances where THY has been ordered by a resolution officer to compensate the passenger, there are also many instances where the amounts sought by the passenger have been reduced by the resolution officer, where the resolution officer finds in favour of THY, and where the complaint is either withdrawn, negotiated, or settled outside the Agency complaints process.

In addition, there should be a review of all complaints to determine whether the actions of other stakeholders have resulted in the passenger complaint in the first case. Apportioning risk to all stakeholders in the ecosystem would create a more balanced and fair approach.

Forcing airlines to pay the fee in all instances, regardless of success, may encourage more meritless complaints. There will be no risk to the passenger in filing a complaint and some may file complaints in the hopes airlines will simply settle the matter to avoid the additional fee. This, in

¹ <https://www.cbc.ca/news/business/passenger-compensation-cta-1.7281613>; <https://portail-portal.otc-cta.gc.ca/en/listing-8514-decisions?lfwww>.

turn, will inflate the Agency's backlog as the Agency will still need to determine eligibility and, in some cases, render a decision.

Finally, requiring the airlines to pay the fee in all instances will also result in higher costs to all Canadian consumers through increased ticket prices. However, requiring individual passengers to pay the fee in unsuccessful complaints ensures individual consumers bear their own risk without negatively impacting other Canadian consumers.

Introducing a fee model that puts the risk on the unsuccessful party, or is split between the parties in cases of mixed success, encourages legitimate complaints, encourages all parties to attempt to settle the matter before the complaint is made to the Agency, and encourages private negotiations once the complaint is filed. Since the fee is paid after a decision is rendered, there is no barrier for a passenger to make their complaint.

Apportioning the risk of the fee will improve operational efficiencies for the Agency. With 111 employees handling approximately 22,000 complaints annually, each employee resolves approximately one case per day. A decrease in the number of complaints reviewed by the Agency each year will provide more time to the Agency to resolve legitimate complaints.

Finally, THY is concerned that ambiguity in the *Air Passenger Protection Regulations* (the "APPR") and inconsistent decisions from the Agency creates confusion for both passengers and airlines and, as a result, an increase in meritless complaints. Since the regulations were introduced in 2019, the CTA has seen a surge in complaints. The lack of clear definitions in the APPR, burdens of proof on airlines that exceed civil standards, and inconsistent decisions have created the opportunity for unnecessary disputes. THY supports revisions to the APPR, additional training for resolution officers to ensure proper burdens of proof are applied and consistent decisions are rendered, which should all have the effect of reducing the number of complaints received by the Agency.

Recommendation

THY recommends that the fee should be a fixed amount, that is charged for eligible and closed complaints, received by the Agency after September 18, 2024, and payable by the unsuccessful party, or split between the parties if there has been mixed success.

Eligible complaints should mean those falling within the scope of the Act and excludes complaints where it is clear the airline has complied with its obligations or if the complaint is frivolous or vexatious.

Closed complaints should mean those where a resolution officer has issued a decision.

Payable by the unsuccessful party apportions risks in a fair and balanced manner without creating barriers for passengers to file complaints.

Respectfully submitted,

Turk Hava Yollari Anonim Ortakligi