

Federal Court



Cour fédérale

**Date: 20231012**

**Docket: T-464-22**

**Citation: 2023 FC 1358**

**Ottawa, Ontario, October 12, 2023**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**DR. GÁBOR LUKÁCS**

**Plaintiff**

**and**

**AIR CANADA ROUGE LP**

**Defendant**

**REASONS AND JUDGMENT**

**I. INTRODUCTION**

[1] Dr. Gábor Lukács (the “Plaintiff”) issued a Statement of Claim on March 3, 2022, against Air Canada Rouge LP (the “Defendant”), seeking the following relief:

- (a) statutory compensation in the amount of \$400.00 pursuant to subsection 19(2) of the *Air Passenger Protection Regulations*, SOR/2019-150 [APPR];
- (b) pre-judgment and post-judgment interest pursuant to ss. 36 and 37 of the Federal Courts Act, R.S.C. 1985, c. F-7

- (c) costs and/or reasonable out-of-pocket expenses of this simplified action; and
- (d) such further and other relief as this Honourable Court may deem just.

## II. CONTEXT

[2] This is a Simplified Action, pursuant to Rules 292 to 299, of the *Federal Courts Rules*, SOR/98-106 (the “Rules”). The evidence consists of the affidavits filed by the parties, the cross-examination of the Plaintiff undertaken at trial, and a Joint Book of Documents.

[3] The Plaintiff filed his affidavit affirmed on March 15, 2023. This affidavit was entered as exhibit P-1.

[4] The Defendant filed the affidavit of Mr. Marc-Tavio Folly, sworn on March 29, 2023. This affidavit was entered as exhibit D-1.

[5] The Joint Book of Documents was entered as exhibit P/D-1. The Joint Book of Documents consists of the following materials:

1. Denial of *APPR* Compensation Email, dated March 14, 2020 at 9:56 a.m
2. Booking Confirmation, issued on February 4, 2020 and dated February 5, 2020
3. Revised Itinerary Email, dated February 26, 2020
4. Revised Itinerary Email, dated March 4, 2020
5. List of electronic notifications sent to passenger, February 26, 2020 and March 4, 2020

6. Dr. Lukács's Call Listing for March 2020 Excerpt Screenshot (in Greenwich Mean Time)
7. CDROM with Audio Recordings of Two Calls on March 9, 2020
8. Reservation Screenshot, taken on March 11, 2020
9. Booking Cancellation Confirmation Email, dated March 11, 2020
10. Acknowledgment of Receipt of Request for *APPR* Compensation Email, dated March 14, 2020 at
11. Customer Relations file, (redacted of frequent flyer number, date of birth, credit card information and names), March 11-13, 2020
12. Air Canada's International Tariff, issued on January 6, 2020
13. Sales, Chargeback and Refund details for PNR MVTE9I, (redacted of credit card number), run on March 4, 2022

[6] In his affidavit, the Plaintiff described himself as a passenger rights advocate. He set out the history of events leading to the commencement of this action.

[7] Mr. Folly holds the position of Mission Resolution Analyst with Air Canada. He too deposed about the background leading to this action.

[8] The claim arises from air travel booked by the Plaintiff on February 5, 2020, from Halifax, Nova Scotia to Budapest, Hungary. The Plaintiff booked his ticket on Air Canada, with the following itinerary (all times local):

- A. Departing Halifax on flight AC613 at 14:25 and arriving in Toronto at 15:45 on April 20, 2020;
- B. Departing Toronto on flight AC1910 at 18:55 on April 20, 2020, and arriving in Budapest, Hungary at 09:30 on April 21, 2020;

- C. Departing Budapest, Hungary on flight AC9023 at 06:15 and arriving at Frankfurt, Germany at 08:00 on August 27, 2020;
- D. Departing Frankfurt, Germany on flight AC875 at 09:55 and arriving at Montreal at 11:35 on August 27, 2020; and
- E. Departing Montreal on flight AC1556 at 13:45 and arriving at Halifax at 16:14 on August 27, 2020.

[9] On February 26, 2020, the Defendant notified the Plaintiff about a change in part of his itinerary, that is the flight from Montreal, Quebec to Halifax, Nova Scotia on August 27, 2020.

The notice was as follows:

One or more flights in your itinerary cannot be operated as planned. Please find your revised itinerary. We apologize for any inconvenience.

AC1598

Departing Montreal, Pierre E. Trudeau Intl (YUL) on August 27, 2020 @ 13:45\*

Arriving in Halifax, Stanfield Intl (YHZ) on August 27, 2020 @ 16:14\*

Reason: Flight Schedule Change

If the revised itinerary does not suit your travel plans, you can also look for alternative flight options using the link provided below, or cancel your itinerary. No change fees will apply\*\*

<https://book.aircanada.com/bkgd?ref=MVTE9I&n=Lukacs>

Booking reference: MVTE9I

Lukacs, Gabor

[10] On March 4, 2020, the Defendant notified the Plaintiff that Flight AC1598 was cancelled and provided the Plaintiff with a revised itinerary. The notice was as follows:

One or more flights in your itinerary cannot be operated as planned. Please find your revised itinerary. We apologize for any inconvenience.

AC668

Departing Montreal, Pierre E. Trudeau Intl (YUL) on August 27, 2020 @ 15:30\*

Arriving in Halifax, Stanfield Intl (YHZ) on August 27, 2020 @ 17:59\*

Reason: Flight Schedule Change

If the revised itinerary does not suit your travel plans, you can also look for alternative flight options using the link provided below, or cancel your itinerary. No change fees will apply\*\*

<https://book.aircanada.com/bkgd?ref=MVTE9I&n=Lukacs>

Booking reference: MVTE9I

Lukacs, Gabor

[11] The notice from Air Canada advised that the itinerary change was due to a “Flight Schedule Change”, not to circumstances beyond its control. The Defendant offered the Plaintiff another booking, on the flight leg from Montreal, Quebec to Halifax, Nova Scotia, on the same date but at a different time. The alternative offered was for a flight at 15:30, on flight AC668.

[12] The Plaintiff deposed that he called Air Canada Customer Relations to seek different alternate travel arrangements. He could not get through on the call on all his attempts. On March 9, 2020, the calls got through but he accessed only an audio message that he recorded.

[13] On March 11, 2020, the Plaintiff cancelled his trip and asked for a refund, pursuant to subsection 17(2) of the Regulations. The Defendant refunded the cost of the ticket, on March 13, 2020, in the amount of \$1,293.48.

[14] On March 11, 2020, the Plaintiff requested compensation from the Defendant, in the amount of \$400, pursuant to subsection 19(2) of the Regulations.

[15] By email dated March 14, 2020, the Defendant refused to pay compensation and advised as follows:

We are in receipt of your claim under the Air Passenger Protection Regulations for flight 1598 on 2020-08-07.

In this instance, the compensation you are requesting does not apply because you were informed of the schedule change at least 15 days prior to the flight departure.

We hope that we may have the opportunity to welcome you on board.

Your case number is: CAS-2492781-F2N4W7

[16] On March 3, 2022, the Plaintiff commenced this action.

[17] The heart of the Plaintiff's complaint is that he was inconvenienced by the Defendant's change in his travel itinerary. His evidence in this regard is found in paragraphs 7 and 8 of his affidavit entered as Exhibit P-1 at trial. These paragraphs provide as follow:

7. The alternate travel arrangements offered on March 4, 2020 did not accommodate my travel needs. The alternate travel arrangements would have prolonged my travel time by 1 hour and 45 minutes, to approximately 20 hours and 45 minutes door-to-door (16 hour and 44 minutes airport-to-airport) instead of approximately 19 hours door-to-door (14 hours and 59 minutes airport-to-airport).

8. Between March 4, 2020 and March 11, 2020, I attempted to seek different alternate travel arrangements that would accommodate my travel needs; however, my attempts were unsuccessful.

(a) It was not possible to make changes to my booking online. When I viewed my booking on Air Canada's website, I saw a message that read:

The following flight(s) had a change of schedule. Please review details below. To make changes to your booking, please contact Air Canada Reservations or your travel agent for assistance.

A screenshot of Air Canada's website showing this message, taken on March 11, 2020, is found at Tab 8 of the JBD.

(b) I attempted to telephone Air Canada's Customer Relations call centre, which handles all customer service matters on Air Canada Rouge's behalf.

On some occasions, the call would not even go through, and therefore I have no documents relating to these attempts.

On two occasions on March 9, 2020 (Atlantic Time), the call did go through, but I heard an audio recording stating that due to "unforeseen circumstances," Air Canada's call volume had exceeded its capacity to answer or place my call on hold. An excerpt of my outgoing call listing, showing these two calls in Greenwich Mean Time, is found at Tab 6 of the JBD. A CDROM with two MP3 files containing the audio recordings of these two calls is found at Tab 7 of the JBD.

[18] The Plaintiff was cross-examined about paragraph 7 of his affidavit. His cross-examination is found at pages 28 to 33 of the transcript. The Plaintiff consistently testified that the prolongation of his travel by one hour and forty-five minutes was an inconvenience to him.

### III. THE ISSUES

[19] By Order dated December 22, 2022, Associate Judge Steele identified the issues for trial as follow:

For the Plaintiff:

1. Whether compensation is owed to the passenger under section 19(2) of the Air Passenger Protection Regulations, SOR/2019-150 [APPR] if the air carrier provided the passenger with notice of the cancellation more than 14 days prior to the originally scheduled departure time of the cancelled flight and the passenger opted for a refund pursuant to s. 17(2) of the APPR.

For the Defendant:

2. Whether section 19(2) of the Air Passenger Protection Regulations, SOR/2019-150 entitles the plaintiff to compensation only when cancellation of his flight was communicated to the plaintiff 14 days or less prior to the originally scheduled departure time of his flight.

#### IV. SUBMISSIONS

##### A. *The Plaintiff's Submissions*

[20] The Plaintiff argues that the plain reading of subsections 19(2) and 12(3) of the Regulations supports his claim for compensation. He argues that it is clear that the Defendant changed part of his travel itinerary for reasons within its control.

[21] The Plaintiff submits that subsections 19(2) and 12(3) are clear and unambiguous and that the time when the cancellation was communicated to the passenger is not part of the eligibility criteria for compensation. He suggests that the Defendant is attempting to “read-in” subsequent amendments to subsection 19(2) that were made in 2022; see SOR/2022-134.

[22] The Plaintiff contends that based upon the modern principles of statutory interpretation, the existence or absence of advance notice of cancellation is not a requisite element of entitlement to compensation under subsection 19(2) of the Regulations.



[23] The Plaintiff also argues that the Regulations are consumer protection regulations and should be interpreted generously in favour of consumers.

[24] The Plaintiff argues that the words of the relevant Regulations are clear and unambiguous, and consequently, it is not necessary to engage in the “full” exercise of statutory interpretation. He submits that as written, subsection 19(2) does not import a temporal element, that the fact that he was advised of the change in itinerary more than 14 days before his planned travel does not change the obligation on the Defendant to pay him compensation, in addition to the refund of the ticket price.

[25] Put briefly, the Plaintiff contends that he is entitled to compensation in the amount of \$400.00, pursuant to the combined operation of subsections 12(3) and 19(2), regardless and independent of the fact that he received 176 days notice of the change in his travel itinerary. He also notes that the English and French language versions are the same with the exception that the conjunction “and” appears between paragraphs 12(3)(c) and (d).

B. *The Defendant’s Submissions*

[26] For its part, the Defendant submits that subsection 19(2) of the Regulations must be read with the condition precedents set out in paragraphs 12(3)(c) and (d) of the Regulations. It says that the Regulations are clear and unambiguous in providing compensation in the case of a refund for a cancelled flight where the passenger is informed of the cancellation 14 days or less before the original departure time of that flight.

[27] The Defendant argues that the interpretation advanced by the Plaintiff would lead to an absurd result whereby a carrier, after refunding the ticket price in the circumstances where a change in a travel itinerary was made more than 14 days before travel, would also be liable to pay compensation. It relies on the principles of statutory interpretation set out in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 (S.C.C.).

## V. DISCUSSION AND DISPOSITION

[28] As a preliminary matter, the Plaintiff objected to the entry by the Defendant of Supplementary documents at the beginning of the trial. These documents consist of the following:

1. Air Passenger Protection Regulations, SOR/2019-150, Canada Gazette, Part II, Volume 153, Number 11, including the Regulatory Impact Analysis Statement (“RIAS”) for those Regulations;
2. Regulations Amending the Air Passenger Protection Regulations, Regulatory Impact Analysis Statement, Canada Gazette, Part I, Volume 155, Number 27;
3. Regulations Amending the Air Passenger Protection Regulations: SOR/2022-134, Canada Gazette, Part II, Volume 156, Number 13; and
4. <https://otc-cta.gc.ca/eng/publication/flight-delays-and-cancellations-a-g>

[29] Following submissions from the parties, the documents were accepted, not as evidence but as authorities. I agree with the position of the Defendant that a RIAS can be accepted as an extrinsic aid to interpretation, relying on the decision in *Boutcher v. Canada*, 202 Nfld. and P.E.I.R. 243 (Nfld. C.A.), at paragraph 76.

[30] This action is about the interpretation of paragraph 19(2)(a) of the Regulations which provides as follows:

**Compensation in case of refund**

**19 (2)** If paragraph 12(2)(c) or (3)(c) applies to a carrier and the passenger's ticket is refunded in accordance with subsection 17(2), the carrier must provide a minimum compensation of

**(a)** \$400, in the case of a large carrier; and

**Indemnité en cas de remboursement**

**19 (2)** Si les alinéas 12(2)c) ou (3)c) s'appliquent au transporteur et que le titre de transport est remboursé au titre du paragraphe 17(2), le transporteur verse l'indemnité minimale suivante :

**a)** dans le cas d'un gros transporteur, 400 \$;

[31] This provision necessarily involves consideration of related provisions of the Regulations, that is subsection 12(3) and subsection 17(2), which provide as follows:

**Cancellation**

**12 (3)** In the case of a cancellation, the carrier must

**(a)** provide passengers with the information set out in section 13;

**(b)** if a passenger is informed of the cancellation less than 12 hours before the departure time that is indicated on their original ticket, provide the standard of treatment set out in section 14;

**(c)** provide alternate travel arrangements or a refund, in the manner set out in section 17; and

**(d)** if a passenger is informed 14 days or less before the original departure time that the arrival of their flight at

**Annulation de vol**

**12 (3)** Dans le cas de l'annulation, le transporteur :

**a)** fournit aux passagers les renseignements prévus à l'article 13;

**b)** si l'annulation de vol a été communiquée aux passagers moins de douze heures avant l'heure de départ indiquée sur leur titre de transport initial, applique les normes de traitement prévues à l'article 14;

**c)** fournit des arrangements de voyage alternatifs ou un remboursement aux termes de à l'article 17;

**d)** s'ils ont été informés quatorze jours ou moins avant l'heure de départ indiquée sur

the destination that is indicated on their ticket will be delayed, provide the minimum compensation for inconvenience in the manner set out in section 19.

#### Refund

17 (2) If the alternate travel arrangements offered in accordance with subsection (1) do not accommodate the passenger's travel needs, the carrier must

(a) in the case where the passenger is no longer at the point of origin that is indicated on the ticket and the travel no longer serves a purpose because of the delay, cancellation or denial of boarding, refund the ticket and provide the passenger with a confirmed reservation that

(i) is for a flight to that point of origin, and

(ii) accommodates the passenger's travel needs; and

(b) in any other case, refund the unused portion of the ticket.

leur titre de transport initial que leur arrivée à la destination indiquée sur ce titre de transport sera retardée, verse aux passagers l'indemnité minimale prévue à l'article 19 pour les inconvénients subis.

#### Remboursement

17 (2) Si les arrangements de voyage alternatifs fournis conformément au paragraphe (1) ne satisfont pas aux besoins de voyage du passager, le transporteur :

a) dans le cas où le passager n'est plus au point de départ indiqué sur le titre de transport et que le voyage n'a plus sa raison d'être en raison du retard, de l'annulation de vol ou du refus d'embarquement, rembourse le titre de transport et fournit au passager une réservation confirmée :

(i) pour un vol à destination de ce point de départ,

(ii) qui satisfait aux besoins de voyage du passager;

b) dans tous les autres cas, rembourse les portions inutilisées du titre de transport.

[32] Paragraph 19(2)(a) was subsequently amended, by SOR/2022-134, to provide as follows:

Compensation in case of refund	Indemnité en cas de remboursement
19 (2) Despite subsection (1), if paragraph 12(2)(d) or (3)(d) applies to a carrier and the passenger's ticket is refunded in accordance with subsection 17(2), the carrier must provide a minimum compensation of	19 (2) Malgré le paragraphe (1), si les alinéas 12(2)d) ou (3)d) s'appliquent au transporteur et que le titre de transport est remboursé au titre du paragraphe 17(2), le transporteur verse l'indemnité minimale suivante :
(a) \$400, in the case of a large carrier; and	a) dans le cas d'un gros transporteur, 400 \$;

[33] This provision is included only for information. It is not relevant to the interpretation of subsection 19(2) as it stood, in March 2020.

[34] Although the Plaintiff devoted much time to argue that the Defendant is now trying to rely on the current version of paragraph 19(2)(a), the Defendant made it clear that its defence rests on the version of the provision in effect in March 2020.

[35] The parties addressed the statutory context behind the Regulations. The *Canada Transportation Act*, S.C. 1996, c. 10 ("the Act") provides the general statutory context. Section 3 of the Act provides as follows:

<b>Application Generally</b>	<b>Champ d'application</b>
<b>3</b> This Act applies in respect of transportation matters under the legislative authority of Parliament.	<b>3</b> La présente loi s'applique aux questions de transport relevant de la compétence législative du Parlement.

[36] In broad terms, the Act regulates air transportation, among other modes of transportation. The Regulations are designed to implement that mandate relative to air travel and air passengers. The provision in issue in this case is directed to passenger protection and, in particular, to compensation for interrupted travel and resulting inconvenience.

[37] The enactment of the Regulations is authorized by subsection 86.11(1) of the Act.

Subparagraph 86.11(1)(b)(i) is relevant and provides as follows:

**Regulations — carrier’s obligations towards passengers**

**86.11 (1)** The Agency shall, after consulting with the Minister, make regulations in relation to flights to, from and within Canada, including connecting flights,

...

**(b)** respecting the carrier’s obligations in the case of flight delay, flight cancellation or denial of boarding, including

**(i)** the minimum standards of treatment of passengers that the carrier is required to meet and the minimum compensation the carrier is required to pay for inconvenience when the delay, cancellation or denial of boarding is within the carrier’s control,

**Règlements — obligations des transporteurs aériens envers les passagers**

**86.11 (1)** L’Office prend, après consultation du ministre, des règlements relatifs aux vols à destination, en provenance et à l’intérieur du Canada, y compris les vols de correspondance, pour :

...

**b)** régir les obligations du transporteur dans les cas de retard et d’annulation de vols et de refus d’embarquement, notamment :

**(i)** les normes minimales à respecter quant au traitement des passagers et les indemnités minimales qu’il doit verser aux passagers pour les inconvénients qu’ils ont subis, lorsque le retard, l’annulation ou le refus

d'embarquement lui est  
attribuable,

[38] The Regulations establish obligations, including liability, on air carriers with respect to tarmac delays, flight cancellations, flight delays, denial of boarding, and damage or loss of baggage in the context of domestic and international air travel; see *International Air Transport Association et al. v. Canadian Transportation Agency et al.*, 2022 FCA 211, leave to appeal to SCC granted, 40614 (17 August 2023).

[39] There is no doubt that subsequently enacted regulations cannot be used to interpret earlier regulations. I refer to the decision in *Canada v. Oxford Properties Group Inc.*, [2018] 6 C.T.C. 1 (F.C.A.) at paragraph 46.

[40] The 2019 RIAS describes the purpose of the Regulations in the following terms:

The objective of the APPR is to normalize the minimum standard across all carriers operating in Canada to ensure that the obligations on carriers are clear, concise and easily understood by carriers and passengers.

[41] The 2019 RIAS goes on to address the matter of compensation in some detail, under the heading "Premiums for enhanced quality of passengers' time" as follows:

Premiums for enhanced quality of passengers' time

Flight disruptions (e.g. flight delays, cancellations and lost baggage) can be stressful and uncomfortable for passengers. The APPR will improve passengers' experience during air travel by imposing obligations on carriers that will reduce stress and discomfort during flight disruptions. Together, reduction in anxiety levels and improved sense of comfort during extended wait periods are fostered by the design of the APPR, which will create benefits to passengers. For instance, awareness of clear procedures in case

of flight disruptions will decrease the level of anxiety to passengers, while the obligation to ensure passengers a minimum level of standard of treatment guarantees a better flight quality experience, increasing comfort.

[42] Insofar as the Defendant refers to proposed amendments to the Regulations, with the accompanying RIAS, the Plaintiff pleads that the Defendant seeks retroactive application of the “amended” Regulations to his situation.

[43] The exercise of statutory interpretation in this case begins with basic principles. First, the text of the provision is to be considered in both English and French; see the decision in *R. v. Daoust*, [2004] 1 S.C.R. 217 (S.C.C.) at pages 229 to 232.

[44] Second, the decision in *Rizzo*, *supra* remains the guiding authority upon statutory interpretation. At paragraphs 21 and 22, the Supreme Court of Canada set out those principles as follows:

21. Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, *Statutory Interpretation* (1997); Ruth Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994) (hereinafter “*Construction of Statutes*”); Pierre-André Côté, *The Interpretation of Legislation in Canada* (2nd ed. 1991)), Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.



Recent cases which have cited the above passage with approval include: *R. v. Hydro-Québec*, 1997 CanLII 318 (SCC), [1997] 3 S.C.R. 213\*\*;*Royal Bank of Canada v. Sparrow Electric Corp.*, 1997 CanLII 377 (SCC), [1997] 1 S.C.R. 411; *Verdun v. Toronto-Dominion Bank*, 1996 CanLII 186 (SCC), [1996] 3 S.C.R. 550; *Friesen v. Canada*, 1995 CanLII 62 (SCC), [1995] 3 S.C.R. 103.

22. I also rely upon s. 10 of the *Interpretation Act*, R.S.O. 1980, c. 219, which provides that every Act “shall be deemed to be remedial” and directs that every Act shall “receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit”.

[45] Although the parties made tangential references to the recent decision of the Federal Court of Appeal in *International Air Transport Association, supra*, that decision does not bear directly upon the issue raised in the present matter.

[46] Both parties argue that the language of subsection 19(2) is clear and unambiguous, their difference lies in how the terms of related provisions are interpreted. Does subsection 19(2) include a temporal element for the purpose of the payment of compensation, in addition to the refund of the ticket price, if a passenger whose travel itinerary has been changed by a carrier for circumstances within the control of a carrier?

[47] According to the Plaintiff, the answer is “yes”, due to the plain meaning of the words of subsection 19(2). Those words include “must”.

[48] In my opinion, “must” generally implies an obligation but that word can only be considered relative to the whole context of the Regulations.

[49] The Defendant submits that upon a “plain reading” of subsection 19(2), with the implied reference to subsection 12(3), that the application of paragraph 12(3)(c) includes the application of paragraph 12(3)(d), meaning that compensation is due only when the refund and notice of interruption are not provided within 14 days.

[50] I agree that subsection 19(2) says nothing about notice within 14 days, or within any time period.

[51] There is no apparent difference between the French and English versions of the Regulations associated with the interpretation of subsection 19(2), with the exception of subsection 12(3).

[52] In the English version, paragraphs 12(3)(c) and (d) are followed by the conjunction “and”. That conjunction is absent from the French version.

[53] The structure of subsection 12(3) supports the submissions of the Defendant, that paragraphs 12(3)(c) and (d) should be read together.

[54] The interpretation proposed by the Plaintiff would mean that in any case governed by subsection 19(2) of the 2019 Regulations, when an itinerary was interrupted for means within the carrier’s control and the alternate travel arrangements were not accepted, that the carrier would have to pay compensation.

[55] I agree with the Defendant that this interpretation would be punitive and lead to an absurd result, when considered in the context of the Regulations and the Act. According to the decision in *Rizzo, supra*, absurdity in statutory interpretation is to be avoided. I refer to paragraph 27 of *Rizzo, supra* as follows:

27. In my opinion, the consequences or effects which result from the Court of Appeal's interpretation of ss. 40 and 40a of the *ESA* are incompatible with both the object of the Act and with the object of the termination and severance pay provisions themselves. It is a well established principle of statutory interpretation that the legislature does not intend to produce absurd consequences. According to *Côté, supra*, an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or if it is incompatible with other provisions or with the object of the legislative enactment (at pp. 378-80). Sullivan echoes these comments noting that a label of absurdity can be attached to interpretations which defeat the purpose of a statute or render some aspect of it pointless or futile (Sullivan, *Construction of Statutes, supra*, at p. 88).

[56] The Regulations were referenced by the Federal Court of Appeal in *International Air Transport Association, supra* at paragraph 124 as being similar to consumer protection legislation. According to the decision in *Seidel v. Telus Communications Inc.*, [2011] 1 S.C.R. 531, at paragraph 37, such legislation should be interpreted "generously in favour of consumers". In my view, such an approach should not result in punishment of a service provider.

[57] In my opinion, the language of subsection 19(2), when read in conjunction with subsection 12(3) of the Regulations, should be interpreted in the manner proposed by the Defendant. Such interpretation accords with the text, the context and the purpose of the Regulations.

[58] In the result, this action will be dismissed with costs. A Direction will issue with respect to costs.

**JUDGMENT in T-464-22**

**THIS COURT'S JUDGMENT is that** the action is dismissed with costs. A Direction will issue with respect to costs.

“E. Heneghan”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-464-22

**STYLE OF CAUSE:** DR. GÁBOR LUKÁCS v. AIR CANADA ROUGE LP

**PLACE OF HEARING:** Held by way of videoconference between Halifax, Nova Scotia and Toronto, Ontario

**DATE OF HEARING:** April 12, 2023

**REASONS AND JUDGMENT:** HENEGHAN J.

**DATED:** October 12, 2023

**APPEARANCES:**

Dr. Gábor Lukács

FOR THE PLAINTIFF  
(ON HIS OWN BEHALF)

Clay S. Hunter

FOR THE DEFENDANT

**SOLICITORS OF RECORD:**

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Toronto, Ontario

FOR THE DEFENDANT