

Court File No.: **A-142-23** ID1

FEDERAL COURT OF APPEAL

BETWEEN:

AIR CANADA also carrying on business as AIR CANADA
ROUGE and as AIR CANADA CARGO (AIR CANADA)

FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE	
FILED	MAI 26 2023 MAY 26 2023
BRITTNEY CHANNER	
TORONTO, ON	1

Appellant

- and -

CANADIAN TRANSPORTATION AGENCY and
CHRISTOPHE SCORDO

Respondents

NOTICE OF APPEAL

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Appellant. The relief claimed by the Appellant appears below.

THIS APPEAL will be heard by the Federal Court of Appeal at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the Appellant. The Appellant requests that this appeal be heard at **Toronto, Ontario**.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the *Federal Courts Rules* and serve it on the Appellant's solicitor, or, if the Appellant is self-represented, on the Appellant, WITHIN 10 DAYS after being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN
IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: May 25, 2023

Issued by: **ABIGAIL GRIMES**
REGISTRY OFFICER
AGENT DU GREFFE
(Registry Officer)

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Respondent

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the order and decision of the Canadian Transportation Agency (the "Agency") dated May 11, 2018 and bearing decision no. 36-C-A-2018 (the "Decision") by which the Agency erred in law, acted outside of its jurisdiction under the *Canada Transportation Act* (the "CTA") and the *Air Transportation Regulations* (the "ATR"), and violated the rules of procedural fairness.

THE APPELLANT ASKS that:

- a) the Appeal be allowed and that the Decision and the order therein be set aside;
- b) it be awarded its costs on this Appeal; and
- c) such further and other relief as counsel may advise and this Honourable Court may deem appropriate.

THE GROUNDS OF APPEAL are as follows:

1. The Agency erred in law, acted outside of its jurisdiction under the *Canada Transportation Act* (the "CTA") and the *Air Transportation Regulations* (the "ATR"), and violated the rules of procedural fairness by:
 - a) awarding compensation for loss where it was admitted and the Agency found as fact there was no loss incurred;
 - b) awarding compensation absent proof of actual expenses incurred, contrary to the remedial powers afforded by the Act and the ATR, and contrary to Agency precedent;

- c) failing to properly interpret an international treaty, the *Montreal Convention*, in accordance with established judicial precedent and the principles of interpretation codified in the *Vienna Convention on the Law of Treaties*, [1980] T.S.No. 37;
- d) awarding compensation in contravention of Articles 17(2), 19 and 29 of the *Convention for the Unification of Certain Rules for International Carriage by Air*, (the "*Montreal Convention*") Schedule VI to the *Carriage by Air Act*, R.S.C. 1985, c. C-26;
- e) ruling on a matter, namely the proper application of a Tariff rule, despite the fact the rule was not raised in the proceedings and without considering or referencing other relevant and associated rules directly connected to issues raised in the proceedings or permitting Air Canada an opportunity to make submissions as to the application of its Tariff;
- f) concluding Air Canada did not properly apply the terms and conditions of a rule of its Tariff when that rule has no application or relevance to the matters at issue;
- g) concluding Air Canada did not properly apply the terms and conditions of a rule of its Tariff without providing any reasons or facts in support of its conclusion; and

- h) awarding compensation contrary to the proper application of Air Canada's relevant Tariff rules without ruling on the reasonableness or lack thereof of such rules;

Statutes and Regulations Relied On:

2. Sections 110(4) and 113.1 of the *Air Transportation Regulations*, SOR/88-58;
3. Section 41 of the *Canada Transportation Act*, S.C. 1996, c. 10;
4. *Convention for the Unification of Certain Rules for International Carriage by Air* (the "*Montreal Convention*"); Schedule VI to the *Carriage by Air Act*, R.S.C. 1985, c. C-26;
5. *Vienna Convention on the Law of Treaties*, [1980] T.S.No. 37;
6. Rule 352 of the *Federal Courts Rules*, S.O.R./98-106; and
7. Such further and other grounds as counsel may advise and this Honourable Court may permit.



May 25, 2023

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Lawyers for the Appellant

FEDERAL COURT OF APPEAL

Court File No.:

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AIR CANADA also carrying on business as
AIR CANADA ROUGE and as AIR CANADA
CARGO (AIR CANADA)

Appellant

AND:

CANADIAN TRANSPORTATION AGENCY and
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Respondents

NOTICE OF APPEAL

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FILE: 218101

I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the _____

day of MAY 26 2023 A.D. 20____

Dated this _____ day of MAY 26 2023 20____

**ABIGAIL GRIMES
REGISTRY OFFICER
AGENT DU GREFFE**