

Claim for Mental Anguish, Inconvenience and Loss
of Academic Opportunities from Cancelled Flight
Denied Under The *Montreal Convention*
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In *Lukacs v. United Airlines Inc.* 2009 MBCA 111, the Manitoba Court of Appeal denied leave to a plaintiff to appeal the trial decision of the Manitoba Court of Queen's Bench in *Lukacs v. United Airlines Inc.*, 2009 MBQB 29. The Court of Queen's Bench had denied the plaintiff's claim for general damages against United Airlines Inc. and Skywest Airlines Inc. under Article 19 of the *Montreal Convention*. Article 19 of the *Montreal Convention* provides:

“The carrier is liable for damages occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damages occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.”

The facts of the case were relatively straightforward. The plaintiff, Gabor Lukacs, was scheduled for an international flight from Winnipeg, Manitoba to Columbus, Ohio on November 16, 2007. The flight was cancelled as a result of aircraft mechanical failure. The plaintiff was advised by an agent for the airline that his flight was cancelled 3½ hours before its scheduled departure. The agent proposed to reschedule the plaintiff for a flight the following morning.

The difficulty the plaintiff had with a flight the following day was that he intended to participate in an academic conference at the Ohio University. The flight departing the following morning would not allow the plaintiff to attend the workshop as intended.

As a result of this problem, during the initial cancellation call, the United Airlines agent suggested an alternate flight on Northwest Airlines that was departing an hour and forty minutes earlier than the plaintiff's originally scheduled flight. However, the plaintiff would be required to leave for the airport immediately. The call was prematurely disconnected before such arrangements were made, so the plaintiff raced to the airport. The plaintiff arrived at the airport and since no United Airlines attendant was on duty, he presented himself to the Northwest Airlines counter to speak to their agent. His arrival at that counter was 59 minutes before the scheduled departure time. Soon after, the United Airlines agent attended the appropriate counter and was advised of the plaintiff's dilemma. Two problems existed at this point. The first being that the United Airlines agent would have to endorse the ticket to Northwest Airlines, and second, since this was an international flight the plaintiff would normally have been required to check-in two hours in advance. Complicating matters was the fact that the United Airlines agent was not experienced in endorsing tickets and no supervisor was immediately available. Ultimately, the plaintiff left the airport with a boarding pass for the following morning. He did not use the boarding pass and claimed reimbursement for the cancelled flight. The plaintiff received a full refund from United Airlines for his ticket.

At trial it was agreed that the *Montreal Convention*, which is Schedule VI to *The Carriage By Air Act*, R.S.C. 1985, c. C-26, was the applicable legislation governing liability for damages occasioned by delay in the carriage of passengers by air. The plaintiff took the position that based on the wording of Article 19 of the *Montreal Convention*, United Airlines did not take all measures that could reasonably be required to honor its contract of carriage. The plaintiff claimed damages for ground transportation to and from the Winnipeg International Airport in the sum of \$80.00, for inconvenience and mental anguish in the sum of \$1,000.00 and damages for missed academic, research and learning opportunities of \$5,000.00. There was no registration fee for the conference and as such, the plaintiff was not out-of-pocket in that regard. The plaintiff argued that the airline failed to take into consideration the possibility of mechanical failures and failed to maintain efficient solutions to assure that the service that was promised to the public was met.

Evidence at the trial of the matter revealed that the plane that was to transport the plaintiff from Winnipeg to Chicago was originating from Chicago. At the time of the cancellation there were no alternate aircraft available to be sent from Chicago. This particular regional hub had only one spare aircraft and it was in use at the time the mechanical problem arose with the plaintiff's plane. The plaintiff argued at trial that having only one replacement aircraft available in such a large regional hub as Chicago was inadequate. He also submitted that there was other conduct by the airline and/or its employees that established United Airlines failed to take all measures it could reasonably be required to take to avoid the damage.

The plaintiff was seeking compensation for inconvenience, mental anguish and loss of academic opportunities. There was much debate at the trial level whether damages of this nature were recoverable under the *Montreal Convention*. The plaintiff argued that these claims for compensation did not fall within a claim for "general damages" but were quantifiable as "special damages" by application of a formula based on his own estimation of time required to learn the information he would have received at the conference on his own, multiplied by his salary. It should be noted that the plaintiff was not a typical, unrepresented layperson. Mr. Lukacs was a tenured Assistant Professor and PhD mathematician with the University of Manitoba at the ripe age of twenty-six. Born in Hungary, he was a mathematics prodigy taking undergraduate university courses at the age of twelve and completing his masters at age sixteen. United Airlines argued that the plaintiff's calculations were speculative at best. In effect, the plaintiff was alleging general damages for mental distress, and a fictional economic loss.

After a detailed and comprehensive analysis of various decisions from other jurisdictions the Trial Court ultimately concluded that claims against air carriers for general damages such as these were not recoverable under Article 19. In the result the Trial Court only awarded the applicant the \$80.00 cab fare as special damages. Indeed, this sum had been offered to the plaintiff in advance of trial.

Since this matter fell under the *Small Claims Practices Act*, C.C.S.M., c. C285, the plaintiff's appeal required leave from the Manitoba Court of Appeal and was restricted to questions of law. In the end the Court of Appeal found there were only two real issues to consider, as follows:

1. Did the trial judge err by concluding that Article 19 of the *Montreal Convention* excluded claims for general damages against air carriers; and
2. Did the trial judge err in law in concluding that the claim for missed academic research and learning opportunities is a claim for general damages rather than special damages in the context of carriage by air.

The Manitoba Court of Appeal reasoned, in respect to the issue of whether the *Montreal Convention* excluded claims for general damages, that there was ample authority under the predecessor to the *Montreal Convention*, i.e. the *Warsaw Convention* of 1929 that damages such as these were not recoverable. The Court of Appeal determined that the jurisprudence was clear that general damages for inconvenience or mental anguish were not compensable under the *Montreal Convention*. In addition to the decisions referred to by the Trial Court, the Manitoba Court of Appeal cited *Lee v. American Airlines Inc.* 355 F. 3d 386 (5th Cir. 2004), which applied the reasoning of the United States Supreme Court in *Eastern Airlines Inc. v. Floyd*, 499 U.S. 530 (S.C. 1991). The Manitoba Court of Appeal was not convinced that this ground had a reasonable prospect of success and leave was denied on that issue.

With respect to the second issue i.e., that the claim for missed academic opportunity was not a claim for general damages in the context of carriage by air but rather special damage, the Manitoba Court of Appeal reasoned that this issue did not raise a pure question of law. The characterization of damages as being either special or general involved an examination of the factual elements of the claim. The Court of Appeal noted that the Trial Judge found that the applicant did not lose any income as a result of the missed opportunity nor did he have to pay a registration fee to attend the conference. As a result, the missed opportunity was not an “expense incurred by the applicant” and hence not an item of special damage.

The Court of Appeal commented that even if they were of the view that this ground did raise a pure question of law, it did not raise an arguable case of substance with any prospect of success. Citing the *Lee* decision, the plaintiff’s claim for missed opportunity appeared to be an attempt to re-characterize damages which were “not easily quantifiable and [did] not result in real economic loss” as a form of special damages. The plaintiff failed again to convince the Court of Appeal to grant leave on this issue.

Finally, one of the side issues raised by the plaintiff which did not receive much attention at the Court of Appeal was the alternate claim for relief under the Manitoba Consumer Protection laws. The Trial Judge noted that the *Montreal Convention* did not permit claims against a carrier based on domestic law but commented that such claims against travel agencies would not be limited by the *Montreal Convention*. It is an interesting comment in today’s modern times of booking flights via the internet. Will consumer protection laws one day ensnare companies like Expedia Inc. and Travelocity.com LP for general damage claims stemming from flight delays?

In the end, the carrier escaped liability for the damages claimed by the plaintiff for mental anguish, inconvenience, and missed academic opportunity.

The carrier, United Airlines, was represented by RMC counsel, Stuart Blake and David Simpson, of Fillmore Riley LLP.