

Is One-Fare Fair?

On January 10, 2008 the Canadian Transportation Agency (the “CTA”) released a landmark decision that orders certain Canadian carriers, namely Air Canada, Air Canada Jazz and WestJet, to amend their current air fare policies to implement a one-person, one-fare (1PIF) policy. This policy enables persons with a disability to pay one fare regardless of the number of seats that they require to accommodate their disability.

The revised fare policy applies to those persons who are required, under the terms of the carriers’ tariff to be accompanied by an attendant and those persons with a disability, the nature of which requires accommodation by additional seats. While the policy will apply to persons disabled by obesity, the CTA specifically stated that the policy does not apply to obese persons except those who are disabled by obesity. However, it is not clear how this distinction will be drawn by the carriers in practice. Indeed, the CTA did not dictate how passengers will be screened for the application of the policy and leaves it in the hands of the carriers to establish proper screening mechanisms.

The decision applies to domestic air services and not to international routes. Because the three affected airlines represent over 90 percent of the domestic market, the CTA dismissed concerns that the order would put them at a competitive disadvantage in the domestic air services market. It should be emphasized that the policy does not apply to foreign airlines operating in or to Canada.

In dismissing the carriers’ cost-based objections to the policy, the CTA noted that it was not necessary for a carrier to establish that the accommodation would threaten its survival or alter its essential character but only that the impact on revenues would have financial implications which would result in undue hardship. The CTA estimated that 0.32 % of the carriers’ domestic passengers will require this form of accommodation resulting in a 0.09% and 0.16% impact on passenger revenues of Air Canada and West Jet respectively, which the CTA characterized as “immaterial” and not an undue hardship.

The CTA also dismissed the carriers’ safety concerns and determined that the establishment of screening mechanisms to assess the eligibility under the 1PIF policy also did not result in undue hardship to the carriers.

The policy does not specifically require the carriers to provide the accommodation in all fare classes. It may therefore be open to the affected airlines that offer premium class service to restrict the application of the IPIF policy to economy seats only.

To our knowledge, Canada is the first jurisdiction to implement a IPIF policy. While the European Union recently implemented a regulation concerning the obstacles faced by disabled persons and persons with reduced mobility when travelling by air, it did not regulate fares. In the United States, if a carrier

determines that a passenger requires an attendant, contrary to the passenger's self-assessment, then the carrier may not charge an additional amount for the attendant's transportation. Additionally, while some airlines voluntarily provide for various discounts or rebates to particular classes of disabled persons, these are discretionary policies, not prescribed by law.

The CTA decision received a surprising amount of coverage in the Canadian and international press. Whether this uniquely Canadian fare policy is fair is definitely controversial.

Cautionary Note

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

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