

July 17, 2013

**DELIVERED BY EMAIL**

Canadian Transportation Agency  
Ottawa, Ontario K1A 0N9

**Attention: Cathy Murphy, Secretary at the Canadian  
Transportation Agency**

Dear Madam:

**Re: Decision No. 239-C-A-2013**  
**Complaints by: Mr. Alexander Brewer, Mr. Jeffrey Kwok, Mr. Nan Liu, Mr. Xian Cong**  
**Jow, Dr. Gerald Jacobs, Mr. Richard Wu and Mr. Khang Tran;**  
**File Nos.: M 4120-3/12-06617, M 4120-3/13-00204, M 4120-3/13-00207, M 4120-3/13-**  
**00211, M 4120-3/13-00221, M 4120-3/13-00224 and M 4120-3/13-00288**

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We act as legal counsel to Swiss International Air Lines Ltd., doing business as SWISS ("SWISS").

Please consider this letter as a Notice of Motion pursuant to section 32 of the Canadian Transportation Agency Rules SOR/2005-35 (the "Agency Rules") to review and rescind or alternatively, re-hear Decision No. 239-C-A-2013 (the "Decision") pursuant to section 32 of the *Canada Transportation Act* S.C. 1996, c.10 (the "Act").

In addition, SWISS seeks a stay of the Decision pursuant to section 29 of the Agency Rules pending the following:

(a) a determination of this motion. In this regard, SWISS seeks a stay of the Decision, including paragraph 82, which requires SWISS to compensate Mr. Alexander Brewer by July 18, 2013 for the expenses specified therein and to allow for the other complainants and accompanying persons to be transported for the same price and in the same class of service as originally booked and between the original points specified by June 18, 2014. SWISS seeks any interim stays that may be necessary in order to allow the Agency the opportunity to hear and determine this Notice of Motion; and

(b) the disposition of an application for leave to appeal and, if leave is granted, an appeal to the Federal Court of Appeal in respect of the Decision pursuant to section 41 of the Act.

The facts, relief sought and the grounds for seeking the relief are set forth below.

## **OVERVIEW**

SWISS seeks a review and rescission of the Decision, or alternatively, a re-hearing on the basis of new facts and circumstances that have arisen since the hearing (in which pleadings closed on March 27, 2013) arising out of SWISS' ongoing investigation of this matter. In particular, SWISS submits that the Agency should review its Decision in order to consider further facts surrounding the mistaken air fares issued by the International Air Transportation Association ("IATA") and the Airline Tariff Publishing Company ("ATPCO") and subsequent developments that have occurred in other jurisdictions pertaining to this same issue. The new facts and circumstances that have arisen are critically important to the disposition of this matter and the interests of justice would best be served by reopening this Decision.

### **1. GROUNDS**

#### **(A) Review, Rescission of Decision and Re-Hearing**

Section 32 of the Act provides as follows:

The Agency may review, rescind or vary any decision or order made by it or may re-hear any application before deciding it if, in the opinion of the Agency, since the decision or order or the hearing of the application, there has been a change in the facts or circumstances pertaining to the decision, order or hearing.

In *Chandler v. Alberta Association of Architects*, (1989) 2 S.C.R. 848 [TAB 1], the Supreme Court of Canada held that justice may require the reopening of administrative proceedings in order to provide relief which would otherwise be available on appeal. The Supreme Court stated the following:

As a general rule, once such a tribunal has reached a final decision in respect to the matter that is before it in accordance with its enabling statute, that decision cannot be revisited because the tribunal has changed its mind, made an error within jurisdiction or because there has been a change of circumstances. It can only do so if authorized by statute or if there has been a slip or error within the exceptions enunciated in *Paper Machinery Ltd. v. O.J. Ross Engineering Corp.*, *supra*.

To this extent, the principle of *functus officio* applies. It is based, however, on the policy ground which favours finality of proceedings rather than the rule which was developed with respect to formal judgments of a court whose decision was subject to a full appeal. **For this reason I am of the opinion that its application must be more flexible and less formalistic in respect to the decisions of administrative tribunals which are subject to appeal only on a point of law. Justice may require the reopening of administrative proceedings in order to provide relief which would otherwise be available on appeal.**

Accordingly, the principle should not be strictly applied where there are indications in the enabling statute that a decision can be reopened in order to enable the tribunal to discharge the function committed to it by enabling legislation.

[emphasis added]

The Supreme Court of Canada has held that flexibility is accorded to tribunals in respect to the ability to reopen a decision, particularly where required to do so by the interests of justice and where permitted by the enabling statute. In this instance, both the interests of justice and section 32 of the Act permit a reopening of the Decision by the Agency.

Since the hearing, there has been a change in the facts and circumstances that warrants a review and rescission of the Decision or alternatively, a rehearing. The new facts and circumstances are outlined below and are critically important to the disposition of a decision in this matter. As demonstrated below, the overall interests of justice would best be served by allowing for a reconsideration of this matter.

**(B) Stay**

Section 29 of the Act permits a stay to be granted as follows:

(1) The Agency may, at the request of a party, grant a stay of an order or decision of the Agency

(a) pending the disposition of an application for re-hearing or a review in respect of that order or decision under section 32 of the Act;

(b) pending the disposition of a petition to the Governor in Council in respect of that order or decision under section 40 of the Act;

(c) pending the disposition of an application for leave to appeal and, if leave is granted, an appeal to the Federal Court of Appeal in respect of that order or decision under section 41 of the Act.

(2) A person who files a request under subsection (1) shall serve a copy of the request on the other parties to the proceeding.

It is submitted that it is just and reasonable for a stay of the Decision to be granted pending this application and pending leave to appeal to the Federal Court of Appeal.

**2. NEW FACTS AND CIRCUMSTANCES**

For the purpose of the original proceeding, the only information requested of SWISS by way of letter dated February 27, 2013 from the Canadian Transportation Agency (the "Agency") was the following:

A detailed explanation of the technical incident that led to the air fares in question being made available to the various travel agencies used by the complainants when purchasing the tickets that were subsequently cancelled.

While a request was made by the Agency for the specific information outlined above for the purpose of the hearing, there are other facts and circumstances pertaining to the Decision that have arisen due to the ongoing investigation of this matter by SWISS and that are germane to the issues. These facts and circumstances are set forth below:

**(A) Mistaken Air Fare**

As noted by the Agency in the Decision, the complainants purchased a total of 15 one-way, First Class<sup>1</sup> multi-segment tickets for travel from Yangon (aka Rangoon), with Montreal as the ultimate destination. The tickets were purchased from Expedia or Travelocity (online travel agents) for a cost of approximately US \$115.00 (excluding taxes, fees and international surcharges).

It is clear that the tickets at issue in this proceeding were issued on the basis of an erroneous fare. Indeed, the correct one-way First Class fare for such a trip is calculated by IATA as approximately US \$15,102.00 (excluding taxes, fees and international surcharges), depending on the itinerary selected between Myanmar and Montreal.

Since the hearing and through its ongoing investigation of this matter, SWISS has learned that the mistaken air fares were well published on travel blogs and readily accessible to international air travellers. SWISS has specifically learned that the complainant, Jeffrey Kwok, who is an experienced frequent flier of international airlines wrote two internet posts dated June 3, 2013 and June 7, 2013 (both after the hearing of the Decision), which demonstrates his understanding of mistaken air fares, and indeed, his desire to publish them in order that other travellers can unfairly benefit from such mistaken fares to the detriment of the air carriers. This is demonstrated through an excerpt from the blog (BoardingArea online: <http://boardingarea.com/canadian-kilometres/?s=mistake>), as attached [TAB 2]. In particular Jeffrey Kwok states, in part, as follows on June 3, 2013:

For those who want to know why I posted those mistake fares, here's what I think.

**A mistake fare is clearly mispriced, so that any employee for the airline who is fairly intelligent enough will notice and notify a superior or get it fixed.** That's why

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<sup>1</sup> In certain circumstances, it is possible that a passenger could travel in business class on one or more legs of their itinerary. Transportation in business class, however, was only possible when the aircraft at issue was not configured in a three-class model where separate seats for first class passengers were available.

whenever I have a post of this type, I ask you not to call the airlines/hotels/company. Does it mean that calling the airline will get the fare fixed? No. But it means that it raises the likelihood that the fare will be discovered and noticed.

(emphasis added)

On June 17, 2013, Jeffrey Kwok posted the following:

There is a misfiled one-way fare (seems like they left off a digit) from Johannesburg to Geneva/Zurich via Istanbul, in business class! Book with united.com (not an affiliate link, thanks for your support!).

**DO NOT CALL THE AIRLINES!** Please comment below on the post if you have any questions. **Also remember that with all these fares, there is an inherent risk of the airline cancelling the fares.** Be very careful about purchasing non-refundable travel expenses including hotels and positioning flights. I TAKE NO LIABILITY IF ANY MISHAP OCCURS AND **I POST THIS BECAUSE I WANT PEOPLE TO BENEFIT. AGAIN, DO NOT CALL THE AIRLINES!**

(emphasis added)

Through his postings, Kwok acknowledges not only that a mistaken fare is clearly mispriced but encourages others not to call the airlines in order to take advantage of such mistakes. That Kwok knows these fares are mistaken is also evident in his acknowledgement that, "there is an inherent risk of the airline cancelling the fares".

There is no question that the particular fare in the present situation was a mistake and that this was made clear by way of blogs published on September 27, 2012 when a popular airline travel blog "Boarding Area" published a posting entitled "**Mistake Fare-One Way First Class originating in Myanmar is Back!**" (BoardingArea online: <http://boardingarea.com/viewfromthewing/2012/09/27/mistake-fare-one-way-first-class-originating-in-myanmar-is-back/>). [TAB 3] The blog posting stated, in part,:

It appears [passengers can] fly between Yangon (RGN) and cities in Eastern Canada for under \$600, Here's business class on ANA from Yangon to Tokyo and then continuing on in Swiss first class to Zurich and then JFK, with American (economy) up to Montreal.

Below the above text was a sample itinerary that depicted two legs, Tokyo-Zurich and Zurich-New York, on SWISS.

As is the case with the complainant, Jeffrey Kwok, it is readily apparent from the title and context of the blog that the author of this blog intended to take advantage of SWISS by encouraging readers to book a "mistake fare". Importantly, the only way for a passenger to book this fare was to select Rangoon,

Myanmar as their origin and Montreal, Canada as their destination; any other origin or destination would not allow the passenger to book the erroneous fare.

Through its ongoing investigation of this matter, SWISS has discovered that almost all the affected tickets were purchased between September 27, 2012 and September 28, 2012. **Virtually all of the complainants in this proceeding, as well as the other passengers that have filed similar formal and informal complaints, booked their tickets on September 28, 2012, the day after the Blog was posted.** The only inference that can be drawn from this is that the purchase of the mistaken air fare tickets resulted from the "Boarding Area" blog posting and from other blogs that linked to it. In other words, the purchasers moved with haste to snap up the mistaken air fares once they became known on the travel blogs and in doing so took advantage of a known mistake.

In contrast to the current period at issue, SWISS has learned that from September 2011 to August 2012, it only sold 17 tickets from Yangon/Rangoon to any destination in the world. Of those 17 tickets, only two were sold for travel to Montreal. There were zero bookings made in First Class from Rangoon to Montreal in the year preceding the incident. In contrast, during the period of time relevant to this case in which the erroneous air fare was available, approximately 1000 passengers booked one-way First Class travel from Rangoon to Montreal on SWISS' ticket stock (SWISS did not issue the tickets itself, but rather the online travel agents automatically issued the ticket on SWISS ticket stock) or on a leg of travel involving SWISS through use of its interline partners.

As openly acknowledged by the complainant Kwok in his blogs posted after the hearing, mistaken air fares are frequently published in order to alert frequent fliers to these fares while at the same time acknowledging that these are clearly mistaken air fares as evidenced by the comments that, "they can be cancelled" or "do not call the airlines". The postings by Kwok and others bloggers and the fact that almost all of the affected tickets were purchased between September 27, 2012 and September 28, 2012<sup>2</sup> is confirmation that the fliers who purchased these tickets sought to snap up an offer that they clearly knew was a mistake.

#### **(B) Proceedings In Other Jurisdictions**

Subsequent to the Decision, the Superior Court of New Jersey, USA issued an Order and Letter Opinion on June 20, 2013 (the "New Jersey Decision") [TAB 4] dismissing the claim of a plaintiff against SWISS arising out of almost identical circumstances to the Complainants in this proceeding. A copy of the Order

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<sup>2</sup> While the erroneous fare could have been purchased beginning September 21, 2012, virtually 100% of purchases were made after the September 27, 2012 blog posting was published.

and Letter Opinion are attached. In the New Jersey Decision, the plaintiff had booked a one-way, first/business-class ticket from Rangoon, Myanmar to Montreal on Travelocity. Like the complainants in this proceeding, the plaintiff booked her trip for 1% of the regular fare and substantially less than the standard economy class fare for these flights. It was noted by the Court that a technical error had been made outside the airlines' control. More specifically, at page 2 of the Letter Opinion, it was noted that the Airline Tariff Publishing Company ("ATPCO") made a technical error which resulted in an erroneous one-way, first class fare from RGN to YUL being made available online for consumers to purchase beginning September 21, 2012. As to the circumstances surrounding the technical error, the Court accepted the following facts based on the trial testimony:

On September 10, 2012, IATA issued a list of fares to ATPCO for air transportation that included fares from Rangoon, Myanmar (RGN) to Montreal, Canada (YUL). ATPCO distributed the list of fares to OTA's. However, when it did so, it made a technical error which resulted in an erroneous one-way, first class fare from RGN to YUL being made available online for consumers to purchase beginning September 21, 2012. The fare was only available for one-way, first class travel originating in RGN and terminating in YUL, but itineraries could be booked through numerous intermediary points and on different carriers. SWISS was only to provide the transportation for several legs of the trip.

The first-class fare at issue was sold to Riley for approximately \$135.00 USD (excluding taxes, fees, and surcharges). The correct fare however, was a minimum of \$15,000 depending on the itinerary that was selected between Myanmar and Montreal. The fare was only available when a passenger selected Rangoon, Myanmar as their origin and Montreal, Canada as their destination. Any other origin or destination would not allow the passenger to book that fare.

SWISS learned of the mistake sometime during the evening of September 27, 2012. Early the next morning, SWISS contacted ATPCO when it first opened for business and instructed ATPCO to immediately delete the fare as an option. By 11:00 AM (EDT) on September 28, 2012, the fare had been removed by all OTA's. According to the trial testimony of a SWISS representative, despite SWISS' efforts, over 1,000 erroneously priced tickets were purchased between September 27 and 28, 2012.

In determining whether SWISS had the contractual right to cancel any ticket issued with an erroneously quoted fare, the New Jersey Court held that the cancellation of the ticket by SWISS was permissible under Rule 5(f) of its tariff. Importantly, the Court also considered the law of mistake and ruled that rescission of a contract is allowed where there has been a mistake by one party provided certain elements are present (see page 5 of the Opinion). In this respect, the Court stated:

It is uncontroverted that the price of the ticket is a material term of the contract between SWISS and its passengers. Here, a mistake was made by third-party without SWISS' knowledge or consent. Once SWISS learned of the mistake, it took immediate action to cancel the fare and rectify the error. SWISS argues that allowing Riley to pay 1% of the

actual fare would be unconscionable. SWISS argues that by refusing its gesture of goodwill to transport her from Switzerland to New York free of charge and instead purchasing a third-party ticket in first-class, Ms. Riley created her own alleged "damages". As a result, SWISS contends that all Riley lost was the "bargain" she never should have had in the first place.

The Court concluded that, **"It is clear that the fare that was temporarily available online was erroneous and under the tariff, Swiss had the right to cancel all the tickets purchased for the RGN to YUL flights"**.

(emphasis added)

SWISS is aware of other USA Courts in the District of Columbia, Texas, and Virginia which have dismissed passenger claims on this issue without issuing a formal opinion.

A further claim based on similar facts was also dismissed by the Subordinate Court of the Republic of Singapore, Small Claims Tribunal. See attached Order of the Tribunal. **[TAB 5]**

**(C) Economic Consequences to SWISS**

An ongoing review of this matter by SWISS indicates that the economic consequences to SWISS of allowing for the reinstatement of the mistaken air fare tickets is of significant magnitude given the total number of tickets issued. This is altogether apart from the claims of these particular complainants.

SWISS took immediate steps to rectify the mistaken air fare once it discovered the technical error. As indicated above, however, at least 1000 tickets were issued at the mistaken fare in a matter of 48 hours. In particular, on September 27, 2012 at 10:24 PM (EDT), SWISS' Head of Corporate Communications/USA received an unsolicited email from a Lufthansa Group frequent flyer that advised her of the blog posting. She immediately contacted SWISS' corporate headquarters in Zurich regarding the issue. At approximately 8:45 AM (EDT) on September 28, 2012, SWISS contacted ATPCO when it first opened for business and instructed ATPCO to immediately remove the fare. Once ATPCO had been notified of this technical failure, SWISS took additional measures to notify other outlets through which its services are sold. The fare was removed by ATPCO at 10:06 AM (EDT) on September 28, 2012. By 11:00 AM (EDT) on September 28, 2012, the fare had been removed by all OTA's. The time between when SWISS learned of the fare and the fare's cancellation was less than 12 hours. There is no question that SWISS acted with haste in correcting the error once discovered.

As indicated earlier, of the 1000 tickets that were issued based on the erroneous fare, approximately 800 were issued on SWISS ticket stock (SWISS did not issue the tickets itself, but rather the OTA



automatically issued the ticket on SWISS ticket stock). The remaining passengers who purchased an erroneous fare were ticketed on the ticket stock of one of SWISS' interline partners.

SWISS does not typically sell tickets for the routing at issue here, or any tickets from Myanmar whatsoever for that matter. It does not offer this route on its website, nor does it list Rangoon, as a destination to which it operates.

In terms of specific pricing, the erroneous fare was sold by various OTA's for approximately US \$115.00. (excluding taxes, fees and international surcharges).<sup>3</sup> The correct one-way fare for such a trip is typically US \$15,102.00 (also excluding taxes, fees and international surcharges), depending on the itinerary that was selected between Myanmar and Montreal). This represents approximately 1% of the correct fare. The result of this pricing error was that the fare was approximately 25 times lower than fares paid by passengers who travelled in economy on the same flights and 100 times lower than the typical first class fare (US \$15,102.00).

A reinstatement of approximately 1000 tickets at an average fare of US \$15,102.00 will cost US \$15,102,000.00 and will have significant consequences to the viability of SWISS. Since the Decision was rendered, Swiss continues to receive a multitude of requests in the nature of the attached e-mail from fliers requesting reinstatement of the First Class ticket. [TAB 6]

In addition to these significant monetary losses, reinstating the erroneously priced tickets will cause further harm to SWISS via its frequent flier program, Miles & More. Generally, passengers receive frequent flier miles based on the number of miles traveled and, in most cases, first class travelers receive three times the number of miles traveled. On the itineraries at issue, the number of frequent flier miles awarded can be quite substantial. For instance, on the common RGN-NRT-ZRH-JFK-YUL itinerary, a first class passenger could be awarded up to 40,000 frequent flier miles. These miles could then be redeemed by consumers for additional free or deeply discounted airfare, thus resulting in further damage to SWISS. Accordingly, not only would reinstatement of these erroneous fare tickets require SWISS to fly each of the complainants half way around the world in first class accommodations for 25 times less than the typical price for an economy ticket, SWISS would additionally have to provide each complainant with the equivalent of a one way transatlantic flight for free.

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<sup>3</sup> These figures represent the base fare paid by consumers, excluding taxes, and carrier-imposed surcharges. While the actual amount paid by consumers and subsequently refunded by SWISS is greater than the base fare in all cases, the taxes, fees, and surcharges charged to a passenger are done so on a case-by-case basis, depending on the passenger's selected itinerary (i.e., different countries charge different amounts). Accordingly, SWISS has elected to highlight the base fare paid by consumers to give the Agency an "apples to apples" comparison of the fare paid versus the correct fare.

**3. REOPENING OF DECISION BY TRIBUNAL**

Given the international scope and multi-jurisdictional nature of this matter and the implications to those parties affected, it is submitted that consideration must be given by the Agency to the principles of international comity. In other words, given that there are rulings occurring in other jurisdictions (such as the New Jersey Decision, claims before other USA courts and Singapore) on essentially the same set of facts, it is submitted that the Agency should reopen this Decision in order to consider all issues, including the legal and equitable doctrines of contract and mistake. This will allow for consistency in the analysis surrounding this matter and ensure that complainants are not simply engaging in forum shopping on what may be perceived to be the most favourable jurisdiction. For example, one specific passenger, Tim Jacobi, has simultaneously filed claims in the Texas State Courts as well as before the CTA. The Texas Court dismissed the claim of Tim Jacobi.

Furthermore, it is submitted that the Agency should consider section 5 of the Act in which it is declared that Canadian National Transportation Policy should give effect to enabling a competitive, economic and efficient national transportation system that benefits all parties involved, including Canadians. In this regard, it is again important to consider the competitive nature of the air transportation industry and the effect that rulings in different jurisdictions may have on this matter, particularly where rulings are favourable to SWISS in the USA but not favourable to SWISS in Canada on essentially the same set of facts.

In order to consider this matter fully, it is submitted that the Agency needs to consider the new facts and circumstances, together with the equitable and legal doctrines associated with the law of contract and that of mistake.

The contractual relationship between every air carrier and each of its passengers is governed by the "contract of carriage" which consists of the passenger's ticket, the carrier's Conditions of Carriage, and the carrier's tariff.

The fare purchased was clearly erroneous. It was not a "discounted" or "sale" fare, nor was it related to the prior currency devaluation in Myanmar. The fare did not emanate from SWISS and was not marketed or sold by SWISS to consumers. In fact, SWISS had no knowledge of the fare until it was informed on September 28, 2012 by a frequent flyer who had accessed the September 27, 2012 blog. The erroneous fare was sold to the public due to an inadvertent technical failure by ATPCO in ignoring the wording of an IATA issued Memorandum Appendix during the process of electronic fare filing and distribution, all without SWISS knowledge or approval. In other words, the First Class fare on the route in question was

mistakenly loaded into computer reservation systems and global distribution systems by a third party not controlled by SWISS.

The September 27, 2012 internet blog poster clearly understood that an error was involved and headlined the blog as a "mistake fare". That resulted in the apparent immediate targeting of SWISS by predatory consumers taking advantage of the erroneous and mistaken fare. Those bloggers and consumers clearly knew or should reasonably have known about the mistake as a result of the absurdly low First Class fare for the route in question during the period in question (i.e. for a price far lower than the cost of Economy Class travel on the same route).

It is a fundamental principle of the law of contract that in order to have a valid and binding contract, the parties must be *ad idem* on the fundamental terms of the contract (HG Beale, ed, *Chitty on Contracts*, 31st ed (London, UK: Sweet & Maxwell, 2012) at ¶5-076) **[TAB 7]**. To form a binding contract, the parties must have mutual agreement, or a "meeting of the minds" on the essential terms of a contract. Here, SWISS did not intend to sell the ticket for 1% of the actual cost. The fare/price was a fundamental term of the contract and there was no mutual understanding or "meeting of the minds" between the parties as to the correct fare. Thus, no contract ever existed between the parties (*McMaster University v. Wilchar Construction Ltd.*, [1971] 3 OR 801) **[TAB 8]**; (SM Waddams, *The Law of Contracts*, 6th ed (Toronto: Canada Law Book, 2010) at ¶5-076) **[TAB 9]**.

Where a party knows of another's mistake as to material contractual terms there is no reasonable expectation that the contract will be performed. Further, where a party seeks to enforce a contract based on mistake (as in this case), it has been held that to do so is unreasonable, unconscionable, unfair and unworthy of contractual protection. (*McMaster University v. Wilchar Construction Ltd.*, [1971] 3 OR 801) **[TAB 8]**; (SM Waddams, *The Law of Contracts*, 6th ed (Toronto: Canada Law Book, 2010) at ¶5-076) **[Tab 9]**

Furthermore, Canadian courts have consistently allowed for the rescission of a contract based on a mistake as to a fundamental term of the agreement. For instance, in *First City Capital Ltd. v. British Columbia Building Corp.*, (1989) 43 B.L.R. 29 (B.C. S.C.) at paras. 31 and 32 **[TAB 10]**, McLachlin, C.J.S.C. (as she then was) stated:

There is also authority for the proposition that rescission may be granted where a party, having an indication that the other party is entering the contract under some serious mistake or misapprehension regarding a fundamental term, either proceeds on a course of wilful ignorance designed to inhibit his own actual knowledge of the other's mistake, or

deliberately sets out to ensure that the other party does not become aware of the mistake: *Taylor v. Johnson* (1983), 57 A.L.J.R. 197 (Aust. H.C.).

**In summary therefore, the equitable jurisdiction of the courts to relieve against mistake in contract comprehends situations where one party, who knows or ought to know of another's mistake in a fundamental term, remains silent and snaps at the offer, seeking to take advantage of the other's mistake. In such cases, it would be unconscionable to enforce the bargain and equity will set aside the contract.**

(emphasis added)

The Supreme Court of Canada has also commented on the equitable jurisdiction of the court and the remedies which can be applied where a unilateral mistake is made. In *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 1 SCR 678) [Tab 11], Justice Binnie, speaking for a unanimous Court, stated:

Rectification is an equitable remedy whose purpose is to prevent a written document from being used as an engine of fraud or misconduct "equivalent to fraud". The traditional rule was to permit rectification only for mutual mistake, but rectification is now available for unilateral mistake (as here), provided certain demanding preconditions are met. Insofar as they are relevant to this appeal, these preconditions can be summarized as follows. Rectification is predicated on the existence of a prior oral contract whose terms are definite and ascertainable. The plaintiff must establish that the terms agreed to orally were not written down properly. The error may be fraudulent, or it may be innocent. **What is essential is that at the time of execution of the written document the defendant knew or ought to have known of the error and the plaintiff did not. Moreover, the attempt of the defendant to rely on the erroneous written document must amount to "fraud or the equivalent of fraud".** The court's task in a rectification case is corrective, not speculative. It is to restore the parties to their original bargain, not to rectify a belatedly recognized error of judgment by one party or the other: (authorities deleted) ... Apart from everything else, a relaxed approach to rectification as a substitute for due diligence at the time a document is signed would undermine the confidence of the commercial world in written contracts.

(emphasis added)

Courts have held that where a purchaser was aware of a seller's mistake and a purchaser snaps up or accepts an offer, then the contract will not be enforceable. In such instances, the contract will be void. (See *Belle River Community Arena Inc. v. WICK Kaufmann Co. Ltd. et al*, [1978] ON No. 3451) [TAB 12] In the current instance, that is precisely what happened. As indicated above, almost all of the 1000 tickets sold occurred in an extremely short period of time between September 27 and 28, 2012, evidencing an aggressive response by savvy air travellers to the blog posting. There can be no dispute that these were mistaken air fares for the following reasons:

- (a) that the RGN-YUL First Class fare was posted at a lower price than the Economy Class fare was evidence of an erroneous fare. Any reasonable traveller (even if they were not a sophisticated frequent traveller) would have known that the air fare was erroneous or a mistake;
- (b) the content of the blogs indicate that there was full knowledge of the mistaken fare;
- (c) that the purchasers moved with such haste in purchasing the mistaken air fare tickets between September 27 and 28, 2012 is indicative of the purchasers seeking to take advantage of the mistake; and
- (d) during the previous year from September 2011 to August 2012, only 17 tickets were sold by SWISS from Yangon/Rangoon to any destination in the world, and of those there were no bookings in First Class.

The entire amount paid by the complainants to SWISS was refunded immediately, inclusive of all taxes and fees. Thus, the parties have been returned to the *status quo*. As a result, all the complainants have lost was the "bargain" they should have never had. To allow the complainants to enforce the air tickets would mean that they would be unjustly enriched, to the extreme detriment of SWISS given the number of tickets involved. Further, it would allow for the enforcement of a contract based on a mistaken term, which the Courts have found to be unfair, unconscionable and unworthy of protection.

#### **4. RELIEF SOUGHT**

Based on the grounds and new facts and circumstances set forth above, SWISS seeks the following:

- (a) A rescission of the Decision;
- (b) Dismissal of the Complaints; or
- (c) Alternatively, a rehearing of the Decision to take into consideration the new facts and circumstances and to allow for SWISS to put forward further evidence in this regard.

We would be pleased to provide you with any further information required in relation to this matter.

Yours truly,  
**DAVIS LLP**

Per:



Heather L. Treacy, Q.C.,  
Partner  
HLT:am

cc: Laura Safran, Q.C.  
Davis LLP

Swiss International Airlines Ltd.  
**Attention:** Marie D'Amico ([mariedamico@swiss.com](mailto:mariedamico@swiss.com))

Mr. Alexander Brewer ([alexbrewer@gmail.com](mailto:alexbrewer@gmail.com))

Mr. Jeffrey Kwok ([kwokjeff@outlook.com](mailto:kwokjeff@outlook.com))

Mr. Nan Liu ([chrisnliu@yahoo.com](mailto:chrisnliu@yahoo.com))

Mr. Xian Cong Jow ([J\\_X\\_C@hotmail.com](mailto:J_X_C@hotmail.com))

Dr. Gerald Jacobs ([gerald\\_jacobs@yahoo.com](mailto:gerald_jacobs@yahoo.com))

Mr. Richard Wu ([coolfish1103@gmail.com](mailto:coolfish1103@gmail.com))

Mr. Khang Tran ([tran.khang@gmail.com](mailto:tran.khang@gmail.com))

Enclosure

**TAB 1**

*Indexed as:*

**Chandler v. Alberta Association of Architects**

**IN THE MATTER of an application for an order for  
prohibition;  
AND IN THE MATTER of the Architects Act, being chapter A-44.1  
of the Revised Statutes of Alberta, 1980, as amended;  
AND IN THE MATTER of the Practice Review Board of the Alberta  
Association of Architects**

**Sheldon Harvey Chandler, S.H. Chandler Architect Ltd.,  
Gordon Gerald Kennedy, G.G. Kennedy Architect Ltd., Brian  
William Kilpatrick, Brian W. Kilpatrick Architect Ltd., Peter  
Juergen Dandyk and Peter J. Dandyk Architect Ltd., appellants;**

**v.**

**Alberta Association of Architects, the Practice Review Board  
of the Alberta Association of Architects, Trevor H. Edwards,  
James P.M. Waugh and Mary K. Green, respondents.**

**[1989] 2 S.C.R. 848**

[1989] S.C.J. No. 102

1989 CanLII 41

File No.: 19722.

Supreme Court of Canada

1989: January 30 / 1989: October 12.

**Present: Dickson C.J. and Wilson, La Forest, L'Heureux-Dubé  
and Sopinka JJ.**

ON APPEAL FROM THE COURT OF APPEAL FOR ALBERTA

*Administrative law -- Boards and tribunals -- Jurisdiction -- Continuation of original proceedings -- Functus officio -- Inquiry into the practices of a firm of architects -- Board conducting a valid hearing but issuing ultra vires findings and orders -- Board's findings and orders quashed -- Board failing to consider whether it should make recommendations as required by legislation -- Whether Board empowered to continue original proceedings -- Architects Act, R.S.A. 1980, c. A-44.1, s. 39(3) -- Alberta Regulation, 175/83, s. 11(1).*

Pursuant to s. 39 of the Architects Act, the Practice Review Board of the Alberta Association of Architects conducted a hearing to review the practices of a firm of [page849] architects which went bankrupt and issued a report. Although the



hearing was intended to be a practice review, the Board, in its report, made 21 findings of unprofessional conduct against the firm and six of the architects, levied fines, imposed suspensions and ordered them to pay the costs of the hearing. The Court of Queen's Bench allowed appellants' application for certiorari and quashed the Board's findings and orders. The Court of Appeal upheld the decision holding that the Board lacked jurisdiction to make findings or orders relating to disciplinary matters or costs. Under s. 39(3) of the Act, the Board is simply responsible for reporting to the Council of the Alberta Association of Architects and for making appropriate recommendations.

The Board notified the appellants that it intended to continue the original hearing to consider whether a further report should be prepared for consideration by the Council and whether the matter should be referred to the Complaint Review Committee. The Court of Queen's Bench allowed appellants' application to prohibit the Board from proceeding further in the matter. The court found that the Board had completed and fulfilled its function and that it was therefore *functus officio*. The Court of Appeal vacated the order of prohibition. It held that s. 39(3) of the Act and s. 11(1) of the Regulations require the Board to consider whether or not to make recommendations to the Council or the Complaint Review Committee. The Board did not do so and therefore did not exhaust its jurisdiction.

Held (La Forest and L'Heureux-Dubé JJ. dissenting): The appeal should be dismissed.

Per Dickson C.J. and Wilson and Sopinka JJ.: The Board was not *functus officio*. As a general rule, once an administrative tribunal has reached a final decision in respect of the matter that is before it in accordance with its enabling statute, that decision cannot be revisited because the tribunal has changed its mind, made an error within jurisdiction or because there has been a change of circumstances. It can only do so if authorized by statute or if there has been a slip in drawing up the decision or there has been an error in expressing the manifest intention of the tribunal. To this extent, the principle of *functus officio* applies to an administrative tribunal. It is based, however, on the policy ground which favours finality of proceedings rather than on the rule which was developed with respect to formal judgments of a court whose decision was subject to a full appeal. Its application in respect to administrative tribunals [page850] which are subject to appeal only on a point of law must thus be more flexible and less formalistic.

Here, the Board failed to dispose of the matter before it in a manner permitted by the Act. The Board conducted a hearing into the appellants' practices but issued findings and orders that were *ultra vires*. The Board erroneously thought it had the power of the Complaint Review Committee and proceeded accordingly. It did not consider making recommendations as required by the Regulations and s. 39(3) of the Act. While the Board intended to make a final disposition of the matter before it, that disposition was a nullity and amounted in law to no disposition at all. In these circumstances, the Board, which conducted a valid hearing until it came to dispose of the matter, should be entitled to continue the original proceedings to consider disposition of the matter on a proper basis. On the continuation of the original proceedings, however, either party should [page851] be allowed to supplement the evidence and make further representations which are pertinent to disposition of the matter in accordance with the Act and Regulations.

Per La Forest and L'Heureux-Dubé JJ. (dissenting): When an administrative tribunal has reached its decision, it cannot afterwards, in the absence of statutory authority, alter its award except to correct clerical mistakes or errors arising from an accidental slip or omission. In this case, the Board was *functus officio* when it handed down its decision. Its function was completed when it rendered its final report. The fact that the original decision was wrong or made without jurisdiction is irrelevant to the issue of *functus officio*.

If the Board had discretion to consider making recommendations, and chose not to do so, it should be the end of the matter. There is no authority in the Act that permits the Board to change its mind on its own initiative. Furthermore, once a board acts outside its jurisdiction it should not be allowed to rectify the infirmities of its disposition according to its own predilections. Standards of consistency and finality must be preserved for the effective development of the complex administrative tribunal system in Canada. Either a Board is compelled to act in a prescribed manner, or it is prohibited from so acting. Allowing the Board to reopen the hearing, without an explicit provision in the enabling statute, would create considerable confusion in the law relating to powers of administrative tribunals to rehear or redetermine matters. Finally, as a general rule, a tribunal should not be allowed to reserve the exercise of its remaining powers for a later date. The Board could not attempt to retain jurisdiction to make recommendations once it had made a final order, as the parties would never have the security of knowing that the decision rendered has finally determined their respective rights in the matter.

If the Board had a duty to consider making recommendations which it failed to fulfill, it could, depending on the circumstances of the case, be directed to review the entire matter afresh, and could be required to conduct a new hearing. Any re-examination, however, should not be construed as a "continuation of the Board's original proceedings". It would set a dangerous precedent in expanding the powers of administrative tribunals beyond the wording or intent of the ena-

bling statute. It would also erode the protection of fairness and natural justice which is expected of administrative tribunals. In the particular circumstances of this case, a rehearing would not be appropriate.

The Court of Appeal erred in applying the principles of mandamus to the present situation.

### Cases Cited

By Sopinka J.

Referred to: *In re St. Nazaire Co.* (1879), 12 Ch. D. 88; *Paper Machinery Ltd. v. J. O. Ross Engineering Corp.*, [1934] S.C.R. 186; *Huneault v. Central Mortgage and Housing Corp.* (1981), 41 N.R. 214; *Re Trizec Equities Ltd. and Area Assessor Burnaby-New Westminster* (1983), 147 D.L.R. (3d) 637; *Ridge v. Baldwin*, [1964] A.C. 40; *Lange v. Board of School Trustees of School District No. 42 (Maple Ridge)* (1978), 9 B.C.L.R. 232; *Posluns v. Toronto Stock Exchange*, [1968] S.C.R. 330; *Grillas v. Minister of Manpower and Immigration*, [1972] S.C.R. 577.

By L'Heureux-Dubé J. (dissenting)

*Re V.G.M. Holdings, Ltd.*, [1941] 3 All E.R. 417; *Re Nelsons Laundries Ltd. and Laundry, Dry Cleaning and Dye House Workers' International Union, Local No. 292* (1964), 44 D.L.R. (2d) 463; *Lewis v. Grand Trunk Pacific Railway Co.* (1913), 13 D.L.R. 152; *M. Hodge and Sons Ltd. v. Monaghan* (1983), 43 Nfld. & P.E.I.R. 162; *Huneault v. Central Mortgage and Housing Corp.* (1981), 41 N.R. 214; *Lodger's International Ltd. v. [page852] O'Brien* (1983), 45 N.B.R. (2d) 342; *Slaight Communications Inc. v. Davidson*, [1985] 1 F.C. 253 (C.A.), *aff'd* [1989] 1 S.C.R. 1038; *Grillas v. Minister of Manpower and Immigration*, [1972] S.C.R. 577; *Cité de Jonquière v. Munger*, [1964] S.C.R. 45; *Re Trizec Equities Ltd. and Area Assessor Burnaby-New Westminster* (1983), 147 D.L.R. (3d) 637; *Lange v. Board of School Trustees of School District No. 42 (Maple Ridge)* (1978), 9 B.C.L.R. 232; *Canadian Industries Ltd. v. Development Appeal Board of Edmonton* (1969), 71 W.W.R. 635; *Karavos v. Toronto*, [1948] 3 D.L.R. 294.

### Statutes and Regulations Cited

Alberta Regulation, 175/83, s. 11.

Architects Act, R.S.A. 1980, c. A-44.1, ss. 9(1)(j.1) [ad. 1981, c. 5, s. 6], 39 [am. 1981, c. 5, s. 16].

Labour Relations Code, S.A. 1988, c. L-1.2, s. 11(4).

National Telecommunications Powers and Procedures Act, R.S.C., 1985, c. N-20 [formerly National Transportation Act], s. 66.

Ontario Municipal Board Act, R.S.O. 1980, c. 347, s. 42.

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Black's Law Dictionary, 5th ed. St. Paul, Minn.: West Publishing Co., 1979, "functus officio".

Jowitt's Dictionary of English Law, 2nd ed. By John Burke. London: Sweet & Maxwell, 1977, "functus officio".

Pépin, Gilles et Yves Ouellette. *Principes de contentieux administratif*, 2e éd. Cowansville, Qué.: Éditions Yvon Blais Inc., 1982.

APPEAL from a judgment of the Alberta Court of Appeal (1985), 67 A.R. 255, allowing respondents' appeal from a decision of the Court of Queen's Bench [Alta. Q.B., No. 8501-19113, October 8, 1985 (Brennan J.)], granting appellants' application for an order for prohibition against the Practice Review Board. Appeal dismissed, La Forest and L'Heureux-Dubé JJ. dissenting.

W.E. Code, Q.C., and B.G. Kapusianyk, for the appellants. No one appearing for the respondents.

Solicitors for the appellants: Code Hunter, Calgary.

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The judgment of Dickson C.J. and Wilson and Sopinka JJ. was delivered by

**1 SOPINKA J.:**-- The issue in this appeal is whether the Practice Review Board of the Alberta Association of Architects was functus officio after delivering a report on the practices leading to the bankruptcy of the Chandler Kennedy Architectural Group. The Alberta Court of Appeal allowed an appeal from the decision of the Alberta Court of Queen's Bench granting the appellants' application for an order prohibiting the Practice Review Board from proceeding on the grounds that the Board no longer had jurisdiction to deal with the matter and was functus officio.

#### Facts

**2** As a result of the Chandler Kennedy Architectural Group filing for voluntary insolvency in June 1984, the Practice Review Board of the Alberta Association of Architects decided on its own initiative pursuant to s. 39(1)(b) of the Architects Act, R.S.A. 1980, c. A-44.1, to undertake a review of the practice of the Group and a number of the individual members of the Group. Hearings were commenced on August 14, 1984 and continued for a total of eighteen days. Final submissions were heard on December 17, 1984 and the report of the Board was issued on March 6, 1985.

**3** The 71-page report made 21 specific findings of unprofessional conduct against the firm and several of the partners. Fines totalling \$127,500 were imposed upon six members of the firm. The same six partners were also issued suspensions from practicing architecture for periods from six months to two years. As well, the appellants were required to pay the costs of the hearing, approximating \$200,000.

#### Proceedings in the Courts Below

**4** The appellants filed notice of intention to appeal the decision of the Board to the Council of the Alberta Association of Architects pursuant to s. 55 [page854] of the Architects Act. However, prior to the commencement of the appeal, the appellants brought an application before the Alberta Court of Queen's Bench for an order in the nature of certiorari to quash the findings and order of the Practice Review Board. Kryczka J. granted the order requested and held that the failure to inform the appellants that they were facing any charges or allegations of unprofessional conduct offended the principles of natural justice. Kryczka J. held that the comments of the Chairman of the Board clearly indicated that the hearings were intended to be a practice review rather than an inquiry into allegations of unprofessional conduct.

**5** This decision was appealed by the Alberta Association of Architects to the Alberta Court of Appeal. In the Court of Appeal (1985), 39 Alta. L.R. (2d) 320, Prowse J.A. speaking for the court, upheld the decision of Kryczka J. but on different grounds. Prowse J.A. held that the Practice Review Board lacked jurisdiction to make findings or orders relating to disciplinary matters or costs. Disciplinary powers were said to be reserved for another body within the Alberta Association of Architects, the Complaint Review Committee. Under s. 39(3) of the Architects Act the Board is simply responsible for reporting to the Council and making whatever recommendations it feels are appropriate. Therefore, the Court of Appeal dismissed the appeal on the grounds that the Architects Act did not give to the Board the powers it purported to exercise.

**6** A month after the decision of the Court of Appeal, the Practice Review Board gave notice to the appellants that it intended to continue the original hearing in order that consideration could be given to preparing a further report to the Council of the Alberta Association of Architects and consideration could also be given to referring the matter to the Complaint Review Committee.

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**7** The appellants then brought an application before the Court of Queen's Bench to prohibit the Board from proceeding further with the continuation of the matter. Brennan J. held that the Board had completed and fulfilled the function for which it was constituted and it was therefore functus officio and lacked jurisdiction to continue its hearing. This decision was also appealed to the Alberta Court of Appeal.

**8** The Court of Appeal (1985), 67 A.R. 255 allowed the appeal and vacated the order of prohibition. Kerans J.A. for the court held that s. 39(3) of the Architects Act and Regulation 175/83, s. 11(1) impose on the Board the duty to consider whether or not to make a recommendation. Kerans J.A. held that the Board did not consider whether to make a recommendation that the matter be referred to the Complaint Review Committee and therefore it did not exhaust its jurisdiction. Functus officio was held not to apply here as there was a failure to consider matters which were part of the Board's statutory duty. It is from this decision that the present appeal arises.

## Statutory Powers of the Board

9 In order to determine whether the Board was empowered to continue its proceedings against the appellants it is necessary to examine the statutory framework within which it operates. The Act does not purport to confer on the Board the power to rescind, vary, amend or reconsider a final decision that it has made. Such a provision is not uncommon in the enabling statutes of many tribunals. See Labour Relations Code, S.A. 1988, c. L-1.2, s. 11(4); Ontario Municipal Board Act, R.S.O. 1980, c. 347, s. 42; and National Telecommunications Powers and Procedures Act, R.S.C., 1985, c. N-20, s. 66 (formerly the National Transportation Act). It is therefore necessary to consider (a) whether it had made a final decision, and (b) whether it was, therefore, *functus officio*.

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10 The Board on its own initiative launched an inquiry into the practices of the appellants pursuant to s. 39 of the Act which provides:

### 39(1) The Board

- (a) shall, on its own initiative or at the request of the Council, inquire into and report to and advise the Council in respect of
  - (i) the assessment of existing and the development of new educational standards and experience requirements that are conditions precedent to obtaining and continuing registration under this Act,
  - (ii) the evaluation of desirable standards of competence of authorized entities generally,
  - (iii) any other matter that the Council from time to time considers necessary or appropriate in connection with the exercise of its powers and the performance of its duties in relation to competence in the practice of architecture under this Act and the regulations, and
  - (iv) the practice of architecture by authorized entities generally,
- and
- (b) may conduct a review of the practice of an authorized entity in accordance with this Act and the regulations.

- (2) A person requested to appear at an inquiry under this section by the Board is entitled to be represented by counsel.
- (3) The Board shall after each inquiry under this section make a written report to the Council on the inquiry and may make any recommendations to the Council that the Board considers appropriate in connection with the matter inquired into, with reasons for the recommendations.
- (4) If it is in the public interest to do so, the Council may direct that the whole or any portion of any inquiry by the Board under this section shall be held in private.

11 It is apparent that s. 39 does not deal with discipline but rather with practices in the profession with a view to their improvement. If, however, in the course of the inquiry into practices it appears to the Board that a matter may require investigation by the Complaint Review Committee, provision is made for referral of that matter to that Committee. Section 9(1)(j.1) of the Act empowers the Council to make regulations:

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- (j.1) respecting the powers, duties and functions of the Practice Review Board including, but not limited to, the referral of matters by that Board to the Council or the Complaint Review Committee and appeals from decisions of that Board;

12 Section 11 of Regulation 175/83 passed pursuant to s. 9(1)(j.1) provides as follows:

11(1) The Board may shall [sic] make one or more of the following directions or recommendations:

- (a) make one or more recommendations to the authorized entity or licensed interior designer, the subject of a practice review, respecting desired improvements in the practice reviewed;
- (b) direct that a reviewer conduct a follow-up practice review to determine whether or not the Board's recommendations have been adopted and whether they have resulted in the desired improvements being made in the practice of the entity concerned;
- (c) if it considers any one or more of the following matters to be of a sufficiently serious nature to require investigation by the Complaint Review Committee, direct that the matter be referred to the Complaint Review Committee for investigation:
  - (i) the uncooperative manner of an authorized entity or licensed interior designer in the course of a practice review or a follow up review;
  - (ii) a failure to comply with the Act, Professional Practice Regulation, Code of Ethics, Interior Design Regulation or General By-laws;
  - (iii) a failure to adopt and implement the recommendations respecting desired improvements in the practice of the entity concerned;
  - (iv) any apparent fraud, negligence or misrepresentation, or any disregard of the generally accepted standards of the practice of architecture or practice of licensed interior designers;
- (d) if the Board determines in the course of its practice review that the conduct of an authorized entity or licensed interior designer constitutes
  - (i) unskilled practice of architecture or unprofessional conduct or both, or
  - (ii) unskilled practice of interior design or unprofessional conduct, or both

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the Board shall deal with the matter in accordance with sections 50 to 53 of the Act;

- (e) indicate that it has no recommendations to make or that the practice reviewed is satisfactory;
  - (f) comment on a practice maintained at a high standard and with the consent of the authorized entity or licensed interior designer concerned, publicize the high standard and the persons concerned;
  - (g) take recommendations to the Council with a view to the establishment of new standards related to specific or general areas of the practice of architecture.
- (2) The Board shall not impose any sanction under subsection (1)(d) unless the authorized entity or professional interior designer concerned
- (a) has made representations to the Board, or
  - (b) after a notice under section 42 of the Act has been given, fails to attend the hearing or does not make representations.

13 The Board's inquiry proceeded as an inquiry into practices in accordance with the Act. The following statements made by the Chairman during the course of the inquiry aptly describe the nature of the inquiry:

The first thing that I would like to make very clear and I believe that you alluded to this in the beginning, that this is not a complaint review, this is a practice review, and as a result we are not dealing with a specific case of wrongdoing which I think you are alluding to and you are obviously experienced in the court. We are dealing with a review of the practice of the various authorized entities and that means a total review. So, as a result, the entire course of this Hearing has been to review the total practice. It has not been a process of reviewing specific points. The Board has been concerned to develop a full and as broad an understanding of the practice of the various entities as is humanly possible under the circumstances.

As a result of the review of those authorized entities, it is our responsibility and our duty to make recommendations and to make findings and we of course are going to be doing that following this.

...

Following each and every individual, we have provided an opportunity for questioning. The Board will have to take into consideration all of the evidence that has been put before it and has been spending a great deal of time in making certain it is listening and trying to understand [page859] everything that has taken place. But again, as I said to your counsel, a few minutes ago, this is not a complaint review where we are trying to find fault or guilt on specific complaints. This is a practice review, and as a result we are given the responsibility of trying to review and understand at the fullest extent possible what has taken place, and as a result of the fullest extent of which has taken place, make findings and recommendations to the profession. [Emphasis added.]

14 Nevertheless, when it came to issue directions and recommendations, instead of proceeding under s. 39(3) of the Act as amplified by s. 11(1)(a), (b), (c), (e), (f) or (g) of the Regulation, the Board proceeded under s. 11(1)(d) of the Regulation, a provision that the Court of Appeal in the first appeal held to be ultra vires. The Court of Appeal held that ss. 50 to 53 deal with disciplinary matters which are beyond the competence of the Board. This decision of the Court of Appeal has not been challenged. Accordingly, the result of the decision of the Court of Appeal is that the Board conducted a valid hearing into the appellants' practice but issued findings and orders that were ultra vires and have been quashed.

15 In view of the fact that the Board erroneously thought it had the power of the Complaint Review Committee and proceeded accordingly, it did not consider recommendations under s. 39(3) of the Act or under s. 11(1)(a), (b), (c), (e), (f) or (g), and in particular (c), of the Regulation.

16 Kerans J.A. based his conclusion that the Board was not functus officio on the ground that the Board had a duty to consider whether to make a recommendation. He stated, at p. 257:

While the board has, under s. 39(3) and perhaps also the regulations, a discretion whether to make any recommendation, we think that the section imposes upon the board the duty to consider whether to make a recommendation. The report does not say that the board did so. If the board did not so consider, then, contrary to the finding of the learned Queen's Bench judge, the board has not exhausted its jurisdiction.

17 In view of the inexplicable use of "may/shall" in Regulation 11(1), it is difficult to determine precisely what the Board was obliged to do. Certainly [page860] it would be strange if the Board were empowered to conduct a lengthy practice review and had no duty to consider making recommendations, either to the parties or to Council, or to consider a referral to the Complaint Review Committee. Therefore, I agree with Kerans J.A. that the Board had the duty to consider making recommendations pursuant to the Regulation and s. 39(3) of the Architects Act.

18 I am, however, of the opinion that the application of the functus officio principle is more appropriately dealt with in the context of the following characterization of the current state of the Board's proceedings. The Board held a valid hearing into certain practices of the appellants. At the conclusion of the hearing, in lieu of considering recom-

mentations and directions, it made a number of ultra vires findings and orders which were void and have been quashed. In these circumstances, is the decision of the Board final so as to attract the principle of *functus officio*?

#### Functus Officio

19 The general rule that a final decision of a court cannot be reopened derives from the decision of the English Court of Appeal in *In re St. Nazaire Co.* (1879), 12 Ch. D. 88. The basis for it was that the power to rehear was transferred by the Judicature Acts to the appellate division. The rule applied only after the formal judgment had been drawn up, issued and entered, and was subject to two exceptions:

1. where there had been a slip in drawing it up, and,
2. where there was an error in expressing the manifest intention of the court. See *Paper Machinery Ltd. v. J. O. Ross Engineering Corp.*, [1934] S.C.R. 186.

In *Grillas v. Minister of Manpower and Immigration*, [1972] S.C.R. 577, Martland J., speaking for himself and Laskin J., opined that the same reasoning did not apply to the Immigration Appeal [page861] Board from which there was no appeal except on a question of law. Although this was a dissenting judgment, only Pigeon J. of the five judges who heard the case disagreed with this view. At p. 589 Martland J. stated:

The same reasoning does not apply to the decisions of the Board, from which there is no appeal, save on a question of law. There is no appeal by way of a rehearing.

In *R. v. Development Appeal Board, Ex p. Canadian Industries Ltd.*, the Appellate Division of the Supreme Court of Alberta was of the view that the Alberta Legislature had recognized the application of the restriction stated in the *St. Nazaire Company* case to administrative boards, in that express provision for rehearing was made in the statutes creating some provincial boards, whereas, in the case of the Development Appeal Board in question, no such provision had been made. The Court goes on to note that one of the purposes in setting up these boards is to provide speedy determination of administrative problems.

He went on to find in the language of the statute an intention to enable the Board to hear further evidence in certain circumstances although a final decision had been made.

20 I do not understand Martland J. to go so far as to hold that *functus officio* has no application to administrative tribunals. Apart from the English practice which is based on a reluctance to amend or reopen formal judgments, there is a sound policy reason for recognizing the finality of proceedings before administrative tribunals. As a general rule, once such a tribunal has reached a final decision in respect to the matter that is before it in accordance with its enabling statute, that decision cannot be revisited because the tribunal has changed its mind, made an error within jurisdiction or because there has been a change of circumstances. It can only do so if authorized by statute or if there has been a slip or error within the exceptions enunciated in *Paper Machinery Ltd. v. J. O. Ross Engineering Corp.*, supra.

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21 To this extent, the principle of *functus officio* applies. It is based, however, on the policy ground which favours finality of proceedings rather than the rule which was developed with respect to formal judgments of a court whose decision was subject to a full appeal. For this reason I am of the opinion that its application must be more flexible and less formalistic in respect to the decisions of administrative tribunals which are subject to appeal only on a point of law. Justice may require the reopening of administrative proceedings in order to provide relief which would otherwise be available on appeal.

22 Accordingly, the principle should not be strictly applied where there are indications in the enabling statute that a decision can be reopened in order to enable the tribunal to discharge the function committed to it by enabling legislation. This was the situation in *Grillas*, supra.

23 Furthermore, if the tribunal has failed to dispose of an issue which is fairly raised by the proceedings and of which the tribunal is empowered by its enabling statute to dispose, it ought to be allowed to complete its statutory task.

If, however, the administrative entity is empowered to dispose of a matter by one or more specified remedies or by alternative remedies, the fact that one is selected does not entitle it to reopen proceedings to make another or further selection. Nor will reserving the right to do so preserve the continuing jurisdiction of the tribunal unless a power to make provisional or interim orders has been conferred on it by statute. See *Huneault v. Central Mortgage and Housing Corp.* (1981), 41 N.R. 214 (F.C.A.)

24 In this appeal we are concerned with the failure of the Board to dispose of the matter before it in a manner permitted by the Architects Act. The Board intended to make a final disposition but that disposition is a nullity. It amounts to no disposition at all in law. Traditionally, a tribunal, which makes a determination which is a nullity, has been permitted to reconsider the matter afresh and render a valid decision. In *Re Trizec Equities Ltd.* [page863] and *Area Assessor Burnaby-New Westminster* (1983), 147 D.L.R. (3d) 637 (B.C.S.C.), McLachlin J. (as she then was) summarized the law in this respect in the following passage, at p. 643:

I am satisfied both as a matter of logic and on the authorities that a tribunal which makes a decision in the purported exercise of its power which is a nullity, may thereafter enter upon a proper hearing and render a valid decision: *Lange v. Board of School Trustees of School District No. 42 (Maple Ridge)* (1978), 9 B.C.L.R. 232 (B.C.S.C.); *Posluns v. Toronto Stock Exchange et al.* (1968), 67 D.L.R. (2d) 165, [1968] S.C.R. 330. In the latter case, the Supreme Court of Canada quoted from Lord Reid's reasons for judgment in *Ridge v. Baldwin*, [1964] A.C. 40 at p. 79, where he said:

I do not doubt that if an officer or body realises that it has acted hastily and reconsiders the whole matter afresh, after affording to the person affected a proper opportunity to present its case, then its later decision will be valid.

There is no complaint made by *Trizec Equities Ltd.* with respect to the hearing held on March 19th. Accordingly, while the court exceeded its jurisdiction by purporting to increase the assessments on the morning of March 17, 1982, its subsequent decision of March 19, 1982, stands as valid.

25 If the error which renders the decision a nullity is one that taints the whole proceeding, then the tribunal must start afresh. Cases such as *Ridge v. Baldwin*, [1964] A.C. 40 (H.L.); *Lange v. Board of School Trustees of School District No. 42 (Maple Ridge)* (1978), 9 B.C.L.R. 232 (S.C.B.C.) and *Posluns v. Toronto Stock Exchange*, [1968] S.C.R. 330, referred to above, are in this category. They involve a denial of natural justice which vitiated the whole proceeding. The tribunal was bound to start afresh in order to cure the defect.

26 In this proceeding the Board conducted a valid hearing until it came to dispose of the matter. It then rendered a decision which is a nullity. It failed to consider disposition on a proper basis and [page864] should be entitled to do so. The Court of Appeal so held.

27 On the continuation of the Board's original proceedings, however, either party should be allowed to supplement the evidence and make further representations which are pertinent to disposition of the matter in accordance with the Act and Regulation. This will enable the appellants to address, frontally, the issue as to what recommendations, if any, the Board ought to make.

28 In the result, the appeal is dismissed, but without costs. The respondents neither appeared on the argument nor filed a factum.

The reasons of La Forest and L'Heureux-Dubé JJ. were delivered by

29 L'HEUREUX-DUBÉ J. (dissenting):-- I must respectfully disagree with my colleague Justice Sopinka's disposition of this appeal.

30 The issues which arise in this appeal are:

- (1) Was the Practice Review Board ("Board") of the Alberta Association of Architects functus officio after delivering a report on the practices leading to the bankruptcy of the Chandler Kennedy Architectural Group?



- (2) If the Board was not functus officio, does it have the jurisdiction to continue the original hearing against the appellants to consider making recommendations to the Complaint Review Committee?
- (3) Did the Court of Appeal err in its consideration and application of the principles relating to mandamus?

31 The first two, closely related issues, turn on the construction of s. 39 of the Architects Act, R.S.A. 1980, c. A-44.1, and Regulation 175/83 (passed under authority of the Act), which establish the Board and define its powers.

[page865]

32 Section 39(3) of the Architects Act provides:

(3) The Board shall after each inquiry under this section make a written report to the Council on the inquiry and may make any recommendations to the Council that the Board considers appropriate in connection with the matter inquired into, with reasons for the recommendations.

33 The disputed text is found in Regulation 175/83, s. 11(1):

11(1) The Board may shall [sic] make one or more of the following directions or recommendations:

...

- (c) ... direct that the matter be referred to the Complaint Review Committee for investigation: ...

34 The confusion emanates from the inclusion of both the permissive, discretionary term "may", and the affirmative, mandatory term "shall", without any indication as to which prevails. However, while I shall discuss the implications of both interpretations, in my view the appeal should be allowed on either construction.

(1) Functus Officio

35 When the Board first undertook to reopen the hearing, appellants sought an order for prohibition, which was granted by Brennan J. In granting the order, the chambers judge of the Court of Queen's Bench stated:

Unfortunately, the Practice Review Board proceeded to set itself up as having disciplinary functions and made findings and assessed penalties. Mr. Justice Kryczka declared these Findings and Orders a nullity, which decision was upheld by the Alberta Court of Appeal.

In my view, the Practice Review Board has completed and fulfilled the function for which it was appointed and therefore it is functus officio. Such being the case, it had no jurisdiction to continue with any function. Accordingly, the application is granted for an Order to prohibit the Board from proceeding further against these Applicants, and in particular, the Board is hereby prohibited from proceeding with any further hearings on this matter.

36 This decision was reversed by the Alberta Court of Appeal: (1985), 67 A.R. 255. According to Kerans J.A., for the court, the Board was not [page866] functus officio, and should be allowed to "voluntarily ... do the right thing" (at p. 257):

[T]he board, having mistaken[ly] decided that it had itself the power to deal directly and finally with discipline questions, too quickly rejected any consideration of making recommendations to other bodies. We think that the board, persuaded by its mistaken assumption of these other pow-

ers, made such an egregious error about the significance of its powers of recommendation that it cannot be said that it has exercised that jurisdiction.

37 Jowitt's Dictionary of English Law (2nd ed. 1977) defines *functus officio* as "having discharged his duty"; an expression applied to a judge, magistrate or arbitrator who has given a decision or made an order or award so that his authority is exhausted. The holding of Morton J. in *Re V.G.M. Holdings, Ltd.*, [1941] 3 All E.R. 417 (Ch. D.), is well summarized in the headnote:

Where a judge has made an order for a stay of execution which has been passed and entered, he is *functus officio*, and neither he nor any other judge of equal jurisdiction has jurisdiction to vary the terms of such stay. The only means of obtaining any variation is to appeal to a higher tribunal.

38 An editorial note added that:

This is a practice point. It is well-settled that the court can vary any order before it is passed and entered. After it has been passed and entered, the court is *functus officio*, and can make no variation itself. Any variation which may be made must be made by a court of appellate jurisdiction.

39 Black's Law Dictionary (5th ed. 1979) defines *functus officio* as "a task performed":

Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority. Applied to an officer whose term has expired and who has consequently no further official authority; and also to an instrument, power, agency, etc., which has fulfilled the purpose of its creation, and is therefore of no further virtue or effect.

[page867]

40 The doctrine of *functus officio* states that an adjudicator, be it an arbitrator, an administrative tribunal, or a court, once it has reached its decision cannot afterwards alter its award except to correct clerical mistakes or errors arising from an accidental slip or omission (*Re Nelsons Laundries Ltd. and Laundry, Dry Cleaning and Dye House Workers' International Union, Local No. 292* (1964), 44 D.L.R. (2d) 463 (B.C.S.C.)). "To allow adjudicator to again deal with the matter of its own volition, without hearing the entire matter 'afresh' is contrary to this doctrine" (appellants' factum, at p. 19).

41 In *Re Nelsons Laundries Ltd.*, Verchere J. cited *Lewis v. Grand Trunk Pacific Railway Co.* (1913), 13 D.L.R. 152 (B.C.C.A.), at p. 154:

The question then is, when is an award made? In my opinion, when the arbitrator has done all that he can do, namely, reduce it to writing, and publish it as his award.

In *M. Hodge and Sons Ltd. v. Monaghan* (1983), 43 Nfld. & P.E.I.R. 162 (Nfld. C.A.), Morgan J.A. stated that (at p. 163):

Whether or not the trial judge was in error in the first instance in declaring the proceedings a nullity, and ordering the Writ of Summons and Statement of Claim to be struck out, is not relevant to the issue now before us. The order given was, by its very nature, final, and even if made in error it could not be amended by the judge who gave it. ... Clearly then the learned judge was *functus officio* and without jurisdiction to hear the matter.

42 Treatise authors dealing with administrative law issues have been surprisingly frugal in their treatment of the *functus officio* doctrine. Perhaps the most concise statement of the doctrine can be found in Pépin and Ouellette, *Principes de contentieux administratif* (2nd ed. 1982), at p. 221:

[TRANSLATION] In the case of quasi-judicial acts, the courts have held that decisions made in due form are irrevocable. To some extent the approach taken has been that once a government body has granted or recognized the rights of an individual, they cannot be challenged by the power of review: individuals are entitled to legal security in decisions. Once the decision is made, the file [page868] is closed and the government body is "functus officio". The legislature will often also take the trouble to specify that the decision is "final and not appealable". The rule that quasi-judicial decisions are irrevocable also seems to apply to domestic tribunals. However, there may be exceptions to the rule when the initial decision is vitiated by a serious procedural defect, such as failure to observe the rules of natural justice.

43 In line with that doctrine, if the Board had discretion to consider making recommendations, and chose not to, that should be the end of the matter. The finality of the Board's decision can be ascertained from its own language when it made its orders. The actual report of the Board reveals that the hearings concluded on December 17, 1984. The Board members signed the report under the heading "Conclusions". Furthermore, given that the Council of the Alberta Association of Architects issued a notice of hearing of an appeal from the decision rendered by the Board, it too must have considered the hearing complete. In the actual findings of the Board, they imposed suspensions, effective immediately. The report is entitled "Report of the Practice Review Board", the rendering of which is the function of that tribunal. All these factors indicate that the Board had completed its function and had rendered its final report.

44 It seems to me that there is a fundamental flaw in the reasoning of the Alberta Court of Appeal. If the Board was not functus officio after handing down its decision, at what point does it become so? In this case an appeal was filed, though not heard because the original ruling was quashed. If the Board is not functus officio when the decision is handed down, it must certainly be so by the time an appeal is filed. If not, then the logical conclusion would be that the Board could sit again to redetermine a matter even after an appeal had been heard, for there is no principled basis on which to say that at some point after the decision has come down the Board becomes functus officio, and there seems no way to rationally define an exception for the rare circumstance where the Board fails to consider the exercise of a discretionary [page869] duty. In my view, this point should be fatal to the respondents.

45 If a tribunal has discretion, i.e. if it may consider making recommendations, and chooses not to, there is no authority in the Architects Act that permits it to change its mind on its own initiative. Furthermore, once a board acts ultra vires, it should not be allowed to rectify the infirmities of its disposition according to its own predilections. Standards of consistency, certainty, and finality must be preserved for the effective development of the complex administrative tribunal system in Canada. Either a board is compelled to act in a prescribed manner, or it is prohibited from so acting. Allowing the Board to reopen the hearing, without an explicit provision in the enabling statute, would create considerable confusion in the law relating to powers of administrative tribunals to rehear or redetermine matters.

46 In most administrative decisions, the tribunal does not address the fact that it has considered all of its discretionary powers but has elected to invoke only a few of those powers. I agree with the holding in *Huneault v. Central Mortgage and Housing Corp.* (1981), 41 N.R. 214 (F.C.A.), that a tribunal should not be allowed to reserve the exercise of its remaining powers for a later date. The Board could not attempt to retain jurisdiction to make recommendations to Council once it has made a final order, as the parties would never have the security of knowing that the decision rendered has finally determined their respective rights in the matter.

47 There are, of course, exceptions to the general rule that an arbitrator who has reached a final decision becomes functus officio and cannot afterwards alter his award. For example an adjudicator may correct clerical mistakes or errors arising from an accidental slip or omission (*Lodger's International Ltd. v. O'Brien* (1983), 45 N.B.R. (2d) 342 (N.B.C.A.); *Re Nelsons Laundries Ltd.*, supra). However, the Board in the present case is [page870] not seeking to correct a slip or clerical error. If it had the option to consider making recommendations, and yet chose not to, that choice does not detract from the finality of the decision.

48 When a decision is rendered with nothing to be completed, there is no doubt that the adjudicator is functus officio: any further action would be entirely without authority (*Slaight Communications Inc. v. Davidson*, [1985] 1 F.C. 253 (C.A.), affirmed [1989] 1 S.C.R. 1038). Hence, if the Board is seen as having discretion whether or not to consider making recommendations, and the Alberta Court of Appeal decision is left undisturbed, the doctrine of functus officio would be rendered nugatory.

49 In *Lodger's International Ltd.*, supra, the New Brunswick Court of Appeal dealt with a series of orders by the New Brunswick Human Rights Commission. The Commission first ordered an employer to compensate two employees. When the employer did not comply, the Commission renewed the order with a time limit for payment. Section 21(2) of

the Human Rights Act provided that the orders were "final". The court held that the second order was improper and that the Commission was functus officio after the first order, because s. 21 did not authorize subsequent orders. *La Forest J.A.* (now of this Court), writing for the court, addressed the issue of whether the Commission was empowered to make such a series of orders and concluded that (at p. 352):

It would take strong words indeed to convince me that the legislature ever intended to give this kind of power to an administrative body, however lofty its goals and however liberally we are expected to construe the statute to facilitate the achievement of these goals.

50 Unlike the enabling statute in *Grillas v. Minister of Manpower and Immigration*, [1972] S.C.R. 577, where the Immigration Appeal Board had statutory jurisdiction to hold a rehearing under [page871] s. 15 of the Immigration Appeal Board Act, there is no authority in the Architects Act for the Board to hold a rehearing. *Cité de Jonquière v. Munger*, [1964] S.C.R. 45, also supported a policy favouring the finality of decisions unless the statute dictates otherwise. Upholding the unanimous decision of the Quebec Court of Appeal, Cartwright J., for the Court, held that (at p. 48):

I am satisfied that the council had the right to interpret the award but not to amend it. This does not mean, however, that it did not have the right to correct a simple clerical error. Anybody having quasi-judicial powers must have such a right, otherwise the consequences of a simple slip in drafting an award might be disastrous.

51 Furthermore, I agree with the holding in *M. Hodge and Sons Ltd.*, *supra*, that the fact that the original decision was wrong or made without jurisdiction is irrelevant to the issue of functus officio (at p. 163):

The order given was, by its very nature, final, and even if made in error it could not be amended by the judge who gave it.

## (2) The Board's Jurisdiction to Rehear

52 The Alberta Court of Appeal interpreted the Architects Act, and Regulation 175/83, as imposing a duty on the Board to consider whether to make a recommendation to the Governing Council or Complaint Review Committee.

53 Despite the ambiguous language, my colleague, Sopinka J., concludes that the Act imposes a duty on the basis that "it would be strange if the Board were empowered to conduct a lengthy practice review and had no duty to consider making recommendations (p. 860)". Given that "the Board conducted a valid hearing until it came to dispose of the matter" (p. 863), my colleague suggested that "[o]n the continuation of the Board's original proceedings ... either party should be allowed to supplement the evidence and make further representations which are pertinent to the disposition of the matter" (p. 864). Hence, while it would [page872] provide for the presentation of supplementary evidence, the rehearing itself would not be conducted afresh, but rather as a "continuation of the Board's original proceedings".

54 This analysis does have a certain intuitive appeal: given that a Practice Review Board does exist, and has a certain function to fulfill, it should be allowed, or rather required, to perform that function. However, the issue here is precisely that the Board did exercise that function, albeit illegally.

55 There is no dispute that when making the final orders it did, the Board clearly exceeded its jurisdiction. The Chairman of the Board himself set out the Board's functions and explicitly recognized that:

[T]his is not a complaint review where we are trying to find fault or guilt on specific complaints. This is a practice review, and as a result we are given the responsibility of trying to review and understand at the fullest extent possible what has taken place, and as a result if the fullest extent of which has taken place, make findings and recommendations to the profession.

56 Following this introduction, the Board embarked on an adjudicatory path which the courts found to be wholly *ultra vires*. If it had a duty to consider whether to make a recommendation to the Complaint Review Committee, it did not do so.

57 Even though the Board was wrong in its initial decision, the question is whether that precludes the Board from now attempting to correctly carry out its function. According to my colleague, as the Board's disposition was a nullity, it amounts to no disposition at all in law: "a tribunal which makes a determination which is a nullity, has been permitted to

reconsider the matter afresh and render a valid decision" (p. 862) (emphasis added), relying on *Re Trizec Equities Ltd. and Area Assessor Burnaby-New Westminster* (1983), 147 D.L.R. [page873] (3d) 637 (B.C.S.C.), where McLachlin J. (now of this Court) wrote, at p. 643:

I am satisfied both as a matter of logic and on the authorities that a tribunal which makes a decision in the purported exercise of its power which is a nullity, may thereafter enter upon a proper hearing and render a valid decision: *Lange v. Board of School Trustees of School District No. 42 (Maple Ridge)* (1978), 9 B.C.L.R. 232 (B.C.S.C.); *Posluns v. Toronto Stock Exchange et al.* (1968), 67 D.L.R. (2d) 165, [1968] S.C.R. 330. In the latter case, the Supreme Court of Canada quoted from Lord Reid's reasons for judgment in *Ridge v. Baldwin*, [1964] A.C. 40 at p. 79, where he said:

I do not doubt that if an officer or body realises that it has acted hastily and reconsiders the whole matter afresh, after affording to the person affected a proper opportunity to present its case, then its later decision will be valid. [Emphasis added.]

58 These precedents distinctly indicate that whenever special circumstances do warrant reconsideration by an administrative tribunal, such is to take place "afresh", not merely as a continuation of the tainted process now sought to be corrected.

59 Furthermore, *Re Trizec* dealt with a procedural error by the Court of Revision. While acting wholly within the domain of its substantive jurisdiction, the Court of Revision increased an assessment against a taxpayer before allowing the taxpayer to be heard. Two days later, at the request of the taxpayer, the court reconvened and a hearing was conducted. Hence, this case is distinguishable on at least three grounds:

(1) the court in *Re Trizec* was instructed to consider the matter afresh and conduct a proper hearing; the Alberta Court of Appeal in *Chandler* allowed the Board to continue its original proceeding;

(2) the court, acting within its jurisdiction, made a procedural error which it subsequently corrected; the Board in *Chandler* was not [page874] empowered at the substantive level to make any of the findings it did; and

(3) the taxpayer itself requested a hearing, whereas the Board in *Chandler* reopened the proceedings on its own initiative.

60 The issues in *Lange v. Board of School Trustees of School District No. 42 (Maple Ridge)* (1978), 9 B.C.L.R. 232 (B.C.S.C.), relied upon in *Re Trizec*, were almost identical. A teacher was dismissed on three grounds of misconduct, yet was heard on only two of those grounds. He was then heard on the third ground and the dismissal was upheld.

61 The suggestion that the Board's original proceedings be continued is especially disturbing. It would set a dangerous precedent in expanding the powers of administrative tribunals beyond the wording or intent of the enabling statute. Furthermore, it would erode the protection of fairness and natural justice which every citizen of this country has a right to expect from administrative tribunals. The original hearing was conducted under the mistaken belief by the Board that it could make certain orders, despite the Chairman's introductory words. The Chairman's comments, reproduced above, clearly indicated that the hearings were intended to be a practice review rather than an inquiry into allegations of unprofessional conduct.

62 *Kryczka J.* of the Alberta Court of Queen's Bench held that, given the failure to inform the appellants that they were facing any such discipline charges or allegations, "it is difficult for me to conceive how the eventual result could be characterized as anything other than a travesty of justice". It might be that the appellants would have entered into a different course or line of defense at the hearing had they suspected that they were being investigated with respect to matters entirely outside the scope of the Board's jurisdiction. Unaware and not informed of the discipline charges that were in fact contemplated by the Board, appellants were not legally in a position [page875] to prepare a full defense to the allegations and orders ultimately made against them.

63 Appellants further contend that, if upheld, the decision of the Alberta Court of Appeal must be taken as overturning the judgment of the same court in *Canadian Industries Ltd. v. Development Appeal Board of Edmonton* (1969), 71 W.W.R. 635, cited with approval in *Grillas*, supra, at pp. 588-89. Canadian Industries dealt with a board that held a hearing without giving notice to the appellant who was entitled to such notice as an interested party. The Board then held a rehearing of which proper notice was given, and decided, after hearing submissions, that its previous order should not be changed. Johnson J.A., for the Court of Appeal held that both orders had to be set aside. The first was a nullity as the appellant was not notified. The second was a nullity as well in the absence of clear statutory authority to conduct a rehearing.

64 As mentioned previously, there is no clear statutory language enabling the Board to conduct a rehearing. If the Board has a duty which it failed to fulfill, it can, depending on the circumstances of the case, be directed to review the entire matter afresh, and can be required to conduct a new hearing. *Re Trizec and Lange*, supra. However, if it sets out to do one thing and winds up doing something entirely different, any reexamination should not be construed as a "continuation of the Board's original proceedings".

65 I would like to briefly address the prima facie apprehension that a direction to the Board to conduct a new hearing is tantamount to "double adjudication". That would be a valid concern if the Board is seen as having discretion. It would then be making orders subsequent to its being rendered functus officio. However, if it has an imposed duty, a rehearing would only be required if the original hearing is determined to be a total nullity, [page876] and the case so warrants. In that case, the apprehension of allowing a tribunal to make a series of orders, *Lodger's International Ltd.*, supra, would not arise. In the particular circumstances of this case, a rehearing would not be appropriate in my view.

#### Mandamus

66 As the Court of Appeal twice referred to the principles of mandamus, I will address them as well. However, I agree with appellants that these principles have nothing to do with this appeal.

67 Laidlaw J.A. set out the requirements for mandamus in *Karavos v. Toronto*, [1948] 3 D.L.R. 294 (Ont. C.A.), at p. 297:

Before the remedy can be given, the applicant for it must show (1) "a clear, legal right to have the thing sought by it done, and done in the manner and by the person sought to be coerced" ...; (2) "The duty whose performance it is sought to coerce by mandamus must be actually due and incumbent upon the officer at the time of seeking the relief ..."; (3) That duty must be purely ministerial in nature, "plainly incumbent upon an officer by operation of law or by virtue of his office, and concerning which he possesses no discretionary powers"; (4) There must be a demand and refusal to perform the act which it is sought to coerce by legal remedy ....

68 Hence, mandamus appears to be a remedy that would apply against a tribunal or authority, and not one to be invoked by it. If the Board declined to exercise jurisdiction, then mandamus would lie. However, that is not the case here. Quite the contrary; the Board took it upon itself to exercise more jurisdiction than in fact it had. That alone would undermine the Court of Appeal's application of mandamus to this case. Furthermore, if we are to follow the requirements set out above, none appear to be satisfied by the facts here:

[page877]

- (1) There is no clear legal right in issue.
- (2) The Board may have had discretion whether or not to make recommendations.
- (3) Whether or not the Regulation confers discretion upon the Board is still an open question, and if the Board has a duty to consider making recommendations, it certainly has discretion whether or not to make them, and which ones to make, if any.
- (4) There has been no demand by the appellants or refusal by the Board to perform, as is required by mandamus.

#### Conclusion

69 On either interpretation of the ambiguous language in the Regulation, I am of the view that the appeal should succeed. If the Board had discretion, and decided to act in a certain manner, it is now functus officio. If it had an imposed duty which it did not perform, it cannot continue with a tainted hearing. For the reasons discussed above, mandamus is not a controlling factor in this appeal.

70 Therefore, I would allow the appeal, vacate the order of the Court of Appeal and restore the judgment of Brennan J. prohibiting the Board from acting any further in this matter, the whole with costs throughout.

qp/i/qlcvd/qlwxy

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June 27

## Miles and Más for \$350 BusinessFirst/Executive First Class (Repost)

*I've been having trouble with getting my posts to the BoardingArea homepage. If you have missed this, consider reading – it will blow your mind! This is TIME SENSITIVE AND THE PRICE WILL GO UP ON THE 29th!*

**How to get a United BusinessFirst Lie-Flat seat for \$325:**

Nearly everything is about evaluating the value of miles. This an instance of where it is really important to look for the best redemption. Remember, you can only get the best value from your points only if you know how to use them. I haven't been around as long as other bloggers, but things I (think) I am good is experimenting with redemptions, maximizing awards, and staying up to date on all information from forums and blogs (\*hem\* mistake fare ☺).

This is one of the "scenarios" that I have been playing with for a few weeks, and since it looks like the window for purchase is closing fast, I thought I might as well post it. This is how you can get a lie-flat bed on a domestic flight for a steal of a deal. Note that I have not yet tried this personally but this might be very lucrative for those who want to do it. Now back to the topic...

I think that domestic first isn't that worth that much. [Frequent Miler](#) presents several options to maximize your miles while flying first class. But I disagree, and I think this might revolutionize "purchasing" domestic first with miles. In my opinion, this is the best and most cost-effective way to fly domestic first class. So either you can spend 34,000 Aeroplan miles, 25,000 United miles, or ~\$350. What would you choose?

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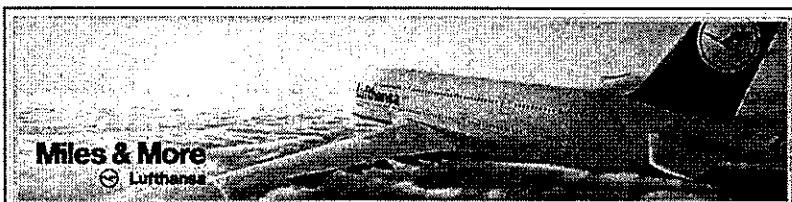
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CA\$2,232	Los Angeles (LAX) to New York (JFK) - Thu, Oct 17						
	United 867	Dep: 1:05pm	Arr: 9:35pm	5h 30m	Boeing 757	Business (P)	Hide Details
CA\$2,232	United	4:05pm	12:23am	5h 18m	LAX to JFK	--	
CA\$2,232	United	10:45pm	7:00am	5h 15m	LAX to JFK	--	

Sample revenue flight

This is nearly exactly the same case in Canada. For example, look at this itinerary which is a one-way flight in Executive Class (Air Canada Domestic Premium Class) which is pricing at just over \$2000.

One-way: Halifax to Vancouver - Tue, Mar 11							
Only Air Canada <input type="checkbox"/>							
PRICE	AIRLINE	DEPART	ARRIVE	DURATION	FROM/TO	STOPS	ADVISORY
CA\$2,003	Air Canada	6:25am	10:33am	6h 8m	YHZ to YVR	YUL	
CA\$2,003	Air Canada	3:05pm	8:33pm	5h 28m	YHZ to YVR	YUL	
CA\$2,003	Air Canada	4:05pm	10:38pm	10h 33m	YHZ to YVR	YUL	
CA\$2,003	Air Canada	6:20pm	10:38pm	6h 18m	YHZ to YVR	YUL	
CA\$2,007	Halifax (YHZ) to Vancouver (YVR) - Tue, Mar 11 Halifax (YHZ) to Toronto (YYZ) - Tue, Mar 11 Air Canada 603 Dep: 5:35am Arr: 7:05am 2h 30m Airbus A319 Business (2)						Hide Details
	Toronto (YYZ) to Vancouver (YVR) - Tue, Mar 11 Air Canada 153 Dep: 8:00am Arr: 10:07am 5h 7m Boeing 777 Business (2)						
CA\$2,007	Air Canada	5:35am	10:39am	5h 4m	YHZ to YVR	YYZ	

## Revenue Ticket

This includes the YYZ-YVR in a lie-flat pod (Executive First).



## Air Canada Executive First

The taxes and fees are just \$32.60 in addition to purchasing the miles.

Select 25,000 Miles and \$32.60	Select 50,000 Miles and \$32.60	Depart: 5:35 a.m. Tue., Mar. 11, 2014 Halifax, NS Canada (YHZ)	Arrive: 7:05 a.m. Tue., Mar. 11, 2014 Toronto, ON Canada (YYZ)	Flight Time: 2 hr 30 mn	Flight: AC603 Operated by Air Canada. Aircraft: Airbus A319 Meal: Food for Purchase. No Special Meal Offered. See On-Time Performance
Change Planes. Connected time in Toronto, ON Canada (YYZ) is 55 minutes:					
		Depart: 8:00 a.m. Tue., Mar. 11, 2014 Toronto, ON Canada (YYZ)	Arrive: 10:07 a.m. Tue., Mar. 11, 2014 Vancouver, BC Canada (YVR)	Flight Time: 5 hr 7 mn  Travel Time: 8 hr 32 mn	Flight: AC153 Operated by Air Canada. Aircraft: Boeing 777-300ER Meal: Food for Purchase No Special Meal Offered. See On-Time Performance

## Award Results

This isn't just for the "flagship routes" with a lie-flat bed. This is any route within one country that has exorbitantly high fare prices yet award availability. For example YYC-YEG-YUL which is pricing at over \$300 one-way in economy class. Or even an expensive transcon such as SEA-DEN-MIA which is pricing at over \$270 one way in economy class. If there is award space, why not outright buy the miles and get an "upgrade" for under a hundred dollars?

Of course the value proposition is slightly different if you have elite status, but it is a fantastic deal to lock in a confirmed domestic first flight months in advance with an award from purchased miles given that the price is this sweet.

See what I'm doing here? I'm leveraging three different promotions to achieve the cheapest redemption possible for a flight. When the promotion ends, that means each Mile & More mile will be 2.2 cents, with a 17,000 business one-way domestic ticket pricing at ~\$374. Is that a great deal? Still acceptable although not a lot better. But right I think lie-flat seats across the country for under \$400 is a definitely a decent if not good deal.

## Summary:

I am buying miles at a discount, transferring to a good airline partner, and then redeeming for a sweet spot on the chart to pull out this deal. By tackling the sweet spots of three promotions this is why this kind of deal can appear. Here is the process if you are numbers person:

224 Euro = 308 Cad\$ = 35,000 Melia Points = 17,000 Miles & More = 1 domestic business redemption = lie-flat bed/pod = deal

## Update:

I have confirmed that the domestic awards apply in Canada and the US.

## Does this make your miles useless?

No. In nearly all other cases, miles are the best way for international business and first class. But domestic first class is something that I don't find it is worth spending the money on. So for those who don't have elite status, this might be a good alternative.

If you liked this post, you can also [signup](#) for emails to get just one daily email for all posts! I am also on [Facebook](#) and [Twitter](#) - don't miss any more posts like these! Also, I'd appreciate any you comments you have on these types of posts.

Posted by Jeff | [24 Comments](#)

Categories: [Deals](#), [Earning](#), [Must Read](#), [Travel Hacking](#)



June 26

## Miles and Más for \$350 BusinessFirst/Executive First Class

**Update:** As the sale for buying Melia Miles is now over, you can expect the price of the ticket to be around \$450-500, which is still a great deal if revenue ticket prices are through the roof.

**How to get a United BusinessFirst Lie-Flat seat for \$325:**

Nearly everything is about evaluating the value of miles. This an instance of where it is really important to look for the best redemption. Remember, you can only get the best value from your points only if you know how to use them. I haven't been around as long as other bloggers, but things I (think) I am good is experimenting with redemptions, maximizing awards, and staying up to date on all information from forums and blogs (\*hem\* mistake fare ☺).

This is one of the "scenarios" that I have been playing with for a few weeks, and since it looks like the window for purchase is closing fast, I thought I might as well post it. This is how you can get a lie-flat bed on a domestic flight for a steal of a deal. Note that I have not yet tried this personally but this might be very lucrative for those who want to do it. Now back to the topic...

I think that domestic first isn't that worth that much. [Frequent Miler](#) presents several options to maximize your miles while flying first class. But I disagree, and I think this might revolutionize "purchasing" domestic first with miles. In my opinion, this is the best and most cost-effective way to fly domestic first class. So either you can spend 34,000 Aeroplan miles, 25,000 United miles, or ~\$350. What would you choose?

MeliáRewards, a hotel chain with many hotels in Spain and in the Caribbean is selling points with 25% bonus. You can sign up [here](#) (I get 250 points per signup to a maximum of a few thousand points – thanks for your support!).

### Buy points

Not enough points for a hotel booking or a catalogue gift you really like? Now you can buy all the points you need. Buy up to 100,000 MeliáRewards in any 12 month period. Minimum purchase 8 € = 1,000 MeliáRewards points. Points purchased through this option are not eligible for automatic upgrades to MeliáRewards silver, MeliáRewards gold or MeliáRewards platinum status.

Offer available for a limited period only!

Buy now and receive a 25% bonus in MeliáRewards points

Offer valid until 28th June 2013

[Buy points »](#)

### Buy Points

This makes every block of 10,000 miles only 64 Euros, or ~\$88 Canadian, with each mile only costing 0.88 cents. You can buy miles [here](#).

**Step 1: Member Information**

Buying Points is the easy way to top up your account to get the award you want!

**Limited time offer!**

Get 25% bonus MeliáRewards points if you buy now.  
Offer valid until 28 June, 2013.

**Your Information**

First Name:

Last Name:

MeliáRewards Number:

Email Address:

Number of Points:

28,000 + 7,000 Bonus

€224.00 EUR

**Continue**

Price includes VAT. Only Euros are accepted as payment currency. A maximum of 100,000 MeliáRewards points can be purchased in a single calendar year. Purchased MeliáRewards points are not refundable once confirmed by the client.

Price includes all applicable fees. GST/HST will be charged to Canadian residents. Purchased points are not refundable and are applicable toward all MeliáRewards awards. Points purchased using this option will post within 24 hours. Purchased points do not count towards MeliáRewards status upgrades. All other MeliáRewards Terms and Conditions apply.

powered by  
**points.com**

**Buying Points**

Why is this important? This is because Melia is a 2:1 transfer partner to Miles & More, which allows you to book tickets on Star Alliance Airlines. This means you can essentially buy Miles & More for 1.76 cents each.



**Miles & More**

Miles & More is the loyalty programme of Lufthansa, Adria Airways, Air Dolomiti, Austrian Airlines, Brussels Airlines, Croatia Airlines, LOT Polish Airlines, Luxair and SWISS and offers MeliáRewards members the chance to transfer MeliáRewards points to the Miles & More programme, where:

2 MeliáRewards points	1 Miles & More mile
-----------------------	---------------------

- ▶ The minimum number of MeliáRewards points to be transferred must be 4,000.
- ▶ The bonus points you receive when you become a MeliáRewards member are not transferable nor can they be converted to points/miles of loyalty programmes of companies associated with MeliáRewards.
- ▶ Once the points have been transferred and converted to points/miles of companies associated with MeliáRewards, they cannot be returned to a MeliáRewards account.

**Convert Melia to Miles & More**

The cost of each award then, by directly buying miles, is the 1.76 cents per mile multiplied by the award amount. For example, that means a roundtrip award to Europe is just under \$2000 if you directly buy the miles, excluding fuel surcharge.

But what Miles and More is a great redemption for is using their miles for domestic flights within a single country. Since Canada and US are big countries, this is a HUGE sweet spot (no pun intended). The award price for a one-way is just 17,000 miles. You can annually buy a maximum of 100,000 miles, which transfers to 50,000 Miles & More. This means you can at least get three one-way domestic/transcon business class awards per year through this method.

Domestic	
Economy	25,000*
Business	35,000*
First Class	50,000*

This means you can fly United Domestic First and Air Canada Executive Class for just \$320 plus a maximum of around \$50 in airport taxes. This is an AMAZING VALUE. Sure, domestic first class might not be worth paying the premium for. But being able to get the LAX-JFK p.s service with flat beds with connecting flights given that there is space for \$320 by purchasing miles and \$2.50 in airport taxes is an amazing deal.



United p.s BusinessFirst

This is when the flight normally goes for at least \$2,000 when buying a revenue ticket. I'm not saying that I would be paying \$2000, but at least it means you're better off using your United miles for transatlantic and transpacific tickets in premium classes.

Choose your flights Modify search Flights Itinerary

☒ All flights
 ☐ US Airways
 ☐ Multiple Airlines
 ☐ Sun Country
 ☐ American
 ☐ Virgin America
 ☐ Delta
 ☐ United
 ☐ Alaska Airlines

Nonstop	From	From	From	From	From	From	From
CA\$2,545	CA\$2,232	CA\$2,127	CA\$2,222	CA\$2,232			
1 stop	From	From	From	From	From	From	From
CA\$703	CA\$770	CA\$922	CA\$1,145	CA\$1,257	CA\$1,309	CA\$2,351	CA\$2,379
2 stops	From	From	From	From	From	From	From
CA\$891	CA\$775	CA\$1,150	CA\$2,143	CA\$1,615			

One-way: Los Angeles to New York - Thu, Oct 17 Complete trips Time bars

Only nonstop ☒ Only United ☐

PRICE	AIRLINE	DEPART	ARRIVE	DURATION	FROM/TO	STOPS	ADVISORY
CA\$2,232	United	6:00am	2:28pm	5h 28m	LAX to JFK		
CA\$2,232	United	8:30am	4:58pm	5h 28m	LAX to JFK		
CA\$2,232	United	11:30am	7:58pm	5h 28m	LAX to JFK		
CA\$2,232	United 867	Dep: 1:05pm	Arr: 9:35pm	5h 30m	Boeing 757	Business (R)	Hide Details
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Sample revenue flight

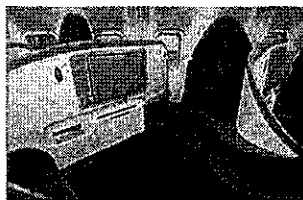
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<b>Select</b>	<b>Select</b>	Depart: 5:35 a.m. Tue., Mar. 11, 2014 Halifax, NS Canada (YHZ)	Arrive: 7:05 a.m. Tue., Mar. 11, 2014 Toronto, ON Canada (YYZ)	Flight Time: 2 hr 30 min	Flight: AC603 Operated by Air Canada. Aircraft: Airbus A319 Meal: Food for Purchase. No Special Meal Offered. <a href="#">See On-Time Performance</a>
25,000 Miles and \$32.60	50,000 Miles and \$32.60	Change Planes. Connect time in Toronto, ON Canada (YYZ) is 55 minutes.			
		Depart: 8:00 a.m. Tue., Mar. 11, 2014 Toronto, ON Canada (YYZ)	Arrive: 10:07 a.m. Tue., Mar. 11, 2014 Vancouver, BC Canada (YVR)	Flight Time: 5 hr 7 min  Travel Time: 8 hr 32 min	Flight: AC153 Operated by Air Canada. Aircraft: Boeing 777-300ER Meal: Food for Purchase. No Special Meal Offered. <a href="#">See On-Time Performance</a>

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If you liked this post, you can also [signup](#) for emails to get just one daily email for all posts! I am also on [Facebook](#) and [Twitter](#) - don't miss any more posts like these! Also, I'd appreciate any you comments you have on these types of posts.

Posted by Jeff | [28 Comments](#)Categories: [Deals](#), [Must Read](#), [Redemptions](#), [Travel Hacking](#)

June 20

## A few items... (Updated)

Apparently everyone else on BoardingArea says that we are going to close comments and no new posts are going to go up starting tonight, so I will see everyone next week! I will be on [twitter](#) so feel free to tweet me if anything interesting pops up!

So a few days ago I posted a mistake fare online. You can see that [here](#) if you happened to miss it.

Again there was quite a bit of controversy over the manner I post these deals/fares. I could say a whole lot about what happened yesterday, but all I will say is that I will continue to post these deals. Even if a hundred people can book these deals, that's all I wanted when I post this. As long as there are more people who benefit than dislike what I am doing and as long as there are people who want me to continue doing what I am doing, I will try my very best to talk about all the latest news in the miles and points world and help everyone maximize their travel dollars. Everyone is going to have a different opinion on this and I hope all of you understand my decision. If you feel that I can improve my content in any way, don't hesitate to send me an email. I am open to any and all feedback that I can get as I try every single day to improve how I write and bring content to all of you.

BoardingArea is undergoing some tech updates on June 21/22 which means I will be unable to post anything new although you are welcome to read anything I've written so far. As EVA Air has joined star alliance, which means their flights are now bookable with most star alliance airline miles (see [here](#)), I've updated the article on fuel surcharges [here](#). Also I've written up a very brief summary of which airlines have fuel surcharges which is available as a [permanent page on my menu](#).

As you may also have realized I have not been doing daily update for a while now. I found that while they were useful, a lot of readers found not all of the information useful, so I am going to try something different. On the right column right above the BoardingArea subscription box, is the Posts to Check out info box. This is will be the location of a highly condensed daily summary, which I plan to update Tuesdays, Thursdays, and Saturdays around 7pm EST, so you can check out the things I think any travel hacker should be reading (to stay up to date). Right now I am trying to work out some formatting issues, so it is still under construction, but it should be up and running before June 25th. I hope you will find this section interesting in addition to the content I already write.

Also note that Google Reader will be shutting down on July 1st. The replacement that I now use for Google Reader is [feedly](#) and if you are using Google Reader consider using Feedly as opposed to a paid alternative as I would say it is probably one of the better version of the Readers that are free. I read from feedly daily, so I'm not just pulling reasons out of thin air. Just add my website (boardingarea.com/canadiankilometers - not canadiankilometers.com), and you will be good to go. Although it isn't as great as Google Reader, it is a functioning reader that is free and is usable. If you have an RSS reader they you can use my RSS feed link [here](#).

Alternatively I highly recommend you signing up for [my mailing list](#) and alternatively the BoardingArea feedblitz which is the small box in the top right corner of my site, under the social media icons. My mailing list does not have any preset mailings, but I will likely be using that for deals like mistake fares and incredible promotions and you will be getting this info at least 30 minutes before any public post goes out which will give you a better chance to hop on the fares/rates. I also try very hard to be very open with my blog as well unlike certain other bloggers so you are welcome to ask me nearly anything I can answer to the extent of my ability there as well.

I am also very proud to say that I do not censor. This is very simple. There is no fine print that you need to comb over. If you write a comment it will be published (unless it is the first time you've commented, upon which I have to approve it first). But unless your comment gets filtered by Akismet and put into SPAM, which looks like this:

Author	Comment	In Res
louis vuitton outlet uk lesurligagnant.com/temp/ shkptka@gmail.com 72.10.32.97	Submitted on 2013/06/19 at 11:10 pm Phony wristwatches are big business enterprise, specially fake Rolaxes. To see the real difference between a true along with louis vuitton outlet uk a new look-alike watch, browse the pre-owned.	Mistake \$350!!! #
ブルガリ アウトレット bulgari-2013jp-sale.com/ m**asweifeb@gmail.com 200.23.26.7	Submitted on 2013/06/19 at 10:51 pm グッドポイントへと右ストレート。これは真であれば最善の場所であるしかし、あなたは上の思考ideedはここで人はいずれかを持っているのはわからない、わからない、いくつかのプロのライターをする? 西組 ⑤ブルガリ アウトレット <a href="http://www.bulgari-2013jp-sale.com/">http://www.bulgari-2013jp-sale.com/</a>	Fuel, Sul Award T #
Toms Outlet Online hote11tagangga.com/tomaoutletusa.html ddgtqsf@gmail.com 2.135.238.92	Submitted on 2013/06/19 at 10:35 pm Thanks for your post. I also think laptop computers are becoming more and more popular currently, and now in many cases are the only kind of computer included in a household. The reason is that at the same time that they're becoming more and more very affordable, their processing power keeps growing to the point where there're as potent as personal computers out of just a few years ago.	Mistake \$350!!! #
cash cons bbs.unix.com.cn/home.php? mod=space&uid=204528 mbso*@gmail.com 222.77.204.152	Submitted on 2013/06/19 at 10:31 pm I think other site proprietors should take this site as an model, very clean and fantastic user friendly style and design, let alone the content. You are an expert in this topic	May 14: #

Example of what SPAM is

If your comment falls into spam (and it has happened before to legitimate comments), I apologize. Technology isn't perfect, but I really do not have time to comb through the hundreds of spam comments I get a day and see whether there are any legitimate comments that unfortunately got caught. If you see that your comment has not been published, again, please send me an email. I wish to have an open dialogue and a non-censorship policy with all my content and I strive to make my blog have one of the strongest disclosure policies.

Posted by Jeff | [8 Comments](#)Categories: [Misc.](#)

June 18

## Mistake Fare (RGN): CTA Ruling

As you may well know, I am involved in a Canadian Transportation Agency (CTA) case against Swiss International Airlines for their unilateral cancellation of fares issued on Swiss ticket stock from "Round 3" of the erroneous fares. You can see what happens in View From the Wing's post [here](#). The massive FT thread about the different rounds are [here](#) (Round 1/2) and [here](#) (Round 3).

**Update:** People who have tickets and did not pursue a formal complaint may not get the same result as me. CTA says: "Please note that the Agency may not necessarily rule in the same manner as it is not bound by past precedents." Just keep that in mind if you do wish to file a formal complaint now.

There is actually a news release you can access online [here](#) which is a very good summary of what they said in the fifteen page document they attached in their wonderful email this morning.

This is what happened:

Today's decision is in response to seven complaints alleging that Swiss improperly cancelled on-line purchased tickets. Although the passengers were refunded for the tickets, the Agency has ordered the carrier to:

- compensate one complainant for all expenses incurred as a result of the cancellation, by July 18, 2013.
- allow all other complainants to be transported on the same conditions, at the same price as the ticket originally booked by them, by June 18, 2014.

That's great and all, but what I find interesting is the arguments and analysis that the CTA uses to base its decision on. In this case, there were three issues at hand, which is from the PDF with the full details. You can access this [here](#).

**ISSUE 1: ARE SWISS' TERMS AND CONDITIONS OF CARRIAGE RELATING TO THE CANCELLATION OF TICKETS WITH ERRONEOUSLY QUOTED FARES CLEARLY STATED, AS REQUIRED BY SUBPARAGRAPH 122(c)(vii) OF THE ATR?**

For reference 122(c) from the ATR States that:

122. Every tariff shall contain

[...]

(c) the terms and conditions of carriage, clearly stating the air carrier's policy in respect of at least the following matters, namely,

[...]

(vii) ticket reservation, cancellation, confirmation, validity and loss,

This is what they decided:

[28] Tariff Rule 5(F) allows Swiss to cancel reservations or tickets with erroneously quoted fares, by reason of "technical failure." The Agency notes that the Rule is silent regarding Swiss' definition of what constitutes a "technical failure." Furthermore, the Rule does not provide examples of situations where a "technical failure" may occur. Consequently, Swiss' usage of that term provides it with relatively broad latitude in labeling various incidents, including human error, as a "technical failure." In such a situation, passengers may be unclear as to specific circumstances under which Swiss may cancel their tickets. The Agency therefore finds that Tariff Rule 5(F) is unclear because it is stated in such a manner as to create reasonable doubt, ambiguity and uncertainty respecting its meaning.

That is a very reasonable explanation.

**ISSUE 2: IS TARIFF RULE 5(F) JUST AND REASONABLE, AS REQUIRED BY SUBSECTION 111(1) OF THE ATR?**

Again for reference, Section 111(1) say:

All tolls and terms and conditions of carriage, including free and reduced rate transportation, that are established by an air carrier shall be just and reasonable and shall, under substantially similar circumstances and conditions and with respect to all traffic of the same description, be applied equally to all that traffic.

This is what CTA thinks:

[35] To assess whether a term or condition of carriage is "unreasonable," the Agency has traditionally applied a balancing test, which requires that a balance be struck between the rights of passengers to be subject to reasonable terms and conditions of carriage and the particular air carrier's statutory, commercial and operational obligations. This test was first established in Decision No. 666-C-A-2001 (Anderson v. Air Canada) and was recently applied in Decision No. 150-C-A-2013 (Forsythe v. Air Canada).

[36] An air carrier sets its terms and conditions of carriage on the basis of its own interests, without any input from passengers. These terms and conditions may have their basis in purely commercial requirements, and as such, there is no presumption that a tariff is reasonable.

[37] When balancing the passengers' rights against the carrier's obligations, the Agency must consider the whole of the evidence and the submissions presented by both parties and make a determination on the reasonableness or unreasonableness of the term or condition of carriage based on which party has presented the more compelling and persuasive case.

[38] Swiss argues that an air carrier cannot be expected to transport passengers for a loss, as Swiss has obligations to its employees and stakeholders. On the other hand, some of the complainants argue that there is no consumer protection in Tariff Rule 5(F).

[39] The Agency has considered the submissions of the parties on this matter, and finds that the complainants have presented a more compelling argument. Specifically, there is no protection afforded to consumers under Tariff Rule 5(F), as Swiss can revoke tickets that it claims to involve fares that have been erroneously quoted by reason of "technical failure." Also, the Agency finds that the obligation that Swiss alleges it has to honour to its employees and stakeholders does not outweigh the interests of the complainants and other consumers to be subject to reasonable terms and conditions of carriage.

[40] While Swiss argues that it should not be obligated to provide services for compensation that is obviously erroneously published and commercially unfeasible, the Agency notes that Swiss provides no submissions concerning the effect that honouring the erroneously posted fares would have on Swiss' commercial obligations. The Agency also notes that Tariff Rule 5(F) provides no time period within which Swiss may cancel a ticket that has been erroneously quoted due to technical error, nor does that Rule specify examples of situations that may lead to such an error. Furthermore, Rule 5(F) imposes no obligations on Swiss to ensure that it takes reasonable steps to prevent the issuance of erroneous fares.

[41] The Agency notes that it took Swiss six days to discover the erroneous fares, leaving at least one complainant with less than three weeks to make alternative travel arrangements.

[42] Considering the above, the Agency is of the preliminary opinion that the broad, undefined authority that Tariff Rule 5(F) affords Swiss is disadvantageous to consumers. Swiss has not demonstrated to the Agency's satisfaction that Rule 5(F) considers or balances the passengers' rights to reasonable terms and conditions of carriage with Swiss' statutory, commercial and operational obligations. In light of the foregoing, the Agency finds, on a preliminary basis, that Rule 5(F) is unreasonable within the meaning of subsection 111(1) of the ATR.

(Emphasis Mine)

Rule 5F is present in the LX Contract of Carriage (CoC) and essentially the "rule" that LX used to say that the tickets were invalid because they reserved the rights to cancel a fare if there was a technical error.

The basis of my claim was that I felt my ticket should be reinstated because 5F was left out of the LX CoC at the time of booking. The amended version has obviously been uploaded to the internet, but at the time I put in my credit card information on expedia, they didn't have that clause. I said in my claim that obviously you can't be held liable for a contract that first of all, nearly 99.99% of consumers will not read (and in fact you are liable because every time you purchase a ticket you are liable to their contract of carriage), but the fact that another version of the CoC was on the website at the time of booking (they changed it around a week after they cancelled my ticket) without the 5F clause makes Swiss' reason to cancel invalid and unreasonable.

If you look at the highlighted portion of the CTA document from section 35-42 above, CTA is saying that the tariff is disadvantageous to consumers, which is pretty but pleasantly surprising.

ISSUE 3: DID SWISS PROPERLY APPLY THE TERMS AND CONDITIONS OF CARRIAGE RELATING TO THE CANCELLATION OF TICKETS WITH ERRONEOUSLY QUOTED FARES AS SET OUT IN TARIFF RULE 5(F), AS REQUIRED BY SUBSECTION 110(4) OF THE ATR?

What CTA says:

[71] When, as in this case, the Agency receives complaints that contest a carrier's action, the carrier is given the opportunity to provide evidence in support of its position. In this case, Swiss was also required to provide a detailed explanation of the technical incident that led to the air fares in question being made available to the various travel agencies used by the complainants when purchasing the tickets that were subsequently cancelled. Swiss has failed to do so.

[72] The Agency notes that Swiss restricted its answer to the cancellation of erroneous first class tickets in this matter. The Agency also notes that Swiss cancelled Mr. \_\_\_'s tickets for travel commencing May 1, 2013, and that these tickets strictly involved business class travel. As Swiss provided no comments regarding this issue, the Agency finds that in cancelling Mr. \_\_\_'s May 1, 2013 tickets, Swiss did not properly apply Rule 5(F) of its Tariff.

[73] With respect to Swiss' cancellation of the other complainants' tickets, the evidence on file does not establish that a technical error occurred during ATPCO's posting of the erroneous fares. While Swiss generally explains the process by which fares are generated and provided to ATPCO, Swiss does not provide any information explaining the point during the process at which the alleged error occurred, the cause of that error and why such an error is deemed to be technical in nature, as opposed to human. Furthermore, as indicated by many of the complainants, contrary to Swiss' submission, ATPCO does not state in its November 7, 2012 letter that the fares were erroneous; rather, ATPCO refers to the erroneous fares as "low fares."

[74] The Agency therefore finds that, on a balance of probabilities, Swiss has not established that a technical failure occurred at all and, consequently, Swiss has not demonstrated that it properly applied Tariff Rule 5(F) when it cancelled the complainants' tickets.

I agree with this as well. The numbers on the fares hint at a failure to properly apply the exchange rate of the Myanmar Kyat (MMK) to the fare, especially when other fares that were plated on airlines including NH (ANA), 9W (Jet Airways), and UL (Sri Lankan) for the exact same itineraries (in some cases) were mostly honoured and flown.

I'm not a legal expert at all, so I've just written what I thought.

What I find interesting is the approach that the CTA takes, which I feel is extremely pro-consumer. They've long been compared with the US DoT with these sort of fares because as far as I know the CTA has no regulations on price increases after purchase. If you don't know, this is the main piece of legislation (you can access this [here](#)) that made Korean Air honour its tickets from the Rangoon Fare "Round 1: (which was again ex-RGN on Korean Air First Class to LAX):

(a) It is an unfair and deceptive practice within the meaning of 49 U.S.C. 41712 for any seller of scheduled air transportation within, to or from the United States, or of a tour (i.e., a combination of air transportation and ground or cruise accommodations), or tour component (e.g., a hotel stay) that includes scheduled air transportation within, to or from the United States, to increase the price of that air transportation, tour or tour component to a consumer, including but not limited to an increase in the price of the seat, an increase in the price for the carriage of passenger baggage, or an increase in an applicable fuel surcharge, after the air transportation has been purchased by the consumer, except in the case of an increase in a government-imposed tax or fee. A purchase is deemed to have occurred when the full amount agreed upon has been paid by the consumer.

In any case, this should be great for me; although Swiss still has time to appeal clause 5F (or else it has to be removed from the tariff, which would be awesome). It seems like the CTA has firmly put its authority into this judgement.

Looks like I will be flying Swiss First soon! Here is a video for your virtual enjoyment (unless you happen to have 85,000 Miles & More miles).

Posted by Jeff | 39 Comments

Categories: [Mistake Fare](#)

June 17

## Mistake Fare: JNB-GVA

Working as of 12:57 Pacific Time June 17th 2013

There is a misfiled one-way fare (seems like they left it in the economy class! Book with [united.com](#) (not an affiliate link, thanks for your support!)).

**DO NOT CALL THE AIRLINES!** Please comment that with all these fares, there is an inherent risk of the airline cancelling the fares. Be very careful about purchasing non-refundable travel expenses including hotels and positioning flights. I TAKE NO LIABILITY IF ANY MISHAP OCCURS AND I POST THIS BECAUSE I WANT PEOPLE TO BENEFIT. AGAIN, DO NOT CALL THE AIRLINES!



Fares for JNB to ZRH on 07/24/13 with

All results per page

Legend

View Rules

View Routing

View Booking Class

Search: Departing JNB on 07/24/13 for ZRH

Show rates for cabins:

Economy

Business

First

Viewing in currency USD

Print Economy

Print First

Validated Results

Fares - 64 items

Fare Basis	Airline	Booking Class	Trip Type	Fare	Cabin	Effective Date	Expiration Date	Min / Max Stay	Adv Purchase Req			
JA2BOX	TK	J	One-Way	220.00(USD)	B							
DOWZA	QR	D	One-Way	1525.00(USD)	B							
WOWZA	EY	W	One-Way	1616.00(USD)	B							
JAF	ET	J	One-Way	1681.00(USD)	B			03 / --				
KA1BOX	TK	K	One-Way	1785.00(USD)	B							
JOWZA1	EK	J	One-Way	1846.00(USD)	B							
ZOWTAPZA	TP	Z	One-Way	1863.00(USD)	B							
JOWZA	QR	J	One-Way	1873.00(USD)	B							
DOWZA	EY	D	One-Way	1908.00(USD)	B							
DAQW	TK	D	One-Way	2028.00(USD)	B							
CFLXOWWB	OK	C	One-Way	2054.00(USD)	B			-- / 12M	10			
COWZA1	EK	C	One-Way	2101.00(USD)	B							
COWZA	EY	C	One-Way	2199.00(USD)	B							
JFFWZA	KQ	J	One-Way	2264.00(USD)	B							
CAQW	TK	C	One-Way	2281.00(USD)	B							
COWZA	QR	C	One-Way	2291.00(USD)	B							
JOWZA1	EK	J	One-Way	2357.00(USD)	B							
FFWZA	AF	I	One-Way	2413.00(USD)	B			-- / 12M				
FFWZA	KL	I	One-Way	2413.00(USD)	B			-- / 12M				
JOWZA	EY	J	One-Way	2505.00(USD)	B							
DOWTAPZA	TP	D	One-Way	2521.00(USD)	B							
DOWZA	AZ	D	One-Way	2578.00(USD)	B			-- / 12M				

Fare

Also you can see this on ITA Matrix:

**How to buy this ticket**

Tickets cannot be purchased directly from IATA Software.

Provide this information to a travel agent to help them match the fares found.  
Make sure to provide the exact booking and fare codes shown.

**Fare 1:** Carrier TK JAZBOX JNB to GVA (full)

Passenger type ADT. ONE-WAY-ONLY fare. Booking code: J

Covers JNB-IST (Business), IST-GVA (Business)

CA\$218.51

• Changes to this ticket will incur a penalty fee.

Turkish Int'l Airport Service Charge (TR)

CA\$7.00

(YR)

CA\$195.30

South Africa Passenger Service Charge (ZA)

CA\$35.70

South Africa Air Passenger Tax (WC)

CA\$21.30

South Africa Passenger Safety Charge (EV)

CA\$1.80

South Africa Passenger Services and Security Charge (UN)

CA\$2.20

Subtotal per passenger

CA\$484.30

Number of passengers

X1

**TOTAL AIRFARE & TAXES**

**CA\$484.30**

Fare construction (can be useful to travel agents)

JNB TK X/IST TK GVA 214.56 JAZBOX NUC 214.56 END RCE 3.09268 XT 1.80EV 2.20UM 21.30WC 35.70ZA 7.00TR 135.30YR

• [Email this itinerary](#)

• [Print this page](#)

ITA

I saw this just a few minutes ago and at first it didn't seem bookable on expedia.com but now I can use [united.com](http://united.com) to book this!

**Review Trip Itinerary****✈ Fare Details**

1 Adults (age 18 to 64) 446.30 CAD

Additional Taxes/Fees 69.00 CAD

**Total 515.30 CAD**

We will request confirmation of your flights from Turkish Airlines. This process may take up to 24 hours. Your credit card will not be charged until your flights are confirmed.

**✈ Flight Details****✈ Tue., 20 Aug., 2013 | Johannesburg ZA (JNB) to Zurich, Switzerland (ZRH)**

Depart: 6:45 p.m. Tue., 20 Aug., 2013 Johannesburg ZA (JNB)	Arrive: 5:25 a.m. +1 Day Wed., 21 Aug., 2013 Istanbul, Turkey (IST)	Flight Time: 9 hr 40 mn	Distance: 4,629 miles	Flight: TK41 Operated by Turkish Aircraft: Airbus A330 Fare Class: Business Meal: Meal No Special Meal Of
Change Planes: Connect time in Istanbul, Turkey (IST) is 3 hours.				
Depart: 8:25 a.m. Wed., 21 Aug., 2013 Istanbul, Turkey (IST)	Arrive: 10:30 a.m. Wed., 21 Aug., 2013 Zurich, Switzerland (ZRH)	Flight Time: 3 hr 5 mn Travel Time: 15 hr 45 mn	Distance: 1,107 miles Total Distance: 5,736 miles	Flight: TK1907 Operated by Turkish Aircraft: Boeing 737 Fare Class: Business Meal: Meal No Special Meal Of

> [View Rules and Restrictions](#)

> [Additional bag charges may apply](#)

> [Change Flights or Start New Search](#)

Fare

It seems bookable but I have yet to know as I haven't purchased anything yet. This is also only available on some days, check ITA to see which days will work on united.com. For example, the image below only 6, 12, 19, 20, and 21st have space in August.

Calendar: Johannesburg to Geneva

01/08/2013

August - September ☒ Include overnight flights

Options marked contain overnight flights. Choose your departure date.

Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun
			1	2	3	4							1
			CA\$2,001	CA\$1,604	CA\$1,604	CA\$2,031							CA\$1,955
5	6	7	8	9	10	11	2	3	4	5	6	7	8
CA\$1,969	CA\$485	CA\$2,004	CA\$2,004	CA\$2,385	CA\$2,004	CA\$2,031							
12	13	14	15	16	17	18	9	10	11	12	13	14	15
CA\$485	CA\$2,004	CA\$2,004	CA\$2,001	CA\$2,001	CA\$2,001	CA\$2,060	CA\$2,001						
19	20	21	22	23	24	25	16	17	18	19	20	21	22
CA\$485	CA\$485	CA\$405	CA\$2,001	CA\$2,001	CA\$2,001	CA\$2,001							
26	27	28	29	30	31		23	24	25	26	27	28	29
CA\$1,969	CA\$2,004	CA\$2,001	CA\$2,001	CA\$2,001	CA\$2,001								
							30						

Lowest one-way fares, per passenger

**Fare**

Get in before they figure it out! Happy Booking! A very big HT to Flyertalk! The fare rules say 100 EUR for changes, 200 EUR to cancel, but given that it is an erroneous fare, it's likely you will get free cancellation if you want to cancel. It also says you're permitted a stopover in IST, although I haven't gotten that to price. If you did, please comment below!

I am on Facebook and Twitter - this is the sort of content that is time sensitive that you don't want to miss! If you liked this post, you can also [signup](#) for emails to get one daily message with all my posts.

**Fare Rules:**

Turkish Airlines TK JA2BOX JNB to GVA

**General notes**

BUSINESS EXCURSION FARES J  
FOR ONE WAY FARES

**Flight restrictions**

THE FARE COMPONENT MUST NOT BE ON  
ONE OR MORE OF THE FOLLOWING  
TK FLIGHTS 7300 THROUGH 7399  
TK FLIGHTS 7500 THROUGH 7599  
TK FLIGHTS 9000 THROUGH 9299.  
NOTE -  
OPERATED AJET DIRECT FLIGHTS

AND  
THE FARE COMPONENT MUST BE ON  
ONE OR MORE OF THE FOLLOWING  
ANY TK FLIGHT OPERATED BY TK.

**Advanced reservation/ticketing restrictions**

RESERVATIONS ARE REQUIRED FOR ALL SECTORS.

**Stopover restrictions**

2 FREE STOPOVERS PERMITTED ON THE PRICING UNIT - 1 IN EACH  
DIRECTION IN IST.

**Transfer restrictions**

2 FREE TRANSFERS PERMITTED ON THE PRICING UNIT - 1 IN EACH  
DIRECTION  
FREE IN TURKEY  
FARE BREAK AND EMBEDDED SURFACE SECTORS NOT PERMITTED ON  
THE FARE COMPONENT.

**Combinability**

SINGLE/DOUBLE OPEN JAWS/ROUND TRIPS/CIRCLE TRIPS NOT  
PERMITTED.  
MIRROR IMAGE NOT PERMITTED.  
APPLICABLE ADD-ON CONSTRUCTION IS ADDRESSED IN MISCELLANE  
PROVISIONS - CATEGORY 23.  
END-ON-END  
END-ON-END COMBINATIONS PERMITTED WITH TK DOMESTIC/

INTERNATIONAL FARES. VALIDATE ALL FARE COMPONENTS. SIDE  
TRIPS NOT PERMITTED.

### Sales restrictions

TICKETS MUST BE ISSUED ON/AFTER 01APR 13 AND ON/BEFORE  
31MAR 14.

### Sales restrictions

TICKETS MAY BE ISSUED BY PTA.  
TICKETS MAY NOT BE SOLD IN IRAN, ISLAMIC REPUBLIC OF/SUDAN.  
NOTE -  
UPGRADE TO ANY HIGHER FARE IS PERMITTED  
REBOOKING CHARGE ALSO APPLIES  
IF ANY.

### Penalties

CHANGES  
ANY TIME  
CHARGE EUR 100.00 FOR REISSUE/REVALIDATION.  
NOTE -  
REPRICING CONDITIONS-  
-----  
A-BEFORE DEPARTURE-  
ITINERARY MUST BE RE-PRICED USING CURRENT FARES  
IN EFFECT ON THE DATE THE TICKET IS REISSUED  
THE ITINERARY MUST MEET ALL RULE PROVISIONS OF  
THE NEWLY TICKETED FARE INCLUDING ADVANCE  
RESERVATION  
-  
A CHANGE IS A DATE/FLIGHT/ROUTING/BOOKING CODE  
CHANGE.  
-  
CHARGE APPLIES PER TRANSACTION - PER PERSON FOR  
ADULT CHILD AND INFANT WITH SEAT.  
INFANTS WITHOUT A SEAT ARE NOT CHARGED THE FEE  
-  
NEW FARE MAY BE EQUAL OR HIGHER. WHEN THE  
NEW  
-  
ITINERARY RESULTS IN A HIGHER  
FARE THE DIFFERENCE WILL BE COLLECTED AND THE  
CHANGE FEE WILL BE APPLIED.  
-  
CHARGES SHALL NOT BE WAIVED FOR MEDICAL  
REASON  
-  
WHEN FARES ARE COMBINED THE MOST RESTRICTIVE  
CONDITIONS APPLY  
-  
FOR DOMESTIC TURKEY SECTORS - WITHOUT CHARGE  
-  
B-AFTER DEPARTURE-  
-  
THE ITINERARY MUST BE RE-PRICED USING HISTORICAL  
FARES IN EFFECT ON THE ORIGINAL TICKETING DATE.  
THE NEW ITINERARY MUST MEET ALL THE RULE  
PROVISIONS OF THE NEWLY TICKETED FARES SUCH THAT  
THE RECALCULATED FARE COULD HAVE BEEN USED FOR  
THE NEW ITINERARY IF PURCHASED ON THE ORIGINAL  
TICKET ISSUE DATE  
-  
A CHANGE IS A DATE/FLIGHT/ROUTING/BOOKING CODE  
CHANGE.  
-  
CHARGE APPLIES PER TRANSACTION - PER PERSON FOR  
ADULT CHILD AND INFANT WITH SEAT.  
INFANTS WITHOUT A SEAT ARE NOT CHARGED THE FEE  
-  
NEW FARE MAY BE EQUAL OR HIGHER. WHEN THE  
NEW  
-  
ITINERARY RESULTS IN A HIGHER  
FARE THE DIFFERENCE WILL BE COLLECTED AND THE  
CHANGE FEE WILL BE APPLIED.  
-  
CHARGES SHALL NOT BE WAIVED FOR MEDICAL  
REASON  
-  
WHEN FARES ARE COMBINED THE MOST RESTRICTIVE  
CONDITIONS APPLY  
-  
FOR DOMESTIC TURKEY SECTORS - WITHOUT CHARGE  
-  
NOTE-  
SEQUENTIAL USE OF FLIGHT COUPONS - THIS FARE IS  
ONLY VALID IF THE FLIGHTS ARE TAKEN IN THE BOOKED  
SEQUENCE. OTHERWISE THE FARE WILL BE RECALCULATED  
BASED ON THE ACTUAL FLIGHT ROUTING.  
CHARGE EUR 200.00 FOR NO-SHOW.  
NOTE -  
CHARGES SHALL NOT BE WAIVED FOR MEDICAL REASON  
CANCELLATIONS



TICKET IS NON-REFUNDABLE IN CASE OF NO-SHOW.  
 NOTE -  
 NOT PERMITTED EVEN FOR MEDICAL REASON  
 FOR NON REFUNDABLE TICKETS THE -YR- SURCHARGE  
 WILL NOT BE REFUNDED.  
 BEFORE DEPARTURE  
 CHARGE EUR 200.00 FOR CANCEL/REFUND.  
 NOTE -  
 -  
 WHEN COMBINING FARES THE MOST RESTRICTIVE  
 CANCELLATION CONDITIONS APPLY FOR THE ENTIRE  
 PRICING UNIT.  
 -  
 AFTER DEPARTURE  
 CANCELLATIONS PERMITTED FOR CANCEL/REFUND.  
 NOTE -  
 FOR CANCELLATIONS AFTER DEPARTURE THE REFUND GIVEN  
 WILL BE THE DIFFERENCE BETWEEN THE FARE PAID AND  
 THE APPLICABLE FARE FOR THE JOURNEY FLOWN.  
 APPLICABLE FARE FOR THE JOURNEY FLOWN IS THE ONE  
 THAT SET AT THE SAME RBD WITH THE ORIGINAL FARE  
 PAID.  
 IF NO FARE EXISTS FOR THE FLOWN JOURNEY  
 ON THE SAME RBD WITH THE ORIGINALFARE  
 ANY FARE SET ON A HIGHER RBD WILL BE ACCEPTED.  
 --  
 -  
 WHEN COMBINING FARES THE MOST RESTRICTIVE  
 CANCELLATION CONDITIONS APPLY FOR THE ENTIRE  
 PRICING UNIT.  
 -

### HIP exceptions

AREA 2 IS EXCLUDED FROM THE HIGHER INTERMEDIATE POINT  
 RULE.

### Endorsements

THE ORIGINAL AND THE REISSUED TICKET MUST BE ANNOTATED -  
 NONEND/TK ONLY - IN THE ENDORSEMENT BOX.

### Discounts

ACCOMPANIED CHILD 2-11 - CHARGE 75 PERCENT OF THE FARE.  
 TICKETING CODE - BASE FARE CODE PLUS CH.  
 MUST BE ACCOMPANIED ON ALL FLIGHTS IN SAME COMPARTMENT  
 BY ADULT  
 OR - UNACCOMPANIED CHILD 8-11 - CHARGE 75 PERCENT OF THE  
 FARE.  
 TICKETING CODE - BASE FARE CODE PLUS CH  
 OR - INFANT UNDER 2 WITH A SEAT - CHARGE 75 PERCENT OF THE  
 FARE.  
 TICKETING CODE - BASE FARE CODE PLUS CH.  
 MUST BE ACCOMPANIED ON ALL FLIGHTS IN SAME  
 COMPARTMENT BY ADULT  
 OR - INFANT UNDER 2 WITHOUT A SEAT - CHARGE 10 PERCENT OF  
 THE FARE.  
 TICKETING CODE - BASE FARE CODE PLUS IN.  
 MUST BE ACCOMPANIED ON ALL FLIGHTS IN SAME  
 COMPARTMENT BY ADULT.

### Other Discounts

DISABLED PERSON(S) - CHARGE 75 PERCENT OF THE FARE.  
 TICKETING CODE - BASE FARE CODE PLUS SB.  
 NOTE -  
 TURKISH VETERAN DISCOUNT - CHARGE 60 PERCENT OF  
 THE FARE. BASE FARE CODE PLUS MG.  
 OR - RESTRICTED SENIOR CITIZEN 60 OR OLDER. ID REQUIRED -  
 CHARGE 85 PERCENT OF THE FARE.  
 TICKETING CODE - BASE FARE CODE PLUS CD.  
 NOTE -  
 IN CASE OF SENIOR CITIZEN DISCOUNTS - COPIES OF  
 THE NECESSARY DOCUMENTS SHALL BE ATTACHED TO THE  
 AUDIT COUPONS.

### Miscellaneous Fare Tags

THIS FARE MUST NOT BE USED AS THE HIGH OR THE LOW FARE  
 WHEN CALCULATING A DIFFERENTIAL. THIS FARE MUST NOT BE  
 USED AS THE THROUGH FARE WHEN PRICING A FARE COMPONENT  
 WITH A DIFFERENTIAL.

### Voluntary changes

IN THE EVENT OF CHANGES TO TICKETED FLIGHTS  
 BEFORE DEPARTURE OF JOURNEY - APPLIES WITHIN TKT VALIDITY  
 CERTAIN DOMESTIC REISSUE PROVISIONS MAY BE OVERRIDDEN BY  
 THOSE OF TK INTERNATIONAL FARES  
 CHARGE EUR 100.00 OR HIGHEST FEE OF ALL CHANGED FARE  
 COMPONENTS - DISCOUNTS APPLY - NO FEE FOR INFANTS W/O  
 SEAT AND  
 REPRICE USING FARES IN EFFECT TODAY  
 PROVIDED ALL OF THE FOLLOWING CONDITIONS ARE MET-

1. WHEN NO INTL COUPONS REMAIN - ALL NEW TRAVEL MUST BE DOMESTIC  
2. CHANGE IS BEFORE ORIGINAL SCHEDULED FLIGHT  
3. TK FARES ARE USED  
4. PUBLIC FARES ARE USED IF TICKETED FARE IS IN PUBLIC TARIFF. PRIVATE FARES ARE USED IF TICKETED FARE IS IN PRIVATE TARIFF  
5. NEW TKT HAS EQUAL OR HIGHER VALUE THAN PREVIOUS TKT  
6. ADV RES IS MEASURED FROM REISSUE DATE TO DEPARTURE OF PRICING UNIT  
7. TKT REISSUE RESTRICTED TO TK  
REFUND VIA ORIGINAL FORM OF PAYMENT  
ENDORSEMENT BOX- HIGHER NON-REF AMT AND NEW ENDORSEMENTS.  
OR -  
BEFORE DEPARTURE OF JOURNEY - APPLIES WITHIN TKT VALIDITY  
CERTAIN DOMESTIC REISSUE PROVISIONS MAY BE OVERRIDDEN BY THOSE OF TK INTERNATIONAL FARES  
NO CHARGE OR HIGHEST FEE OF ALL CHANGED FARE COMPONENTS AND  
REPRICE USING FARES IN EFFECT TODAY  
PROVIDED ALL OF THE FOLLOWING CONDITIONS ARE MET-  
1. NO CHANGE TO TRAVEL FROM ALL INTERNATIONAL SECTORS  
2. WHEN NO INTL COUPONS REMAIN - ALL NEW TRAVEL MUST BE DOMESTIC  
3. CHANGE IS BEFORE ORIGINAL SCHEDULED FLIGHT  
4. TK FARES ARE USED  
5. PUBLIC FARES ARE USED IF TICKETED FARE IS IN PUBLIC TARIFF. PRIVATE FARES ARE USED IF TICKETED FARE IS IN PRIVATE TARIFF  
6. NEW TKT HAS EQUAL OR HIGHER VALUE THAN PREVIOUS TKT  
7. ADV RES IS MEASURED FROM REISSUE DATE TO DEPARTURE OF PRICING UNIT  
8. TKT REISSUE RESTRICTED TO TK  
REFUND VIA ORIGINAL FORM OF PAYMENT  
ENDORSEMENT BOX- HIGHER NON-REF AMT AND NEW ENDORSEMENTS.  
OR -  
BEFORE DEPARTURE OF JOURNEY - APPLIES WITHIN TKT VALIDITY  
CERTAIN DOMESTIC REISSUE PROVISIONS MAY BE OVERRIDDEN BY THOSE OF TK INTERNATIONAL FARES  
CHARGE EUR 300.00 OR HIGHEST FEE OF ALL CHANGED FARE COMPONENTS - DISCOUNTS APPLY - NO FEE FOR INFANTS W/O SEAT AND  
REPRICE USING FARES IN EFFECT TODAY  
PROVIDED ALL OF THE FOLLOWING CONDITIONS ARE MET-  
1. WHEN NO INTL COUPONS REMAIN - ALL NEW TRAVEL MUST BE DOMESTIC  
2. CHANGE IS AFTER ORIGINAL SCHEDULED FLIGHT  
3. TK FARES ARE USED  
4. PUBLIC FARES ARE USED IF TICKETED FARE IS IN PUBLIC TARIFF. PRIVATE FARES ARE USED IF TICKETED FARE IS IN PRIVATE TARIFF  
5. NEW TKT HAS EQUAL OR HIGHER VALUE THAN PREVIOUS TKT  
6. ADV RES IS MEASURED FROM REISSUE DATE TO DEPARTURE OF PRICING UNIT  
REFUND VIA ORIGINAL FORM OF PAYMENT  
ENDORSEMENT BOX- HIGHER NON-REF AMT AND NEW ENDORSEMENTS.  
OR -  
AFTER DEPARTURE OF JOURNEY - APPLIES WITHIN TKT VALIDITY  
CERTAIN DOMESTIC REISSUE PROVISIONS MAY BE OVERRIDDEN BY THOSE OF TK INTERNATIONAL FARES  
CHARGE EUR 100.00 OR HIGHEST FEE OF ALL CHANGED FARE COMPONENTS - DISCOUNTS APPLY - NO FEE FOR INFANTS W/O SEAT AND  
REPRICE USING FARES IN EFFECT WHEN TKT WAS ISSUED  
PROVIDED ALL OF THE FOLLOWING CONDITIONS ARE MET-  
1. WHEN NO INTL COUPONS REMAIN - ALL NEW TRAVEL MUST BE DOMESTIC  
2. FULLY FLOWN FARE NOT REPRICED TO FURTHER POINT  
3. CHANGE IS BEFORE ORIGINAL SCHEDULED FLIGHT  
4. TK FARES ARE USED  
5. PUBLIC FARES ARE USED IF TICKETED FARE IS IN PUBLIC TARIFF. PRIVATE FARES ARE USED IF TICKETED FARE IS IN PRIVATE TARIFF  
6. NEW TKT HAS EQUAL OR HIGHER VALUE THAN PREVIOUS TKT  
7. ALL RULE AND BOOKING CODE PROVISIONS ARE MET  
8. ADV RES IS MEASURED FROM ORIGINAL TKT DATE TO DEPARTURE OF PRICING UNIT  
9. TKT REISSUE RESTRICTED TO TK  
REFUND VIA ORIGINAL FORM OF PAYMENT  
ENDORSEMENT BOX- HIGHER NON-REF AMT AND NEW ENDORSEMENTS.  
OR -  
AFTER DEPARTURE OF JOURNEY - APPLIES WITHIN TKT VALIDITY  
CERTAIN DOMESTIC REISSUE PROVISIONS MAY BE OVERRIDDEN BY THOSE OF TK INTERNATIONAL FARES  
NO CHARGE OR HIGHEST FEE OF ALL CHANGED FARE COMPONENTS AND  
REPRICE USING FARES IN EFFECT WHEN TKT WAS ISSUED  
PROVIDED ALL OF THE FOLLOWING CONDITIONS ARE MET-  
1. NO CHANGE TO TRAVEL FROM ALL INTERNATIONAL SECTORS  
2. WHEN NO INTL COUPONS REMAIN - ALL NEW TRAVEL MUST BE DOMESTIC  
3. FULLY FLOWN FARE NOT REPRICED TO FURTHER POINT  
4. CHANGE IS BEFORE ORIGINAL SCHEDULED FLIGHT  
5. TK FARES ARE USED  
6. PUBLIC FARES ARE USED IF TICKETED FARE IS IN PUBLIC TARIFF. PRIVATE FARES ARE USED IF TICKETED

FARE IS IN PRIVATE TARIFF  
 7. NEW TKT HAS EQUAL OR HIGHER VALUE THAN PREVIOUS  
 TKT  
 8. ALL RULE AND BOOKING CODE PROVISIONS ARE MET  
 9. ADV RES IS MEASURED FROM ORIGINAL TKT DATE TO  
 DEPARTURE OF PRICING UNIT  
 10. TKT REISSUE RESTRICTED TO TK  
 REFUND VIA ORIGINAL FORM OF PAYMENT  
 ENDORSEMENT BOX- HIGHER NON-REF AMT AND NEW ENDORSEMENTS.  
 OR -  
 AFTER DEPARTURE OF JOURNEY - APPLIES WITHIN TKT VALIDITY  
 CERTAIN DOMESTIC REISSUE PROVISIONS MAY BE OVERRIDDEN BY  
 THOSE OF TK INTERNATIONAL FARES  
 CHARGE EUR 300.00 OR HIGHEST FEE OF ALL CHANGED FARE  
 COMPONENTS - DISCOUNTS APPLY - NO FEE FOR INFANTS W/O  
 SEAT AND  
 REPRICE USING FARES IN EFFECT WHEN TKT WAS ISSUED  
 PROVIDED ALL OF THE FOLLOWING CONDITIONS ARE MET-  
 1. WHEN NO INTL COUPONS REMAIN - ALL NEW TRAVEL MUST  
 BE DOMESTIC  
 2. FULLY FLOWN FARE NOT REPRICED TO FURTHER POINT  
 3. CHANGE IS AFTER ORIGINAL SCHEDULED FLIGHT  
 4. TK FARES ARE USED  
 5. PUBLIC FARES ARE USED IF TICKETED FARE IS IN  
 PUBLIC TARIFF. PRIVATE FARES ARE USED IF TICKETED  
 FARE IS IN PRIVATE TARIFF  
 6. NEW TKT HAS EQUAL OR HIGHER VALUE THAN PREVIOUS  
 TKT  
 7. ALL RULE AND BOOKING CODE PROVISIONS ARE MET  
 8. ADV RES IS MEASURED FROM ORIGINAL TKT DATE TO  
 DEPARTURE OF PRICING UNIT  
 9. TKT REISSUE RESTRICTED TO TK  
 REFUND VIA ORIGINAL FORM OF PAYMENT  
 ENDORSEMENT BOX- HIGHER NON-REF AMT AND NEW ENDORSEMENTS.

### Voluntary cancellations

REFER TO PENALTIES CATEGORY 16

### Application

BUSINESS CLASS FARE  
 APPLICATION  
 AREA  
 THESE FARES APPLY  
 FROM AFRICA TO EUROPE.  
 CLASS OF SERVICE  
 THESE FARES APPLY FOR BUSINESS CLASS SERVICE.  
 TYPES OF TRANSPORTATION  
 THIS RULE GOVERNS ONE-WAY AND ROUND-TRIP FARES.  
 FARES GOVERNED BY THIS RULE CAN BE USED TO CREATE  
 ONE-WAY/ROUND-TRIP/OPEN-JAW JOURNEYS.  
 PASSENGER EXPENSES NOT PERMITTED  
 OTHER CONDITIONS  
 SEQUENTIAL USE OF FLIGHT COUPONS - THIS FARE IS  
 ONLY VALID IF THE FLIGHTS ARE TAKEN IN THE BOOKED  
 SEQUENCE. OTHERWISE THE FARE WILL BE RECALCULATED  
 BASED ON THE ACTUAL FLIGHT ROUTING.

Posted by Jeff | [67 Comments](#)

Categories: [Mistake Fare](#)

June 13

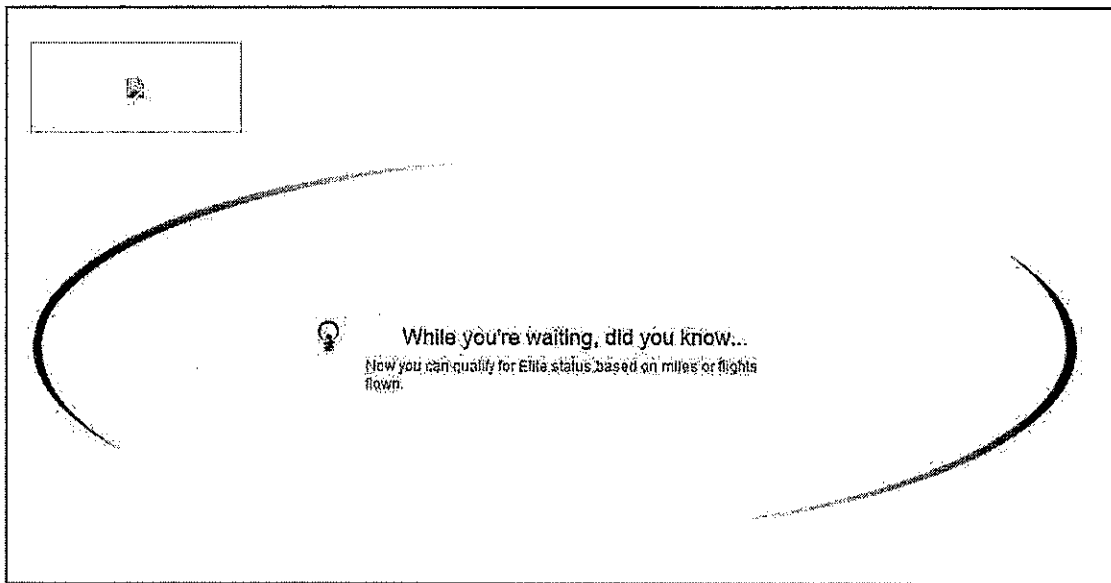
## The rush from award bookings...

As One Mile At a Time very aptly puts it, there's that rush when you book (award) tickets, especially when there's an aspirational redemption or a mistake fare dangling in front of you.

The award that I feel most deserves to win the "award that will give you that high" is probably going to be Lifemiles. They are the winner of giving you that adrenaline rush. Allow me to summarize my fun night with them...

This (very early) morning I was trying to book an award with the online engine. My EF alerts didn't seem to be working, but I decided to check lifemiles anyways for a redemption I had in mind, as even if the segments are all there on one day, it might not be bookable. I've also heard too many reports of horror stories with the call center and trying in vain to piece together an award segment by segment on the phone, so all I am willing to do is to just sit and hope the online system to spit out what I want.

So I'm in luck today but first, you have to go through the very glitchy engine and wait a long time with this screen as it pulls up the results. Twice the engine says that there is an error, the lifemiles support team has been notified, blah blah blah. I try again. Results show up! That's so great!



Then you get to wait for another minute as it pulls the seats and goes to the payment page, and through to the traveller information page. All this time I'm extremely tense for reasons I cannot disclose for fears of angry FT haters and my own ethical boundaries, as I've seen the engine time out before. This seems to happen a lot with my itineraries, but this time I click, and voila! I get through to the CC page! Now I am celebrating as all I have to do is enter my credit card information.

For some dumb reason (or maybe it was smart?) I decided to use my Chase Marriott Visa which has no forex instead of my trusty AMEX which I used for my last transaction with lifemiles. So I click through... and

"We were unable to obtain authorization for your credit card. Please verify that your Credit Card information is correct or try again using a different Credit Card."

Why now???!! I was super ecstatic over snagging two TPAC business class seats essentially during peak season summer travel 2 months out and so at first I thought the engine was having trouble processing my credit card as several people have posted about this on Flyertalk. So I go over to my online banking and I see a declined transaction.

Authorizations Summary					
Date	Time	Type	Response	MCC	Amount
05/12/2013		Mail/Phone Order	Declined		\$92

#### Online Banking

Oh geez my what the f#% just happened???!! Well, at least I know now that a couple hundred dollar "mail/phone order" charge from a Colombian Airline company in the middle of the night is going to get declined. ☹

Back on the page I'm on (unfortunately I forgot to take a screenshot), there's no option to rebook. So I can't really use another credit card. To top off the bad news, Chase Canada Customer Service is closed until 8AM EST so now I can just sit and relax hope that the seats are being held or will come back.

It's certainly the first time this has happened, though all the previous times my routes have been "legitimate," if you want to put it that way, so it wasn't really a problem. But When you combine getting a great deal and snagging award seats with no clarity on what you're going to get at all and the fact that the we're dealing with a company that has the worst call center, won't let you book mixed class tickets online or via phone, and has no qualms about devaluing their redemption values with advance notice, it's pretty insane. It honestly really is a crapshoot, all the while with your heart racing.

So that was my very interesting experience with lifemiles. Now I have to go phone their call center, wish me luck!

Posted by Jeff | [9 Comments](#)

Categories: [Avianca](#), [Help](#), [Me](#), [Redemptions](#)

June 3

## June 3 – Mistake Fares, Hyatt/Flying Blue Points Sale, Posts

Check out [my post](#) on how I should post! Would love your feedback!

Also, there is a limited time status match for Etihad Gold. For more information, see my post [here](#).

Hyatt is selling points for 1.85 cents at a 30% discount when you buy 30,000 – 40,000 points. Details [here](#).



Buy 1,000 – 9,000 points and get a 10% Bonus  
 Buy 10,000 – 29,000 points and get a 20% Bonus  
 Buy 30,000 – 40,000 points and get a 30% Bonus

Considering how hard it is to get enough Hyatt points in Canada to stay at any of the Cat 6 Park Hyatts, I actually might buy some points. I'll be waiting what Daily Getaways has to offer first. Remember, purchases are processed by points.com, so no bonus points for category spend.

There is also a promotion to buy Flying Blue miles at up to 50% bonus until July 9th. Miles are approximately 3.5 cents per mile, so that means with the 40% bonus it comes down to around 2.3 cents. Details [here](#). Premium class space should be generally good since a lot of the space Delta Skypesos can't access, so that brings a business class ticket to under 2900 dollars including fuel surcharges. If you're planning to buy a paid ticket at \$4000, it might be a good idea to consider. Alternatively you can consider buying miles for Air France First Class with their 50% off promo awards, if you have the budget.

**Flying Blue members will benefit from the following bonus:**

- 10,000 – 18,000 Award Miles = 10% Bonus
- 20,000 – 28,000 Award Miles = 20% Bonus
- 30,000 – 38,000 Award Miles = 30% Bonus
- 40,000 Award Miles = 40% Bonus

**Flying Blue Elite members will benefit from the following bonus:**

- 10,000 – 18,000 Award Miles = 10% Bonus
- 20,000 – 28,000 Award Miles = 20% Bonus
- 30,000 – 38,000 Award Miles = 30% Bonus
- 40,000 – 58,000 Award Miles = 40% Bonus
- 60,000 – 88,000 Award Miles = 45% Bonus
- 90,000 – 100,000 Award Miles = 50% Bonus

[Hack My Trip](#) has another excellent post, this time on why airfares to Canada are so expensive. I am so jealous he can consistently produce high quality posts!

[Points Miles & Martinis](#) says that Garuda Indonesia is joining Skyteam in 2014. The new first class on their 777's look quite good!

[Loyalty Lobby](#) says that Iberia is dropping its rewards flight saver, which means YQ are now added on to European flights. It's better off booking with Avios now and hopefully they won't be copying that. Remember, there isn't YQ if you [transfer your Avios to Iberia Plus](#) to fly their long-haul routes.

[Milevalue](#) says that there are 7 first class seats nearly everyday between October 2013 to March 2014 with AA on MIA-EZE. First class party, anyone? EDIT: Looks like it was a mistake and the seats got pulled. Too bad.

Flight	Depart	Arrive	Current Mileage Balance
American Airlines 999	Miami (MIA) December 30, 2013 10:45 AM	Buenos Aires (EZE) December 30, 2013 09:40 PM	Available Mileage Needed Departure First Mile/Award Award \$ x 02.500 Returns First Mile/Award Award \$ x 02.500 Mileage Balance After
Travel Time : 8 h 55 m Cabin Class : First Seat : unassigned	Booking Code : Z Plane Type : 777		
Flight	Depart	Arrive	Taxes & Fees
American Airlines 934	Buenos Aires (EZE) March 10, 2014 10:00 AM	Miami (MIA) March 10, 2014 09:00 PM	Additional Taxes and Carrier Imposed Fees on Passenger \$ x \$17.33 Tax and Award Charge Information (9)
Travel Time : 9 h 0 m Cabin Class : First Seat : unassigned	Booking Code : Z Plane Type : 777		Flight Subtotal 750,600 miles + \$463.92

LOOK AT THIS! Too bad it's gone ☹

January / February 2014 Requested: Wed Oct 30 [Close Full Calendar](#)

SUN	MON	TUE	WED	THU	FRI	SAT
			22 62.5K	23 62.5K	24 62.5K	25 62.5K
26 62.5K	27 62.5K	28 62.5K	29 62.5K	30 62.5K	31 62.5K	1 62.5K
2 62.5K	3 62.5K	4 62.5K	5 62.5K	6 62.5K	7 62.5K	8 62.5K
9 62.5K	10 62.5K	11 62.5K	12 62.5K	13 62.5K	14 62.5K	15 62.5K
16 62.5K	17 62.5K	18 62.5K	19 62.5K			

And this!

30% bonus for transferring points into Aeroplan via points.com. I think it's a horrible deal using points.com, unless when you're transferring out. From [View from the Wing](#)

There is also a 30% transfer promotion from Diners Club to BA Avios for both Canada and US until July 31st. However, I don't have a Diners Club Card so I can't access the pages.

Finally, there is 50% share bonus with US Dividend Miles. This means miles at 2cpm, which is higher than when they have the 100% purchase bonus, but it might be good for clearing out accounts with small balances. Details [here](#).

Share your miles and give 50% more.

**No fee for a limited time!**

Share your miles to help friends and family reach award travel. It's fast and easy!

Through June 30, 2013, when you share miles, you won't pay a processing fee and you'll give 50% more miles – up to 25,000 bonus miles.

- Share 10,000 miles, give 15,000 miles
- Share 30,000 miles, give 45,000 miles
- Share 50,000 miles, give 75,000 miles

Details

Posted by Jeff | [10 Comments](#)

Categories: [Updates](#)

June 3

## Should I be posting about mistake fares?

I've had three posts where I've talked about mispriced fares – the [SEZ – DUB](#) fare yesterday, the [Marriott Phuket](#) currency error, and the potential [TATL](#) fare.

I understand that this is my own blog and I'm allowed to write whatever I please – but I strive to maintain the best practices in the miles and points world with my content. Whether it's about proper disclosure, hat tipping properly, or even open discussion, I've tried my very hardest to adhere to the practices that everyone here feels is reasonable.

I got two comments this morning (and I've also gotten a few similar ones with the other posts) telling me that I am "killing the deal" and that "I'm not doing anyone a favour."

For those who want to know why I posted these mistake fares, here's what I think.

A mistake fare is clearly mispriced, so that any employee for the airline who is fairly intelligent enough so not the ~~US Dividend Miles Call Center~~ will notice and notify a superior or get it fixed. That's why whenever I have a post of this type, I ask you not to call the airlines/hotels/company. Does it mean that calling the airline will get the fare fixed? No. But it means that it raises the likelihood that the fare will be discovered and noticed.

When I post these, I realize the exposure my blog gives to the fare. So while that may ruin it for those that are angry that how instead of tens of bookings there are hundreds of bookings, that doesn't affect whether it's going to be honoured or not. In my opinion the number of bookings and the mistake fare itself is generally mutually exclusive. If you look at the Rangoon mistake fare, the round 1 fares were honoured. The round 3 weren't. It wasn't a matter of the number of people booking, but rather the airline that decided not to honour it.

Obviously, I don't understand how I am killing it, other than the fact that I may bring its death a few hours ahead. Again, I can't predict by how many hours I will do that and I try my hardest to ensure people don't make dumb mistakes by calling the airlines. But even if they do, why should the people who booked it before I posted about the deal have a right to be angry that others are booking it? What is the need to be selfish?

Yes, I didn't find the mistake fare, but does that mean I shouldn't be able to write about it? I feel that posting the mistake will benefit more than it will harm. Especially with the Seychelles fare, I think it was the case. I've never seen so many posts on twitter thanking me for bringing the fare to the public, which is exactly what I wanted. I

want to help people in miles and points, and if a mistake fare does that, so be it. I also think that the people that benefit from this fare greatly outnumber the people who feel I ruined the deal. That is worth any haters posting comments that I don't like but I will ~~essen~~ keep on my post.

Do you think I should be posting the username of the poster who discovered the fare on the FT thread for proper disclosure? Or do you think I should not even be posting these? Please comment below and ~~cast a vote~~ (I can't seem to figure out how to do a poll – I don't think I have the widget).

I really wouldn't be here if it wasn't for your support – all of you, from the awesome conversations on Twitter, to the nice people on flyertalk that I had PM conversations with, and even all the bloggers who helped me to become a better blogger. Thank you, very much. So whether you hate my posts or love my posts I still appreciate your feedback. ☺

Posted by Jeff | [39 Comments](#)

Categories: [Blogging](#)

June 1

## Mistake Fare: SEZ – DUB OW \$350!!!

There is a mistake fare in business class from the Seychelles to Dublin. Seems like a fat finger error as someone left off a zero ☺

Bookable on [expedia.co.uk](http://expedia.co.uk). **DO NOT CALL THE AIRLINES!**

Excellent for someone who is planning a trip to the Seychelles. Here is a sample result:

Only 2 tickets left at this price! ☺

**£233** per person, includes tax and fees. **SELECT**

Victoria SEZ 20:40 → DUB 13:50 +1 day 1 Stop 21h 10m

Multiple Airlines Air Seychelles 18 Etihad Airways 41

Hide Flight Details ✖ Seat Preview

**FLIGHT DETAILS**

Thu. Nov. 14 (Arriving Nov. 15) Victoria, Seychelles to Dublin, Ireland

Victoria (SEZ) to Abu Dhabi (AUH)  
Air Seychelles 18  
Business Class (1), AIRBUS INDUSTRIE A330-200  
Depart 20:40 Arrive 01:10 +1 day  
Duration: 4h 30m

Stopover: Abu Dhabi (Abu Dhabi Intl.) 8h 5m

Abu Dhabi (AUH) to Dublin (DUB)  
Etihad Airways 41  
Business Class (W), AIRBUS INDUSTRIE A330-200  
Depart 09:15 Arrive 13:50  
Duration: 8h 35m

Total trip time: 21h 10m

Hide Flight Details


Collect 200 points

Sample Result

What else is awesome, however is that you can put a stopover in AUH as the fare rules (see below) permit unlimited stopovers:

Only 2 tickets left at this price! £248

per person, includes taxes & fees

**Flight 1: Thu. Nov. 14**  
 Victoria → Abu Dhabi  
 SEZ 2040 → AUH 0110 +1 day Direct 4h 30m  
 Air Seychelles 18


Hide Flight Details ▲

**FLIGHT DETAILS**

Thu. Nov. 14 (Arriving Nov. 15) Victoria, Seychelles to Abu Dhabi, United Arab Emirates

Victoria (SEZ) to Abu Dhabi (AUH)  
 Air Seychelles 18  
 Business Class (1), AIRBUS INDUSTRIE A330-200  
 Depart 2040 Arrive 0110 +1 day  
 Duration: 4h 30m  
 Total trip time: 4h 30m

Hide Flight Details ▲

**Flight 2: Thu. Nov. 28**  
 Abu Dhabi → Dublin  
 AUH 0215 → DUB 0650 Direct 8h 35m  
 Etihad Airways 45

Hide Flight Details ▲

**FLIGHT DETAILS**

Thu. Nov. 28 Abu Dhabi, United Arab Emirates to Dublin, Ireland

Abu Dhabi (AUH) to Dublin (DUB)  
 Etihad Airways 45  
 Business Class (W), AIRBUS INDUSTRIE A330-200  
 Depart 0215 Arrive 0650  
 Duration: 8h 35m  
 Total trip time: 8h 35m

Hide Flight Details ▲

Sample Fare with stopover in AUH

Get in before they figure it out!

Working as of 9:40 Pacific Time

Fare Rules (from IATA Matrix):

Air Seychelles Limited HM IOWSC SEZ to DUB

#### General notes

BUSINESS ONE WAY SPECIAL EXCURSION FARES I  
 Between EUROPE and AFRICA FOR ONE WAY FARES

#### Advanced reservation/ticketing restrictions

OPEN RETURNS NOT PERMITTED.

NOTE -

TICKETING DEADLINE FOR HM AS MENTIONED BELOW  
 FOR BOOKINGS DONE 60 DAYS OR MORE BEFORE DEPARTURE  
 DEPARTURE TICKETING MUST BE DONE 30 DAYS AFTER BOOKING.

FOR BOOKINGS MADE 59 TO 30 DAYS BEFORE DEPARTURE  
 TICKETING MUST BE DONE 7 DAYS AFTER BOOKING

FOR BOOKINGS MADE 29 TO 15 DAYS BEFORE DEPARTURE  
 TICKETING MUST BE DONE 5 DAYS AFTER BOOKING

FOR BOOKINGS MADE 14 TO 7 DAYS BEFORE DEPARTURE  
 DEPARTURE TICKETING MUST BE COMPLETED 03 DAYS AFTER BOOKING

FOR BOOKINGS MADE 6 TO 3 DAYS BEFORE DEPARTURE  
 TICKETING MUST BE COMPLETED 24 HOURS AFTER BOOKING

FOR BOOKINGS MADE LESS THAN 3 DAYS BEFORE DEPARTURE



E TICKETING MUST BE COMPLETED 04HOURS AFTER BOOKING.  
G.

### Minimum stay requirements

TRAVEL FROM LAST STOPOVER MUST COMMENCE NO EARLIER THAN 3 DAYS AFTER DEPARTURE FROM FARE ORIGIN.

### Stopover restrictions

UNLIMITED FREE STOPOVERS PERMITTED ON THE PRICING UNIT.  
NOTE -  
STOPOVER PERMITTED AT GUESTS OWN EXPENSE.

### Transfer restrictions

UNLIMITED TRANSFERS PERMITTED ON THE PRICING UNIT  
FARE BREAK AND EMBEDDED SURFACE SECTORS NOT PERMITTED ON THE FARE COMPONENT.  
NOTE -  
AS PER SPECIFIED PUBLISHED ROUTINGS.

### Combinability

SINGLE/DOUBLE OPEN JAWS/ROUND TRIPS/CIRCLE TRIPS NOT PERMITTED.  
APPLICABLE ADD-ON CONSTRUCTION IS ADDRESSED IN MISCELLANEOUS PROVISIONS - CATEGORY 23.  
END-ON-END  
END-ON-END COMBINATIONS PERMITTED WITH HM DOMESTIC FARES. VALIDATE ALL FARE COMPONENTS. SIDE TRIPS PERMITTED.

### Sales restrictions

TICKETS MUST BE ISSUED ON HM OR EY.  
TICKETS MUST BE ISSUED BY ELECTRONIC TICKETING.  
OR - TICKETS MUST BE ISSUED ON HM OR HR.  
TICKETS MUST BE ISSUED BY ELECTRONIC TICKETING.

### Penalties

CHANGES  
CHARGE USD 50.00 FOR REISSUE/REVALIDATION.  
WAIVED FOR DEATH OF PASSENGER OR FAMILY MEMBER.  
NOTE -  
OFFICIAL DOCUMENTATION REQUIRED IN THE CASE OF DEATH OF PASSENGER/FAMILY MEMBER.  
-----  
CHANGE FEES MUST BE CODED AS XP IN THE TAX FIELD.  
-----  
FIRST CHANGE FOC ADDITIONAL CHANGES PERMITTED AT THE ABOVE CHARGE.  
-----

CANCELLATIONS  
CHARGE USD 150.00 FOR CANCEL/REFUND.  
WAIVED FOR DEATH OF PASSENGER OR FAMILY MEMBER.  
NOTE -  
OFFICIAL DOCUMENTATION REQUIRED IN THE CASE OF DEATH OF PASSENGER/FAMILY MEMBER.  
-----

### HIP exceptions

THE HIGHER INTERMEDIATE POINT RULE DOES NOT APPLY FOR STOPOVERS.

### Endorsements

THE ORIGINAL AND THE REISSUED TICKET MUST BE ANNOTATED - NO ENDORSEABLE VALID HM EY - AND - NON REFUNDABLE - IN THE ENDORSEMENT BOX.  
NOTE -  
ALL TKTS MUST REFLECT THE TRAVEL VALIDITY  
-NOT VALID AFTER- IN THE NVA BOX.

### Discounts

ACCOMPANIED CHILD 2-11 - CHARGE 85 PERCENT OF THE FARE.  
TICKETING CODE - BASE FARE CODE PLUS CH AND PERCENT OF DISCOUNT  
OR - INFANT UNDER 2 WITHOUT A SEAT - CHARGE 20 PERCENT OF THE FARE.  
TICKETING CODE - BASE FARE CODE PLUS IN AND PERCENT OF DISCOUNT  
OR - INFANT UNDER 2 WITH A SEAT - CHARGE 85 PERCENT OF THE FARE.  
TICKETING CODE - BASE FARE CODE PLUS IN AND PERCENT OF DISCOUNT  
OR - UNACCOMPANIED CHILD 5-11 - CHARGE 100 PERCENT OF THE FARE.

TICKETING CODE - BASE FARE CODE PLUS CH AND PERCENT OF DISCOUNT.

### Discounts

ACCOMPANIED CHILD 2-11 - CHARGE 67 PERCENT OF THE FARE.  
 TICKETING CODE - BASE FARE CODE PLUS CH.  
 MUST BE ACCOMPANIED ON ALL FLIGHTS IN SAME COMPARTMENT BY ADULT 18 OR OLDER  
 OR - INFANT UNDER 2 WITH A SEAT - CHARGE 67 PERCENT OF THE FARE.  
 MUST BE ACCOMPANIED ON ALL FLIGHTS IN SAME COMPARTMENT BY ADULT 18 OR OLDER  
 OR - 1ST INFANT UNDER 2 WITHOUT A SEAT - CHARGE 10 PERCENT OF THE FARE.  
 MUST BE ACCOMPANIED ON ALL FLIGHTS IN SAME COMPARTMENT BY ADULT 18 OR OLDER  
 OR - UNACCOMPANIED CHILD 6-11 - CHARGE 67 PERCENT OF THE FARE.

### Agent Discounts

AGENT - NO DISCOUNT.

### Miscellaneous Fare Tags

THIS FARE MUST NOT BE USED AS THE HIGH OR THE LOW FARE WHEN CALCULATING A DIFFERENTIAL. THIS FARE MAY BE USED AS THE THROUGH FARE WHEN PRICING A FARE COMPONENT WITH OR WITHOUT A DIFFERENTIAL.

### Application

AIR SEYCHELLES REGULAR FARES FROM SEYCHELLES ISLANDS  
 APPLICATION  
 AREA  
 THESE FARES APPLY FROM SEYCHELLES.  
 CLASS OF SERVICE  
 THESE FARES APPLY FOR BUSINESS/ECONOMY CLASS SERVICE.  
 TYPES OF TRANSPORTATION  
 THIS RULE GOVERNS ONE-WAY AND ROUND-TRIP FARES.  
 FARES GOVERNED BY THIS RULE CAN BE USED TO CREATE ONE-WAY/ROUND-TRIP/CIRCLE-TRIP/OPEN-JAW JOURNEYS.  
 FULL AND SEQUENTIAL USE OF FLIGHT COUPONS-  
 THE TICKET /OR ELECTRONIC TICKET/ IS NOT VALID IF THE FIRST COUPON HAS NOT BEEN USED AND WILL NOT BE HONORED IF ALL THE COUPONS ARE NOT USED IN THE SEQUENCE PROVIDED IN THE TICKET /OR ELECTRONIC TICKET/.  
 CAPACITY LIMITATIONS  
 THE CARRIER SHALL LIMIT THE NUMBER OF PASSENGERS CARRIED ON ANY ONE FLIGHT AT FARES GOVERNED BY THIS RULE AND SUCH FARES WILL NOT NECESSARILY BE AVAILABLE ON ALL FLIGHTS. THE NUMBER OF SEATS WHICH THE CARRIER SHALL MAKE AVAILABLE ON A GIVEN FLIGHT WILL BE DETERMINED BY THE CARRIER'S BEST JUDGMENT  
 OTHER CONDITIONS  
 ALL FARES ARE SUBJECT TO CHANGE OR WITHDRAWAL WITHOUT NOTICE.  
 FARES ARE ONLY GUARANTEED IF AUTO-PRICED AND TICKETED IN GDS ON THE SAME DAY.

From [Flyertalk](#)

Posted by Jeff | [82 Comments](#)

Categories: [Mistake Fare](#)

May 21

## May 21 – RGN mistake fare, Marriott Elite Breakfasts

Don't forget to follow me on [Facebook](#) and [Twitter](#)!

Really, really quiet day today:

Starting June 22, Marriott Rewards Gold and Platinum Elite members plus a guest will get free continental breakfast seven days a week in the lounge or restaurant of participating hotels in the U.S. and Canada, the company will announce Tuesday (from [USA Today](#)).

So I stumbled upon this nice LX filing (in the FT thread) in a SCC claim in Texas concerning the RGN mistake fare, which you can access [here](#).

I found these interesting tidbits:

Notice to the public appears to have begun on September 26, 2012, when a popular airline travel blog "BoardingArea" published a posting entitled "Mistake Fare – One Way First Class Originating in Myanmar is Back!" The blog posting stated "It appears [passengers can] fly between Yangon (RGN and cities in Eastern Canada for under \$600.

The original post from Gary @ View from the Wing is [here](#).

...

Despite Swiss' efforts over 1,000 erroneously priced tickets were purchased ... approximately 800 of these tickets were issued on Swiss ticket stock.

This is my favourite one:

Based on the number of passengers at issue, honoring the erroneous fares would cost Swiss millions in lost revenue.

Oh my! I guess that's why they chose to fight everyone in court/scc. Right,...

It seems to me that LX is basing its argument on the fact that in their tariff they say that they are allowed to cancel erroneously issued tickets under rule 5F. They also disclaim the plaintiff's right to go through this claim under Texas contract law and want to slap their legal fees onto the claimant if LX wins. I can't wait to see what happens.

Of course I am not a legal agent and I don't know a lot about this. But it will be interesting to see how the Canadian claims are handled, given that LX had a version of it's CoC (contract of carriage) on it's site that did not have clause 5F.

If you liked this post, sign up to receive free blog posts via [email](#) or in a [RSS reader](#) if you liked this post ... then you'll *never miss* another one!

Posted by Jeff | [6 Comments](#)

Categories: [Mistake Fare](#), [Updates](#)

May 11




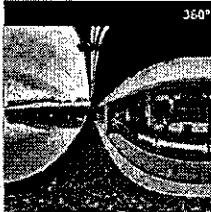
## Mistake Hotel Rate – Marriot's Phuket Beach Club @ \$15USD/night!!!

**EDIT:** Around 20 mins (as of 11:49 PDT) after I posted this the rooms have been pulled. That was fast!

Marriott Phuket is pricing rate at 423 THB, which is a currency error, because 423 THB is approximately 15 USD.

**Marriott's Phuket Beach Club**  
 230 Maai, Maikhae, Talang - Phuket Island, 83110 Thailand

MAPS & TRANSPORTATION  
 FACT SHEET  
 PHONE NUMBERS

**Please Note** - Extra beds/rollaways/cribs available free of charge for first item and THB 600 per night for each additional bed/crib.

<b>Standard Rates</b> From 423.00 (THB) per night	<b>Room Packages</b> None available for your dates	<b>Marriott Rewards Offers</b> None available for your dates
--	---	---

Show: [By Rate Type](#) | [By Room Type](#) | [By Price](#)

**BOOK A RIGHT**  
ONLY AT MARRIOTT.COM

**You Selected:** 2 Bedroom Apartment, Bedroom 1: 1 King, Bedroom 2: 2 Double, Sofabed, Bathrooms: 2, Garden view

**423.00**  
THB / Night

Leisure rate, includes wired high-speed Internet, wireless Internet  
[Rate rules](#) | [Room details](#)

**Continue**

Sample Date

If you are planning a trip South Asia, book now and cancel later. Definitely a steal! This is definitely a mistake fare, so it will be pulled very soon! I have not (and likely will not) book this so I don't guarantee that your reservations will be honoured of course. In the event the hotel does honour it would be very cool to stack it with the [Unexpected Bonus Promotion](#).

Remember:

Rate excludes taxes and service charge  
 Full prepayment required 24 hours after booking.  
 Changes or cancellation not permitted.

Book here: <http://www.marriott.com/hotels/travel/hktph-marriotts-phuket-beach-club/>

You can also file a BRG with any other OTA's if you're feeling adventurous to get an even better deal.

Very glad I found this gem on [flvertalk](#) just before I was going to sleep. Big HT!

Posted by Jeff | [2 Comments](#)

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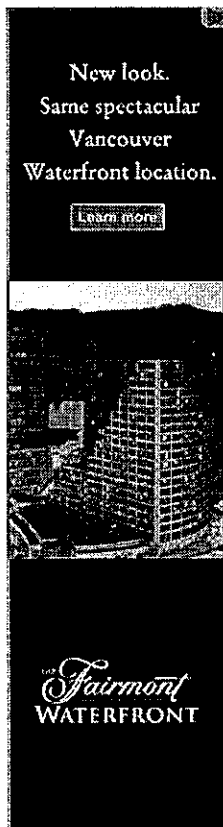
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27

Sep

## Mistake Fare – One Way First Class Originating in Myanmar is Back!

Some months ago there was a major mistake fare where you could fly first or business class direct cheap *as long as your trip started in Yangon, Myanmar*.

Sounds crazy to many, but frequent flyers from all over the world have been descending upon that country to start trips.

Now – crazy thing that it is – someone has pointed out on Milepoint that **the fare is back**.

It appears to you fly between Yangon (RGN) and cities in Eastern Canada for under \$600. Here's business class on ANA from Yangon to Tokyo and then continuing on in Swiss first class to Zurich and then JFK, with American (economy) up to Montreal.

### Itinerary

#### **Yangon (RGN) to Montreal (YUL) - Sat, Feb 2**

<b>ANA</b>	Yangon (RGN) to Tokyo (NRT) - Sat, Feb 2 ANA 914	Dep: 10:00PM Layover in NRT	Arr: 6:40AM Sun, Feb 3	6h 10m 4h 35m
<b>+</b>	Tokyo (NRT) to Zurich (ZRH) - Sun, Feb 3 Swiss International Airlines 161	Dep: 11:15AM Layover in ZRH	Arr: 3:50PM	12h 35m 18h 0m
<b>+</b>	Zurich (ZRH) to New York (JFK) - Mon, Feb 4 Swiss International Airlines 16	Dep: 9:50AM Layover in JFK	Arr: 12:55PM	9h 5m 2h 0m
<b>AA</b>	New York (JFK) to Montreal (YUL) - Mon, Feb 4 American 4442 OPERATED BY AMERICAN EAGLE	Dep: 2:55PM	Arr: 4:35PM	1h 40m

Cost per passenger (including taxes & fees): \$586.42  
Total cost for 1 passenger: \$586.42

One could of course just get off in New York, or without checked bags in Zurich if one preferred.

Getting the Yangon – Tokyo flight on ANA, operated just 3 days a week, is key to making this work.

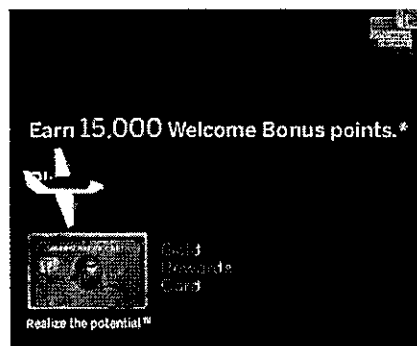
I've managed to price this in *business class* on Travelocity using multi-city search but I haven't been able to price it on a live, bookable site in first class yet. (The screen shot above is from the ITA Matrix.) So this is a work in progress, I play to play with the various country Expedia websites next.

Bear in mind that a visa is required for Myanmar.

0

0

### 181 Comments



1. Seth said,



There's no data in that thread on MP. Did you perhaps the advantage of the fact that you're an admin on the site to read the previously edited post and share details which had been redacted??

2. **gregorygrady** said,

Great, now that you outed this on the blogosphere, Round 3 will certainly be shut down much sooner. Well done!!!

3. **Frank** said,

All hail the clicks!

4. **Garv** said,

@Seth – I do not have any ability to see redacted posts. That post, and the replies, clued me into what was going on and I started searching fares.

5. **clayd333** said,

If you see your deal pull the trigger people.. If its gone in an hour or a week shouldn't make a difference.. Book ur flights or don't, this is a blog about travel deals folks, if you don't like it, don't click!

6. **Rab** said,

Just couldnt hold on to it for even 10 minutes.. could ya.

7. **Garv** said,

@Frank – for what it's worth, writing about travel that starts in Myanmar is unlikely to drive 'clicks'. ☹

@Rab I worked on this for like 2 hours before posting it. It was posted on a public frequent flyer community, Milepoint. But that was just the clue that it was out there. I had to deduce everything for myself, that took quite a bit of time. Sounds like a whole bunch of other people were aware of this.... well, if you had shared it with me, under a request not to share further, then I wouldn't have. I've never broken that sort of trust. But when I have to figure it out for myself, I may go ahead and post it.

Kinda makes the complaint crew wish y'all had sent me an email to let me know about this, no?

8. **Fábio Vilela** said,

Any specifics dates for this year besides Feb/2013 ?

9. **bangkokiscool** said,

Gary, if you click through on travelocity it will book the exact flights you show in A class (F).

10. **Garv** said,

@Fabio Vilela – dates shouldn't matter, through end of schedule I believe

11. **Garv** said,

@bangkokiscool – thanks!!

12. **Paul** said,

I see the dates/itinerary I want pricing out at \$567, but I can't seem to book on travelocity. Any tips?

13. **Garv** said,

@Paul what do you mean by can't seem to book it?

14. **Paul** said,

Gary, apologies...I see the fare on the ITA matrix (exact same routing as your screenshot, but just different day) but can't replicate on Travelocity using multi-city option

15. **AM** said,

I can't find the ANA flight earlier than Jan 28, any idea why? It's supposed to be Mon/Wed/Sat.

16. **pmr** said,

I'm having trouble pulling this up on ITA. I'm typing in RGN and YUL but nothing like this comes up, all way higher priced...any pointers?

17. **lucky** said,

Are you searching each segment individually on Travelocity, or "marrying" any of them?

18. **thalha** said,

Thanks Gary for the post

19. **bangkokiscool** said,

This site shows NH 914 operating dates:

<http://aviability.com/flight-number/flight-nh914-ana>

Just booked on travelocity using multi-segment, with each segment spelled out, \$734. Expedia shows the fare too but won't book it if there's no real inventory, and TL seems to be more accurate in that regard. No ticket #'s yet.

20. **Erich** said,

Same routing, made sure to leave RGN on MWF and clicked through on Travelocity, C on ANA to NRT, F NRT-ZRH-JFK, Y AA JFK-YUL.

Would love NRT-LHR NH F and ZRH-JFK or YUL LX F on same itinerary if any body is able to find it

21. **AM** said,

Does it have to be via Europe? Any routings via West Coast?

22. **Rohan** said,

Also available via FRA on NH or LH F connecting on SQ F to JFK

23. **Chris** said,

@AM: The routing rules are MPM-based and specify travel via the Atlantic.

24. **sushiguy** said,

Just booked as well for 734 but no ticket number as well, hope it's good. Thanks for the heads up Gary.

25. **LarryInNYC** said,

On the issue of the visa — I was in Yangon in August and there was a visa-on-demand counter in the arrivals section. Don't know if it's operational or only offered to certain passport holders (I had my visa already from the consulate in NYC).

26. **colpuck** said,

just booked the direct ZRH-YUL to shave 200.00 off the fare 566 a/i for what should be a boat load of \*A miles....that is if it tickets.

27. **David** said,

@bangkokiscool – Click through what?

28. **David** said,

Any luck with Hipmunk?

29. **David Code** said,

Gary, don't listen to the nay-sayers and the whiners. You are very kind (and brave!) to share such great gifts with us. Thsnks.  
David Code

30. **Dennis** said,

Seems Travelocity has pulled all NH avail.

31. **Howie** said,

398 if you want to try US envoy from ZRH

32. **emmygofly** said,

Thanks gary! Also a shout out to colpuck. Followed your lead to reduce the price by \$200. Booked on Travelocity. Waiting to see if this tickets. We will be in Australia so just a little hop, skip and jump to get to Myanmar.

33. **Gene** said,

Not working for me. Is there a trick?

34. **Simon** said,

@howie us envoy to where? PHL or CLT?

35. **Gene** said,

What website will ticket this? I can't even get it on ITA!! grr..

36. **Gabriel** said,

Just booked on travelocity, searching each segment individually in "multiple destinations". I searched business class and it actually gave me results for First on the Swiss segments saying "business class is not available". I think the trick is just picking the right dates—I couldn't get it for Gary's dates above but the following Monday worked. Meanwhile, the last leg only gave AC options, not AA, but I wouldn't plan to take that part anyway. Same here though, no ticket number yet.

37. **Erich** said,

To clarify, I booked RGN-NRT-ZRH-JFK-YUL starting 7/3/2013, LX F on the 2 long hauls. On travelocity US, ticket is not yet issued, \$597

38. **colpuck** said,

Ticked on swiss, over under three days before they cancel

39. **benji** said,

How long can the layovers in Zurich and/or NRT be?

40. **Howie** said,

@simon PHL

41. **sushiguy** said,

Just curious to see if anyone has gotten this to actually ticket? I booked but have yet to receive an email from travelocity. It doesn't even show up under my trips, but yet I can pull it up if I use the trip look up function with the trip id.

42. **Arcanum** said,

Booked RGN-NRT-FRA-ZRH-YUL with NRT-FRA and ZRH-YUL in F. LH A380 from NRT-FRA. NH 777 was also an option but I couldn't get it to book. No ticket #s yet.

Anyone know the cancellation policy for Travelocity? I couldn't get my preferred dates to book so I booked another week then got my preferred dates to work on Expedia.

43. **Ben** said,

expedia.ca has RGN-YUL for CAD\$298 on MH/RJ in J for all your oneworld folks

44. **Dennis** said,

Finally kick through on tocity.ca, having a trip to China next march so this is quite a tricky catch. Finger crossed.

45. **emmygoffly** said,

Got email from travelocity. And eticket numbers.

46. **Chris** said,

@Arcanum What did you do from FRA-ZRH? I can't get it to price with that routing?

47. **Dennis** said,

The PNR is trackable at swiss.com

48. **Chris** said,

@Arcanum I believe Travelocity will allow a cancel within 24 hours

49. **Ken Y.** said,

Will this work on any Skyteam airlines?

50. **Jamison** said,

just booked RGN-NRT-ZRH(21 hr layover)-YUL one-way on Travelocity

RGN-NRT on ANA Business Class  
NRT-ZRH on SWISS First Class  
ZRH-YUL on SWISS First Class

can't wait to try this all out for \$566.79 a.i !

1 Adult: \$130.00  
Taxes + Airline & Agency Fees: \$436.79  
Total: \$566.79

THANKS GARY!

51. Gene said,

Dead?

52. Chris said,

@Gene still pricing for me

53. Gene said,

Dates and website? I was getting some but I hesitated and now cant find!

54. GuWonder said,

I had to avoid LX-operated flights to get it to price to ticketing presumably.

Swiss may have become aware of this as their inventory dropped like a fly hit by a hard fly swatter

55. Soltatio said,

Check march. Just booked in march on travelocity. Waiting for ticket numbers.

56. Ken Y. said,

Got it to price. Too bad I have no status with \*A and don't really want it.

57. colpuck said,

@guwonder, my ticketed was issued by swiss, so they don't even have the pleasure of billing someone else for this debacle.

58. ehche said,

was able to book RGN-NRT-ZRH-JFK-YUL leaving 5/29/2013 on Travelocity for \$715. No email or ticket # yet.

59. harold said,

How did they resolve it last time – flights stuck / canceled / compensation offer?

60. Neil said,

any way to work Auckland, NZ in this fare? anyone?

61. Colpuck said,

@KenY, it is pricing on MH/RJ if you are in OW but only in J.

62. Mike S. said,

Colpuck said,

@KenY, it is pricing on MH/RJ if you are in OW but only in J.

---

What is the routing? Thanx!

63. Gene said,

Booked! Sadly, if this sticks, I will have to cancel my SQ F award (NOT A380). Oh well, I prefer LX F over SQ F anyways.

64. Will said,

Booked, will see if they honour it ☺

RGN-NRT-ZRH-JFK-YYZ-YUL \$734

Had a hard time even getting a reservation done, on travelocity was failing at the last step. Finally found some dates in June that stuck.

65. **Chris** said,

@Gene just got May on Travelocity following flight advice above

@Colpuck any tips on an OW itinerary? I'm trying to validate on RJ in J but haven't found the magic flights yet.

66. **David** said,

Booked via FRA on LH 380 in F.

67. **AZNF** said,

How do you get a return to work?

68. **Chris** said,

Just got ticket numbers from travelocity

69. **Tom** said,

I went to buy on Travelocity and there was a last minute price change to 24,000 USD ☹

70. **Will** said,

Got a confirmation from Travelocity, got an e-ticket number issued by SWISS and it pulls up fine on their website...

71. **Chris** said,

@Tom try alternate dates – probably an availability change. Still looks alive to me.

72. **AZNF** said,

does it only work on travelocity?

73. **SOLTATIO** said,

@Chris – How long did the ticket numbers take? I've been waiting over 40 minutes with no email from travelocity?

74. **Colpuck** said,

@Chris, I know someone who got RGN-KUL-AMM-YUL to price out. That's all I know. RGN-KUL on MH, KUL-AMM-YUL on RJ.

75. **Mike S.** said,

A poster of FT said you can book SQ F on the A380 ! HOW ???

76. **Peter Y** said,

Thanks for this one, got 2 tix for president's day week w/ my son. Booked a UA SFO-ICN-BKK positioning flight, will use regional budget airlines from there.

77. **GuWonder** said,

What are the fare rules on this?

78. **Andrew** said,

Got a OW to book end of April: RGN-HKG-LHR-ORD-YUL for 633.19 ticketed by CX on Travelocity. RGN-HKG is via KUL on MH and CX then CX to LHR and AA to ORD.

79. **Mal** said,

Got it for my pre Osh Kosh trip.. you sir.. are a godsend ☺

80. **Chris** said,

@SOLTATIO Mine probably took 45-60 min if I had to guess.

@Colpuck Thanks. I figured it out – I was overcomplicating it.

81. **David** said,

Booked with LH A380. Love it.

82. **SOLTATIO** said,

Mine still hasn't ticketed on Travelocity? Can replicate it on Expedia for a few days later. Maybe I must pull the trigger on that and then cancel the travelocity one if they don't come through?

83. **Neil** said,

Still trying to book this. Is this dead? trying dates in early April 2012. not working out so far.

84. **Neil** said,

Is this dead? trying dates in early April 2012. not working out so far.

85. **Mike S.** said,

First Class (A) inventory is going fast on the NRT-ZRH leg – now booking into business (C) at higher price \$672.

86. **Explore** said,

Travelocity leads me through the whole process, to the final booking screen, and then says "one or more flights could not be confirmed". Same thing with other dates.

87. **beachfan** said,

I only get Thai or Korean offered on Travelocity for Sat, Mon departures (3/9 or 3/11). How do I get ANA offered?

88. **Paul** said,

Thanks Gary, I also booked with LH A380. Sweet.

89. **Sandeep** said,

You can get creative.. here is a hint.. think SQ First suite via LHR!

90. **SOLTATIO** said,

Just got Expedia to ticket it in 5 minutes. Still nothing from Travelocity. Guess I will cancel that within 24 hours.

91. **Ken Y.** said,

Colpuck, thanks for the heads up! Too bad MH doesn't earn MQMs on DL and RJ only gives 1x EQM and 0.25x bonus on AA. This just doesn't work as a MR, and not sure if it's worth it even if I wanted to do a AA Plat challenge. ☹

92. **Moler** said,

Booked the RGN-NRT-ZRH-JFK-YUL (NH J-LX F-LX F-AC Y/J) prototype on lastminute.co.uk, 5.29.13 departure, GBP 456. Got a confirmation email within a few minutes. No E-tix number, but a booking code that works on Swiss.com. Thanks, Gary!

93. **DBest** said,

Finding RGN-KUL-FRA (on Malaysia J)-FRA-YUL (Srilankan codeshare of AC Y) for \$258 for some Saturdays in Feb.

94. **Iou** said,

Thank you! I snapped first class all the way to yul.

95. **Ken Y.** said,

Got it to price for \$8-900 on KLM, but at 9500 miles on those legs, even with a Z class fare at 1.5x MQM and 2.5x total miles banked with elite bonus, it just doesn't cut it...

96. **wildway** said,

I started the Milepoint thread, but I wanted to work out the bugs before I posted further. For people trying to book various itineraries, try routing through RGN-HAN- and on or RGN-NRT and on, via Europe and JFK. You can route yourself on Qantas A380 F, ANA A380 F, Thai A380 F, and lots of other options. I found availability on Swiss, Alitalia, Delta, BA, Thai, ANA, Finnair, Cathay and Singapore. And I think a few others I'm forgetting.

Myself, I went for a \$333 itinerary that includes AF A380 in First from CDG-JFK. It's a great option for Skyteam folks, RGN-HGN-CDG-JFK-YUL.

For the adventurous, it's the same base fare of \$115 to St. Johns, Newfoundland, and Halifax.

97. **wildway** said,

Oops, I meant HAN.

98. **vip007** said,

Dates for the \$333?

99. **Mike S.** said,

Thank you wildway. Can you provide the routing you used to get AF A380F and Qantas A380F ? On whose stock are these tickets issued (what airline gets stuck with the bill?)

100. **Jason** said,

This only works from RGN? I have to find way to get to rgn from west coast? What would be the cheapest way to Rgn from lax?

101. **Sherpa** said,

@gary, we booked three for Jan 20th \$258 RGN-KUL-FRA business, FRA-YUL economy, but I'll take it. Thanks for the heads up as usual, couldn't get the F to work, expedia may have solved it as NONE of their fares were showing up, Travelocity still appears to be alive but after "roaming alone" episode I have my doubts until it's ticketed and in my inbox.

Thanks again, fingers crossed!

102. **George Stevens** said,

@wildway,

Thanks for the OP, and the HAN alternative- are there particular days of the week for the RGN – HAN flight to work?

103. **Paul** said,

Anyone booked from west coast.

104. **wildway** said,

I went RGN-HAN-CDG-JFK-YUL, and i saw a lot of Sunday and Thursday availability. (1/24 for me). I used month long ITA searches to find the dates that worked, RGN-YUL, with advanced routing codes thrown in there to explore various options.

I note that I was only able to price a small portion of what I actually found on ITA. But when it was working, it was RGN-HAN-SIN-LHR, which yielded the Qantas A380 F options. And Singapore, as well.

But there's a huge range of available routes, at least as far as ITA is concerned. RGN-HAN-KIX-FCO-JFK-YUL.

105. **Tom** said,

Just purchased itinerary on travelocity in December (departing 22/12/2012) RGN-PEK-ZRH-YUL in F for \$572 USD... How long does it take for a ticketing confirmation from travelocity to arrive ?

106. **wildway** said,

Also, I booked everything through the US to make sure the DOT protection would be there. I'd recommend that to everyone considering this fare.

107. **wildway** said,

Delta stock.

108. **David** said,

Travelocity has now ticketed. It was sitting with revenue protection for a while. On 205 ANA stock.

109. **z** said,

no go for those of us just waking up?

110. **Planetshakers** said,

Travelocity (US)  
RGN SIN – 6th Oct  
SIN YUL – 7th Oct

\$533 MH MH SQ F (A380 suites) BA

111. **Blom** said,

I don't see any availability ☹

112. **reader** said,

I booked RGN-HKG-LHR-JFK-YUL. About \$680, CX first and BA business across atlantic. THanks!

Now time to wait and see \*glee\*

113. **Geoff** said,

ITA is showing \$2354 as the lowest price from now until end of calendar... does that mean it's dead? Was hoping to go to Myanmar next year anyways, would have been perfect!

114. **ClearedCustoms** said,

Got nervous and pulled the trigger on RGN-NRT-ZRH-NYC-YUL for 7/15/13 at \$586 without searching other options. NH business, LX First. Purchased on travelocity.com about 7 hours ago. No email, no ticket numbers yet. Reservation shows up in my Travelocity account. PNR pulls up itinerary with Ana and Swiss. Thanks Wildway & Gary.

115. **BrewerSEA** said,

I was just called by Travelocity about my RGN-PEK-ZRH-YUL in about a month purchased ~2.5 hours ago to confirm my CC information. Received the confirmation email a moment later. It is ticketed on Swiss (724) stock.

116. **john** said,

So this is the secretive first strike then? Well thanks! Im glad I didnt bother trying to figure out what it was since you actually have to fly the first leg.

117. **David** said,

@ClearedCustoms – call Travelocity and ask for your ticket number. No ticket number means no chance.

118. **Nayamir** said,

Got 3 ticket numbers, still hopefully they honor these tickets

119. **ClearedCustoms** said,

Anyone have a direct line to Travelocity Revenue Management? I'm in Singapore and my US cell won't ring here. A CSR just told me I needed to wait another 4-6 hours for Revenue Management to complete a review of the transaction, then hung up on me when I asked to be transferred to them. Am I getting hosed?

120. **Nayamir** said,

First rule, be patient and wait. DONT CALL

121. **z** said,

pulled the trigger on RGN-PEK-(a380)FRA-PHL-YUL for \$366 US. too bad could not get FRA-WAS and just dump the rest of the ticket. Any chance i can do this after the fact since its booked in F??

122. **Douze Notations** said,

@z – mind sharing sample dates? are these in F?

123. **ClearedCustoms** said,

@ Nayamir – Crap. You're right.

124. **Dov** said,

Fare Rules From Expertflyer

Fare basis code FIFOW3

Generic IATA Fares YY

STOPOVERS

UNLIMITED FREE STOPOVERS PERMITTED ON THE PRICING UNIT.

TRANSFERS

UNLIMITED TRANSFERS PERMITTED ON THE PRICING UNIT.

FARE BREAK AND EMBEDDED SURFACE SECTORS PERMITTED ON THE FARE COMPONENT.

PENALTIES

NO PENALTIES APPLY.



125. Del said,

Found a roundtrip that works if anyone is interested. Prices just under \$1100

RGN-NRT-ZRH-YUL-AMS-KUL-RGN

Outbound is on NH and LX in in C and F and return on KL and MH in J. search for the return as YUL-KUL, KUL-RGN

126. z said,

@douze, still waiting for confirmation, although its hit my CC already and have booking reference numbers

RGN-PEK (with a connection in KMG) F China Airlines Feb 3

PEK-FRA F LH a380 Feb 4

FRA-PHL C (envoy US Air) Feb 5

PHL-YUL F (US AIR) FEB 5 (going to be dumped) and will either amtrak or bus back to DC

127. Douze Notations said,

mind sharing sample dates and which ota? thank you!!!!

128. z said,

Sample dates are there (above)

booked through travelocity.ca

129. z said,

sorry and meant AIR CHINA (not china airlines)

130. Douze Notations said,

Thanks @z. Awesome iten, btw.

131. z said,

thanks. best of luck. let me know if you are the same flights.. cheapoair.com had it for slightly more give or take US\$100

132. Douze Notations said,

@z – not working out for me on tl. which ota did you use?

133. Douze Notations said,

@z thanks so much. got it!!!! still playing around with it. these dates do sound enticing though 😊

134. z said,

still there on cheapoair for 449. do you see it?

135. Nayamir said,

In my opinion, I would stay away from Air China. In the past, I had a problem with them for not crediting miles to my United account.

Regarding to a possibility for a ticket being cancelled, I would stay away. Maybe I am wrong here. Who knows? Here we are all gaming with the booking.

136. z said,

@nayamir- did you get it resolved or no? what was the issue?

137. SRN said,

Heads up availiabilty in August 2013.

Booked & Ticketed via SIN in F on SQ & Swiss.\$689.00 AI

Several dates in August.

138. Christian said,

@z – What segments did you search for? Can't seem to reproduce that, searching multiple dates.

139. SH\_BK said,

Please don't laugh, but how are people planning to get TO Myanmar?

140. Nayamir said,

No, they did not credit miles to my United account. Even I paid full fare for economy ticket on their flights to Southeast Asia. After several tries, emails, I decided to give up. Wasted so much time with their people.

So for this kind of mistake fair, I am highly doubt that they would credit miles to UA account.

141. **gbaco** said,

Booked 4 hours ago and no Ticket Number. Got an email saying the flight isn't available, but 1 min later got a confirmation with no ticket number. I made the stupid mistake to call Travelocity and was told the ticket is under revenue control. Has this happened to anyone else? Should I not count on this to be ticketed and book another using a different account?

142. **Chas** said,

This this might finally be dead as of 11:38 AM EDT.

143. **z** said,

the segments were  
RGN-PEK  
PEK-FRA  
FRA-PHL  
PHL- YUL on the dates listed above

Tried looking on both cheapo and travelocity.ca and xpedia.ca, cant seem to find them. Chas might be right they pulled the fare. i got a call from travelocity.ca through my Chase fraud department number to authenticate my purchase. hopefully that means a ticket number is forthcoming

144. **benji** said,

I know this is kinda taboo, but I am new to this game and would really appreciate the help. I would like to take advantage of this and stopover in Paris long enough to propose to my girlfriend in the city. I am looking at the return being after new years day. Can anyone help me or point me to a pay service that can take care of this for me?

What my plan is: Spend New Years eve in Hawaii or Tokyo. After that I will take advantage of this offer, so I am thinking the routing needs to start on the 3rd. I would like to route throug CDG and have enough time there to propose to my girlfriend at the Eiffel Tower. Then return to the US. Obviously as much use of First class or even first class on an A380 would make this trip all the more memorable.

Thanks for the help or for pointing me in the direction of someone who can.

145. **benji** said,

Sorry, correction. needs to start on the 2nd or 5th

146. **Chris** said,

Looks dead to me – \*may\* be bookable on some sites that don't update immediately, but fare has definitely been pulled.

147. **BigRedBears** said,

Got on RGN-KUL-SIN-CDG-JFK-YUL for \$683 in mid-February. RGN-KUL-SIN on Malaysia business class, SIN-CDG in Singapore suite, CDG-JFK in Air France first. Both SQ and AF on A380.

@SH\_BK: I am planning to redeem United miles to BKK or SGN and figure out a cheap fare to RGN from there.

148. **DL** said,

I managed to book on expedia this morning, and have ticket numbers.

RGN – KUL – SIN – ZRH – JFK // LGA – YUL. I get to fly SQ R-class on an A380, and LX F. Sweet

At \$850 it is not as good a deal as others, but still an amazing deal!

Now my question is as follows: SQ gives 300% for R class in KrisFlyer miles, and United 150%. I have about 180,000MP already in the bank : should I start building up a KrisFlyer account with the SQ flight?

149. **Simon** said,

Looks dead to me. Has anyone else been able to book just now?

150. **z** said,

my ticket was just voided, anyone else's? Have an eticket number...  
OTA:travelocity.ca  
claiming the fare was "expired"

151. **shane** said,

what sites dont update immediately !

152. **KC** said,

Now that this is settle, any creative idea on how to change the time for stopover? ☺

153. **Simon** said,

No eTicket so I guess I'm pretty much screwed. Oh well... It was good entertainment though...

154. **ClearedCustoms** said,

@SH\_BK United one-way awards to South Asia (Myanmar, Thailand, or Laos) are 32.5/60/70 in y/j/f. I personally want NH LAX-NRT-MNL in biz. Rev Y ticket from MNL to BKK, then overland to Lao, then Myanmar. Lets hope this is honored. Me, my girlfriend, and a best friend are all on the same RGN-YUL return.

Another AviancaTaca bonus on purchased miles could be handy too.

155. **whyfly** said,

Well got some great tickets thanks. rgn-kul-sin-lhr [A380First]yul \$517. Got all my ticket # and now lets hope this one sticks. the others I routed via jfk so Dot can enforce the ticket ☺

156. **gregorygrady** said,

Quote by Gleff:

---

"@Frank – for what it's worth, writing about travel that starts in Myanmar is unlikely to drive 'clicks'."

---

LOL, as this post is at 152 replies already within the first 24 hours. Haven't seen that many replies on a View From the Wing blogpost in quite some time.....yeah, unlikely to drive clicks my foot. ☺

157. **Gary** said,

@gregorygrady – and my traffic stats which i what i was writing about were pretty normal for a thursday and a friday. Comments aren't clicks.

158. **SOLTATIO** said,

@gregorygrady Well Im honestly glad that Gary opened up the possibility for his readers. I saw the thread on Milepoint and booked before he posted but his great explanation about how to go to work really helped many newbies and even helped when travelocity didnt issue my tickets after a few hours to try the expedia sites and keep looking for F when originally I could only find J. Thanks a mil @Gary

159. **Coathanger** said,

@Gary Thank you for sharing this deal on your blog. I managed to get a RGN-KUL-SIN-LHR-YUL booking ticketed so now it's wait and see.

@gregorygrady this deal was already being covered off in the usual FT and MP forums which i would imagine provides most of the readership for the boarding area blogs. in the time this deal (and blog post) was live again it wouldn't have hit the top of google pages thrown up for yangon so additional traffic would be minimal.

160. **David** said,

@ClearedCustoms – Travelocity Revenue Management can be contacted at +1 (866) 488 6333. They cleared my ticket in under 2 minutes.

161. **ClearedCustoms** said,

@David Thanks, I did get in touch with them. Not sure what was going on behind the scenes as CS said RM was reviewing it, and RM told me to tell CS they were not reviewing it. Etickets (on 724) eventually came through around the 20 hour mark ☺

162. **whyfly** said,

well i booked one of my tickets 23hours ago it just confirmed 10 minutes ago???? etickets on 724.

WOW! shocked

163. **David** said,

@ClearedCustoms – It is just strange stuff with the Gnome. Full credit though for instant ticketing once the RM guys have press OK.

164. **Triptroll** said,

To late.. it seems to be gone ☺

165. **Haddaway** said,

@Gary: Haters gonna hate. Thank you for your post.

166. **Neil** said,

I managed to get two tickets with the following route: RGN-NRT-FRA-ZRH-YUL and RGN-KMG-SIN-CDG-PHL-YUL. I was wondering if I can start my first trip at NRT and the second trip at SIN then end at PHL without any problems? I don't think that would be an issue. However, I saw some comments on flyertalk that I might be denied boarding. Any idea? Thanks for your helps in advance.

167. **Gary** said,

@Neil – you must take all flights on your itinerary, or else the rest may be cancelled

168. **Neil** said,

Forget me for not understanding this better. I am just thinking that as long as I am here for the flights, they have to check me in, right? Do they have the right to cancel the rest of my flights?? Or they assume since you are not showing up for your previous flights, you might not make the rest of the flights so then they can cancel the rest? If this is related to the passenger load issue, could it help if I check in for the flights I want to take in advance? I will be in Taiwan during the time so I was just thinking buying a ticket to connect in NRT for trip #1 and SIN at trip #2. Will they definitely cancel your flights if you dont make the first one? Just trying to figure out if this is worth the risk. Thank you for your input.

169. **Gary** said,

@Neil you must fly all ticketed segments in order or you lose the rest of your itinerary. If you do not show up for your first flight you lose all the rest of your flights.

170. **Will** said,

@Neil – you must fly all the sectors in order, which means starting in RGN otherwise your ticket will be void. Your reservations won't be cancelled as per what others said because you hold different airlines' flights. But your e-ticket will be null which means you cannot use it.

171. **Alex** said,

Thanks Gary, I was able to snag 4 one way tickets RGN-KUL-SIN, SIN-LHR, LHR-YUL for next june. Works out perfectly for me as I am moving my family back to eastern U.S. next summer. I do have a question though and hoping you can help. I actually have 5 people in my family including a 10 month old (at time of travel). There wasnt availability for 5 people so I booked 4, hoping to be able to add a lap-infant. I dont mind paying about \$1500-\$2000 to add her, just wondering if that will create issues if i contact the airlines? thanks

172. **Gary** said,

@Alex I think you'll be fine contacting the airline, it's a pretty normal request you're going to be making. Although my guess is it'll be complicated. First, where did you book the tickets? You may wind up needing to work through them and they may be clueless. Second, your other option is owrking through the tcketing carrier, whose ticket is it? (What are the first 3 numbers in the ticket?)

173. **Neil** said,

Thank you, Gary and Will! You are very helpful. I will be Asia then so I can just position myself to fly out of RGN. I have anther question. I booked two tickets and one looks like is charged by ANA and I have the e-ticket numbers and all. Does this mean that I can start making other travel arrangements? The other ticket I booked is supposed to be through Singapore Airline. I have the e-ticket number and has not heard anything from TL. However, the credit card shows pending charges from Air China? Not sure why. Does this mean that I might lose this ticket? Thanks!

174. **Alex** said,

hello again Gary, I took your advice and called Travelocity, and was connected to a representative with a middle eastern accent. He told me that I had to call Sri Lankan Airlines, which is the issuing stock. However, i am hesitant as when I initially called travelocity, the automated system said there was a problem with my itinerary. I have heard that since I booked thru Travelocity US website, I have DOT protection on this, is it true? or does DOT protection only apply if it touches US Soil? My routing is RGN-KUL-SIN, SIN-LHR, LHR-YUL, thanks again

175. **Piyush** said,

Swiss Air started cancelling tickets.

176. **Swiss Cancelling Myanmar First Class Mistake Fare Tickets - View from the Wing** said,

[...] Last week I posted about a fare from Yangon, Myanmar to Eastern Canada ... less than \$600 for international three-cabin f... [...]

177. **My next "big" trip will be... - One Mile at a Time** said,

[...] being said, a couple of weeks ago there was a mistake fare between Yangon and Montreal in first class, for roughly \$500-800 one-way. I couldn't resist [...]

178. [Ticketless in Malaysia... the complete tale | The Trip Sherpa](#) said,

[...] Airlines (MH), does not want me to fly at all. And they have good reason, after all, it was due to this mistake fare. MH would only receive \$113 of actual fare (not taxes) for our \$247 business class fare for over [...]

179. [May 21 – RGN mistake fare, Marriott Elite Breakfasts – Canadian Kilometers](#) said,

[...] original post from Gary @ View from the Wing is here. [...]

180. [Mistake Fare \(RGN\): CTA Ruling – Canadian Kilometers](#) said,

[...] 3" of the erroneous fares. You can see what happens in View From the Wing's post here. The massive FT thread about the different rounds are here (Round 1/2) and here (Round [...])

181. alex said,

Gary, don't know how to contact you, but I just want to thank you as I am wrapping up an amazing month long vacation with my family partially thru the RGN mistake fare and will be going to the FCT in a couple of days. If you can spread the word, I have two rooms at the Frankfurt Sheraton for this Friday that I cannot use, and will go to any two people that you may want to choose, or first come first serve.

## Add A Comment

Name (required)

Mail (will not be published) (required)

Website

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**TAB 4**

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF  
ALAN G. LESNEWICH  
JUDGE



COURTHOUSE  
ELIZABETH, NEW JERSEY  
07207

LETTER OPINION

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE COMMITTEE ON OPINIONS

June 20, 2013

David Katzenstein, Esq.  
Eckert Seamans Cherin & Mellott, LLC  
Four Gateway Center, Suite 301  
100 Mulberry Street  
Newark, NJ 07102

Ms. Patricia Riley  
23 Wade Drive  
Summit, NJ 07901

Re: Riley v. Swiss International Air Lines, Ltd.  
Docket No. SC 246-13  
Trial Date: June 4, 2013

Dear Mr. Katzenstein & Ms. Riley:

This matter involves a claim for alleged economic damages by *pro se* plaintiff, Patricia Riley ("Riley"), who booked a one-way, first/business-class ticket from Rangoon, Myanmar (with stops in Tokyo, Geneva, Zurich and New York) to Montreal, Canada on Travelocity. Riley claims that defendant Swiss International Air Lines Ltd. ("SWISS"), breached a contract with her to fly her first/business-class from Geneva to Zurich to J.F.K. Airport in New York. She seeks \$1,948.50 in damages. Generally speaking, due to a technical error outside the airlines' control, Riley booked her trip for 1% of the regular fare and substantially less than the standard economy class fare for these flights. When Riley arrived in Zurich during her trip, pursuant to its rights under the applicable contract of carriage, SWISS notified Riley that it had cancelled her reservations on the segments of the trip that were ticketed by SWISS due to the pricing error. However, as a gesture of good will, SWISS offered to fly Riley (in a coach class seat) free of charge from Zurich to Geneva to New York. Riley declined the coach seat and offered to pay for an upgrade to first-class or business class. Her request was denied by the SWISS representative, but no reason was provided. Instead Riley, having



anticipated the potential cancellation weeks in advance, used an "insurance" ticket she had purchased from United Airlines to fly not to JFK, but to Liberty Airport.

### FACTS

According to the trial testimony, the process by which international airfare is priced can be somewhat complicated, and can involve numerous parties. In some cases, airlines are able to set their own fares. However, in other situations, the fares are set and published by two independent organizations: The International Air Transport Association ("IATA") and the Airline Tariff Publishing Company ("ATPCO"). IATA is responsible for determining the price of airfare for certain itineraries and ATPCO is responsible for sending that price to Online Tickets Agents (OTAs), such as Travelocity for eventual sale to consumers.<sup>1</sup>

On September 10, 2012, IATA issued a list of fares to ATPCO for air transportation that included fares from Rangoon, Myanmar (RGN) to Montreal, Canada (YUL). ATPCO distributed the list of fares to OTAs. However, when it did so, it made a technical error which resulted in an erroneous one-way, first-class fare from RGN to YUL being made available online for consumers to purchase beginning September 21, 2012. The fare was only available for one-way, first-class travel originating in RGN and terminating in YUL, but itineraries could be booked through numerous intermediary points and on different carriers. SWISS was only to provide the transportation for several legs of the trip.

The first-class fare at issue was sold to Riley for approximately \$135.00 USD (excluding taxes, fees, and surcharges). The correct fare however, was a minimum of \$15,000 depending on the itinerary that was selected between Myanmar and Montreal. The fare was only available when a passenger selected Rangoon, Myanmar as their origin and Montreal, Canada as their destination. Any other origin or destination would not allow the passenger to book that fare.

SWISS learned of the mistake sometime during the evening of September 27, 2012. Early the next morning, SWISS contacted ATPCO when it first opened for business and instructed ATPCO to immediately delete the fare as an option. By 11:00 AM (EDT) on September 28, 2012, the fare had been removed by all OTAs. According to the trial testimony of a Swiss representative, despite SWISS' efforts, over 1,000 erroneously priced tickets were purchased between September 27 and 28, 2012.

Approximately 800 of these tickets were issued on SWISS ticket stock<sup>2</sup> (SWISS did not issue the tickets itself, but rather the OTA automatically issued the ticket on

---

<sup>1</sup> IATA is a trade association for the world's airlines. It provides services for its members, including certain circumstances, the establishment of fares for air transportation. ATPCO is a private company that is the data supplier of all major pricing engines. ATPCO obtains fares from its airline clients and "distributes" them to the online ticket agents for sale to the general public through websites such as [www.travelocity.com](http://www.travelocity.com) and [www.orbitz.com](http://www.orbitz.com).

<sup>2</sup> "Ticket stock" refers to electronic tickets issued by OTAs that bear the logo of the ticketing carrier.

SWISS ticket stock). The remaining passengers who purchased an erroneous fare were ticketed on the ticket stock of another airline.

Based on the number of passengers who purchased the tickets, honoring the erroneous fares could have cost SWISS millions in lost revenue. SWISS cancelled all of the erroneous fares that had been issued on its ticket stock. Consistent with the contract of carriage, SWISS notified all such passengers, approximately 800, by October 4, 2012 and issued full refunds to each passenger by October 9, 2012. So as not to strand any customers who might have been halfway through their itinerary, as a gesture of goodwill, SWISS also made a decision to transport passengers who were traveling on the ticket stock of another airline in economy class, provided that the passenger traveled in sequence (i.e. started in Myanmar and flew all previous legs of their itinerary), which was a contractual precondition for this fare.

Ms. Riley was a savvy frequent flyer who purchased her ticket through Travelocity on September 27, 2012. The fare Riley paid for her ticket, which included first/business-class travel approximately halfway around the world, was \$141.00 (excluding taxes, fees and surcharges). The total cost of the ticket (including taxes, fees and carrier-imposed surcharges) was \$751.90. Notwithstanding the ATPCO error, All Nippon Airways elected to honor the ANA segments of Riley's ticket. Accordingly, Riley flew first-class from Rangoon to Tokyo on February 16, 2013.

Prior to embarking on her trip, Riley apparently learned from reviewing traveler blogs posted by other passengers about how certain airlines were handling passengers traveling on tickets purchased with the erroneous fare. Suspecting that SWISS might ultimately not honor her first-class ticket, using her credit card and frequent flyer mileage, Riley purchased what she described as an "insurance" ticket from Zurich to JFK on United Airlines before embarking on her trip. Riley arrived at the SWISS terminal in Tokyo. She told the staff there that she could not view or print her SWISS boarding passes for the Zurich-Geneva or Geneva-New York segments of her itinerary. After advising that her flight was issued erroneously, Riley was offered by a SWISS representative the opportunity to fly, free of charge, in economy class on the remaining flights. Riley refused the offer and flew back to Liberty Airport, Newark, New Jersey using the "insurance" ticket she had purchased months before leaving for Myanmar.

### LEGAL ANALYSIS

Following the close of the trial, SWISS made an application pursuant to *Rule 4:40-1* for the Court for judgment in its favor and to dismiss the Complaint. The Court reserved decision at that time to review the exhibits moved into evidence and consider the applicable law.

A defense motion for judgment following trial pursuant to *Rule 4:40-1* must be denied if the evidence, together with the legitimate inferences to be drawn, could sustain a judgment in the plaintiff's favor. The court must accept as true all the evidence which supports the position of the party defending against the motion and

according it the benefit of all inferences which can reasonably and legitimately be deduced from the evidence, and if reasonable minds could differ, the motion must be denied. *Dolson v. Anastasia*, 55 N.J. 2, 5 (1969). See also *Zive v. Stanley Roberts, Inc.*, 182 N.J. 436, 441- 42 (2005) and *Verdicchio v. Ricca*, 179 N.J. 1, 30 (2004).

The "contract of carriage" between the airline and its passengers governs the parties' legal relationship. The contract of carriage is made up of the passenger's ticket, the carrier's Conditions of Carriage, and the carrier's tariff. *St. Paul Ins. Co. v. Venezuelan International Airways, Inc.*, 807 F.2d 1543, 1547 (11<sup>th</sup> Cir. 1987); *Edem v. Ethiopian Airlines Enter.*, 2009 U.S. Dist. LEXIS 118951 (E.D.N.Y. Sept. 30, 2009), *Seisay v. Compagnie Nationale Air France*, 1997 U.S. Dist. LEXIS 11009, 1997 WL 431084 (S.D.N.Y. July 30, 1997), *Clemente v. Philippine Airlines*, 614 F. Supp. 1196 (S.D.N.Y. 1985). The carrier's tariff which makes up part of the contract of carriage and applies generally to all air transportation performed by the carrier, "is binding on a passenger, regardless of the passenger's actual knowledge of the tariff." *Edem v. Ethiopian Airlines Enter.*, 2009 U.S. Dist. LEXIS 118951 at \*21; *Seisay v. Compagnie Nationale Air France*, 1997 U.S. Dist. LEXIS 11009 at \*9; *Clemente v. Philippine Airlines*, 614 F. Supp. 1199 (internal citations omitted).

According to its plain language, the SWISS tariff permits the cancellation of tickets issued with an erroneous fare. *Rule 005(F)* of the tariff states:

SWISS reserves the right to cancel reservations and/or tickets issued with an erroneously quoted fare by reason of a technical failure prior to said erroneous quote being detected and corrected. SWISS reserves the right to void the purchased ticket and refund the amount paid by the customer and/or offer the customer the ticket at a published fare that should have been available at the time of booking.

SWISS's tariff is applicable to Riley's ticket because the itinerary she purchased involved multiple carriers, including SWISS, which was scheduled to operate Riley's flights between Zurich and Geneva, as well as between Geneva and New York. As noted above, Riley purchased her ticket through Travelocity.<sup>3</sup>

As such, pursuant to *Rule 005(F)* of its tariff, which was applicable to Riley's travel, SWISS had the contractual right to cancel any reservation or ticket issued with an erroneously quoted fare, such as the fare paid by Riley for first-class travel approximately halfway around the world, was \$141.00. As the fare was clearly erroneous, SWISS' cancellation of the segments at issue was permissible under *Rule 005(F)* of its tariff.

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<sup>3</sup> Travelocity's "Terms and Conditions of Travel", which apply to all purchases made on [www.travelocity.com](http://www.travelocity.com), state: "If your carriage is by more than one carrier, different Conditions, Regulations and any applicable tariffs may apply for each carrier. The Conditions, Regulations and any applicable tariffs of each carrier are, by this notice, incorporated by reference into and made part of your contract of carriage."

SWISS also argued that Riley's claims fail under New Jersey law because the fare purchased was based on a unilateral error by ATPCO and executed by Travelocity. As a result, SWISS contends there never was a meeting of the minds between SWISS and Riley, and thus no contract existed at the time of its alleged breach.

New Jersey Courts have consistently allowed rescission of a contract based on a mistake by one party, so long as the following elements are present: (1) enforcing the contract would be unconscionable; (2) the matter as to which the mistake was made relates to a material feature of the contract; (3) the mistake occurred notwithstanding the exercise of reasonable care by the party making the mistake; and (4) the relief given must not seriously prejudice the other party, save for the loss of their bargain. *Fleming Cos. v Thriftway Medford Lakes*, 913 F. Supp. 837, 843 (D.N.J. 1995) (citing *Conduit & Foundation Corp. v. Atlantic City*, 2 N.J. Super. 433, 440 (1949); *Stephenson v. Spiegle*, 429 N.J. Super. 378, 385 (App. Div. 2013)). According to the evidence adduced at trial, all of the above elements are present.

It is uncontroverted that the price of the ticket is a material term of the contract between SWISS and its passengers. Here, a mistake was made by third-party without SWISS' knowledge or consent. Once SWISS learned of the mistake, it took immediate action to cancel the fare and rectify the error. SWISS argues that allowing Riley to pay 1% of the actual fare would be unconscionable. SWISS argues that by refusing its gesture of goodwill to transport her from Switzerland to New York free of charge and instead purchasing a third-party ticket in first-class, Ms. Riley created her own alleged "damages". As a result, SWISS contends that all Riley lost was the "bargain" she never should of had in the first place.

As noted above, the fare at issue was clearly erroneous. SWISS had no knowledge that the fare had been published and, once it was made aware of the fare's existence, took immediate action to remove it from public availability. It was successful with 800 of the fares purchased. Although the record is bereft of any facts related to the specifics of any communications between SWISS and Travelocity to make sure that Travelocity customers were informed of the ticketing issue, it is uncontroverted that SWISS did alert Travelocity of the error and requested that it contact impacted customers. The record is also silent as to what, if anything, Travelocity did to contact its airline customers. However, it is undisputed that Riley and other passengers who did not have their tickets cancelled before embarking on their journey were offered the opportunity to travel the SWISS legs in coach class.

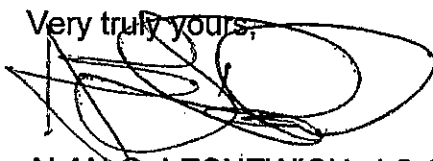
The fact that Ms. Riley, a seasoned air traveler, admitted that she was skeptical enough about the efficacy of the incredibly reduced fare, so much so as to purchase an "insurance" ticket, is credible evidence that she was acutely aware that SWISS might very well cancel her ticket. Ms. Riley conceded that her review of air traveler blogs made her aware that other travelers were have their tickets canceled and receiving refunds. She also testified that although she did contact SWISS by telephone to inquire about the status of her tickets, she did not specifically raise the issue of the potential erroneous fare, nor did she make an effort to communicate with Travelocity about the

potential cancellation of her ticket. Instead, she chose to embark on her journey with the understanding that when she arrived in Zurich, she might need to fall back to her "insurance" ticket to return to the United States in a first-class seat. When she was advised by a SWISS representative in Zurich that her ticket was not valid but that SWISS was ready, willing and able to fly her the rest of the trip in a coach seat, Ms. Riley rejected the offer and asked to upgrade to first or business class. SWISS rejected her offer and Ms. Riley reverted to her "insurance" ticket to fly directly to Liberty Airport by way of another airline rather than continue on her journey with SWISS.

In the Court's opinion, both Ms. Riley and the SWISS representative who testified at trial were credible witnesses. Based upon the facts as viewed in the light most favorable to Ms. Riley and applying the law discussed above, it is the Court's opinion that SWISS did not breach any contract with Ms. Riley. It is clear that the fare that was temporarily available online was erroneous and under the tariff, SWISS had the right to cancel all the tickets purchased for the RGN to YUL flights. SWISS made an immediate effort to cancel the 800 tickets purchased on its ticket stock and to provide refunds. SWISS also communicated with online agents, such as Travelocity, to advise them of the erroneous fare. Although it is not clear from the record what efforts SWISS or Travelocity made to communicate with customers in a position similar to Ms. Riley, it is clear that Ms. Riley was aware of a potential problem when she purchased her "insurance" ticket. In the Court's opinion, Ms. Riley would have been in the same position had she purchased the "insurance" ticket and then arrived in Zurich and been permitted to continue to travel first or business class. Therefore, even if there were some way to conclude that SWISS breached a contract with Ms. Riley, the good-faith SWISS offer to fly Ms. Riley to her final destination in coach<sup>4</sup> did not, in the Court's opinion, cause Ms. Riley any ascertainable economic damages.

For all of the reasons set forth above, the motion of SWISS for judgment pursuant to *Rule 4:40-1* is GRANTED.

Very truly yours,

A handwritten signature in black ink, appearing to read 'ALAN G. LESNEWICH', written over a horizontal line.

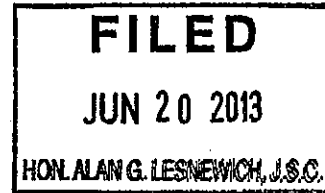
ALAN G. LESNEWICH, J.S.C.

AGL/pfk  
encl. (Order)

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<sup>4</sup> That offer was consistent with *Rule 005 (F)* of the tariff which provides that SWISS "offered the customer the ticket at a published fare that should have been available at the time of booking" in the event SWISS did not void the ticket and refund the amount paid by the customer.

ORDER PREPARED BY THE COURT



-----  
PATRICIA RILEY,

Plaintiff,

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – UNION COUNTY  
SPECIAL CIVIL PART  
DOCKET NO.: SC-000246-13

V.

**ORDER**

SWISS INTERNATIONAL AIRLINES, LTD.,

Defendant.  
-----

This matter having been opened to the Court on Motion of Eckert Seamans Cherin & Mellott, LLC, pursuant to *Rule 4:40-1*, attorneys for Defendant, Swiss International Airlines, Ltd., for an Order granting judgment in its favor, and the Court having considered the trial evidence in the light most favorable to Plaintiff, *pro se*, Patricia Riley, reviewed the applicable law, and arguments of counsel and the Plaintiff, and for the reasons set forth in the Court's letter opinion dated June 20, 2013;

IT IS on this 20th day of June, 2013;

ORDERED that the Motion for Judgment of Defendant, Swiss International Airlines, Ltd., is hereby granted and that Plaintiff's claims are hereby dismissed with prejudice and without costs; and it is further;

ORDERED that a copy of this Order shall be served upon all parties within seven (7) days of the date hereof.

A handwritten signature in black ink, appearing to be "Alan G. Lesnewich", written over a horizontal line.

HON. ALAN G. LESNEWICH, J.S.C.

  X   Opposed  
       Unopposed

**TAB 5**

IN THE SUBORDINATE COURT OF  
THE REPUBLIC OF SINGAPORE  
SMALL CLAIMS TRIBUNALS

CLAIM NO: SCT/270/2013

VEEL JONATHAN CHARLES ASHLEY

...Claimant(s)

SWISS INTERNATIONAL AIR LINES LTD.

...Respondent(s)

**ORDER OF TRIBUNAL**

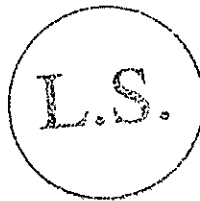
This Claim having been called on this day for HEARING before the Referee, MR  
SHRINIWAS RAI,

AND UPON HEARING the Claimant(s) and the Respondent(s),

IT IS ORDERED that:-

The Claim be dismissed.

Dated: 13 Feb 2013



A handwritten signature in cursive script, appearing to read 'Anne Durray'.

MS. ANNE DURRAY  
REGISTRAR  
SMALL CLAIMS TRIBUNAL  
SINGAPORE