

**Date: 20080529**

**Docket: A-367-07**

**Citation: 2008 FCA 194**

**CORAM: LINDEN J.A.  
NADON J.A.  
SEXTON J.A.**

**BETWEEN:**

**AIR CANADA**

**Appellant**

**and**

**CANADIAN TRANSPORTATION AGENCY and  
JAMES HOU**

**Respondents**

Heard at Toronto, Ontario, on May 29, 2008.

Judgment delivered from the Bench at Toronto, Ontario, on May 29, 2008.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**NADON J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Toronto, Ontario, on May 29, 2008)**

**NADON J.A.**

[1] This appeal results from Air Canada's refusal to allow one of its passengers, James Hou, to board its flight from Vancouver to Toronto on July 30 and July 31, 2006 and in regard to which Mr. Hou filed complaints before the Canadian Transportation Agency (the Agency).

[2] By its decision of March 29, 2007, the Agency dismissed Mr. Hou's complaint regarding the July 30 refusal but allowed it with regard to the July 31, 2006 refusal.

[3] Prior to rendering its decision, the Agency wrote to Air Canada requesting it to provide evidence regarding the events of July 30 and July 31, 2006. Air Canada did not provide the Agency with any evidence concerning the investigation which, it says, it was still carrying out on July 31, 2006 when it refused to allow Mr. Hou to board its plane until late in the afternoon by which time he had already departed on a plane operated by another carrier.

[4] In particular, Air Canada failed to provide to the Agency the evidence of Kimberly Swan and Yana Valleta whose affidavits were sworn on April 27, 2007 and on which it relies in this appeal to demonstrate the reasonableness of its conduct in regard to the events of July 30 and July 31, 2006.

[5] Although we are satisfied that had this evidence been before the Agency when it rendered its decision, the outcome thereof would likely have been different, the plain fact is that that evidence was never placed before the Agency.

[6] In these circumstances, we are of the view that it cannot be said that, on the evidence before it, the Agency erred in concluding as it did.

[7] We are obviously not saying nor suggesting that Air Canada, like any other carrier, cannot properly investigate events such as those which have given rise to this appeal. To the contrary, we are of the view that Air Canada acted responsibly in conducting an investigation prior to allowing Mr. Hou to board one of its planes. Indeed, rule 35 of the tariff governing the terms and conditions

of carriage of Air Canada expressly provides that where a passenger has been found to have engaged in prohibited conduct, such as being under the influence of alcohol, as was the case here, the carrier may refuse to transport a passenger for a length of time which “may range from a one-time to an indefinite up to lifetime ban” and that “The length of the refusal period will be in the carrier’s reasonable discretion, ...”.

[8] The appeal will therefore be dismissed, but in the circumstances, without costs.

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“M. Nadon”

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-367-07

**(AN APPEAL FROM THE ORDER OF THE C.T.A., DATED MARCH 29, 2007.  
DECISION NO. 156-C-A-2007.)**

**STYLE OF CAUSE:** AIR CANADA v. CANADIAN  
TRANSPORTATION AGENCY  
and JAMES HOU

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 29, 2008

**REASONS FOR JUDGMENT OF  
THE COURT BY:** (LINDEN, NADON & SEXTON  
J.J.A.)

**DELIVERED FROM THE  
BENCH BY:** NADON J.A.

**DATED:** MAY 29, 2008

**APPEARANCES:**

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