

Date: 20090323

Docket: A-412-08

Citation: 2009 FCA 95

**CORAM: DESJARDINS J.A.
NOËL J.A.
TRUDEL J.A.**

BETWEEN:

AIR CANADA

Appellant

and

**CANADIAN TRANSPORTATION AGENCY
and PETER GRIFFITHS**

Respondents

Heard at Toronto, Ontario, on March 23, 2009.

Judgment delivered from the Bench at Toronto, Ontario, on March 23, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

DESJARDINS J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on March 23, 2009)

DESJARDINS J.A.

[1] We are all of the view that the Canadian Transportation Agency (the Agency) ignored the balancing test which it itself outlined at the beginning of its analysis at paragraph 20 of its reasons (see also the Agency's decisions in *Del Anderson* No. 666-C-A-2001, *Zuker* No. 680-C-A-2001, *Morgan* No. 38-C-A-2002, *Bass* No. 37-C-A-2002 & *Clark* No. 55-C-A-2002 where the same test was applied.)

[2] In particular, it was incumbent upon the Agency to take into account and weigh the reasons for the Air Canada's tariff revisions against the inconveniences to the respondent Peter Griffiths.

[3] That, the Agency did not do.

[4] This appeal will be allowed, the decision of the Agency will be set aside and the matter will be returned to the Agency for a redetermination so that the balancing exercise be conducted on the basis of the existing record.

[5] As no costs are sought, none will be awarded.

"Alice Desjardins"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-412-08

(APPEAL FROM A JUDGMENT OR ORDER OF THE CANADIAN TRANSPORT AGENCY, DATED APRIL 4, 2008, DECISION NO. 155-C-A-2008)

STYLE OF CAUSE: AIR CANADA v.
CANADIAN TRANSPORTATION
AGENCY and PETER GRIFFITHS

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 23, 2009

REASONS FOR JUDGMENT OF THE COURT BY: (DESJARDINS, NOËL & TRUDEL
J.J.A.)

DELIVERED FROM THE BENCH BY: DESJARDINS J.A.

APPEARANCES:

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David Demirkan FOR THE RESPONDENTS

SOLICITORS OF RECORD:

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