



# Civil Resolution Tribunal

Date Issued: December 30, 2019

File: SC-2019-004260

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Quinn v. WestJet Airlines Ltd.* 2019 BCCRT 1446

B E T W E E N :

DOROTHY QUINN

**APPLICANT**

A N D :

WESTJET AIRLINES LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. The applicant, Dorothy Quinn, was a passenger on a flight operated by the respondent, WestJet Airlines Ltd. The applicant says she fell when exiting the aircraft. She seeks compensation of \$5,000 for pain and suffering.

2. The respondent denies liability on various grounds, most significantly that no “accident” occurred as that term is defined in the Montreal Convention.
3. The applicant is represented by a family member, CR. The respondent is represented by an in-house lawyer, Andrew Kay.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties in this dispute call into question each other’s credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Bearing in mind the tribunal’s mandate that includes proportionality and a prompt resolution of disputes, I decided to hear this dispute through written submissions.
6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
  - a. order a party to do or stop doing something;
  - b. order a party to pay money;
  - c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUE**

8. The issue in this dispute is whether the respondent is liable for the applicant's injury suffered while exiting the respondent's aircraft, and if so, what are the damages.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant must prove her claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
10. On December 23, 2018, the applicant travelled on a WestJet flight from Palm Springs, USA to Vancouver, BC.
11. The applicant does not dispute, and I find, that she was bound by the terms and conditions of her airline passenger ticket, including the respondent's international tariff (tariff). As the applicant's trip was an international one, the parties were also bound by the terms of an international treaty known as the Montreal Convention. The Montreal Convention has the force of law in Canada, under the federal *Carriage by Air Act*. The Montreal Convention limits the scope and type of claim that a person can make for disputes about international air travel.
12. Article 17(1) of the Montreal Convention provides that the respondent is liable for a passenger's death or bodily injury if the "accident" took place on board the aircraft or during embarking or disembarking. Article 17 of the Montreal Convention is the

only basis for a passenger's injury claim against an air carrier (*Wettlaufer v. Air Transat A.T. Inc.*, 2013 BCSC 1245, para 83). If such an accident occurs, the carrier is liable without proof of fault, subject to a cap on damages.

13. The respondent says that no accident occurred as that term is used in the Montreal Convention. Specifically, it says the applicant's injury was either the result of the applicant being unsteady on her feet, or her own peculiar reaction to the aircraft's normal operation. Accordingly, I must determine what happened when the applicant disembarked, and whether those events amounted to an accident under Article 17 of the Montreal Convention.
14. The term "accident" is not defined in the Montreal Convention, but case law provides guidance. The respondent refers to cases from the United States Supreme Court and England's Court of Appeal, which are not binding on the tribunal but may be persuasive. Those cases indicate that an accident under Article 17 of the Montreal Convention is an unusual or unexpected event that happens independently of anything the passenger does or fails to do. In *Barclay v. British Airways*, [2008] EWCA Civ 1419, England's Court of Appeal gave examples of events that are clearly accidents, such as a flight attendant spilling hot coffee on a passenger, and events that are clearly not accidents, such as a passenger suffering a mid-flight heart attack. I return to *Barclay* after considering the evidence of the applicant's alleged accident.
15. It is undisputed that the applicant, who is 93, required a wheelchair for travelling long distances. The respondent supplied a wheelchair at the bridge connecting the aircraft to the terminal.
16. The applicant says that on arrival at the Vancouver airport, the respondent's cabin crew asked her to wait until other passengers disembarked, then make her own way to the exit door. She says she followed their instructions. As she exited the aircraft there was some congestion at the exit, where staff and flight crew were exchanging Christmas greetings. The applicant says she attempted to negotiate her way to the waiting wheelchair but did not notice the uneven floor between the aircraft and

bridge. She stepped on it and lost her balance. She says her “resulting fall” was traumatic and caused painful bruising. She does not explain what contact caused the bruising, or whether she contacted the floor or something else.

17. The respondent’s lead flight attendant (LFA) prepared an incident report on the day of the incident. The LFA said that the applicant was the last to deplane. The LFA asked the applicant if she needed assistance getting to the aircraft door and to the wheelchair, but the applicant said she was okay to walk to the door. The LFA followed in case she needed assistance. As the applicant stepped onto the bridge, she temporarily lost her footing. The LFA said the applicant leaned slightly backwards and the LFA steadied her by placing a hand on the applicant’s back and arm.
18. The LFA report said that after the applicant lost her footing, the applicant informed the LFA that she was out of breath and may have broken a rib. The agent waiting with the wheelchair asked the applicant if she would like a paramedic and the applicant said she did. The applicant sat in the wheelchair. The LFA advised the applicant that the agent would take her to the paramedic.
19. The respondent’s customer service agent (CSA) prepared an incident report. It is not clear if the CSA was the agent waiting with the wheelchair or someone else. The CSA said that the applicant tripped upon leaving the aircraft and hit her ribs on the bridge door. The CSA said the applicant possibly bruised or cracked her ribs, and requested paramedics, who suggested she go to the hospital.
20. None of the three accounts confirm the extent to which the applicant deviated from a vertical standing position. Based on the accounts, I find that when the applicant lost her balance she contacted a vertical wall, either part of the bridge or the aircraft. However, the degree to which the applicant “fell” are not critical to the outcome of this dispute.
21. The applicant submitted a December 24, 2018 report from the Richmond Hospital (medical report). The medical report says the applicant was referred to internal

medicine for bradycardia (slow heart rate) and “query” presyncopal symptoms, which may include dizziness, weakness, blurred vision, vertigo, and nausea. The medical report said that the applicant was disembarking the airplane and remembers wishing the flight attendant a merry Christmas. It continues:

She then felt unsteady and fell against the cockpit door and impacted her left ribs. She had the wind knocked out of her. She denies ever losing consciousness. She denies any dizziness or palpitations.

22. The medical report said x-rays confirmed that the applicant did not have rib fractures. It did not mention bruising. The medical report concluded that the applicant “had an unsteady episode, and it was likely not due to a cardiac cause.”
23. The applicant’s representative, CR, provided a statement on her behalf, in which he said that the applicant has a very clear recollection of the events leading up to her “fall” and related them to him in detail. The applicant’s submissions largely duplicate the statement, which I have summarized above. However, there are some inconsistencies between the statement and the submissions. In the statement, CR said the applicant “did not notice the uneven floor-gap.” In written submissions, the applicant submits that she “did not notice the *wet and* uneven floor joint” (emphasis mine). There is no mention of wetness in the statement or the dispute notice. In final reply, the applicant says it was a rainy day in Vancouver. The applicant provided no objective evidence in support, and no explanation of how rain entered the bridge or aircraft.
24. On a balance of probabilities, I find that the event did not constitute an accident under Article 17 of the Montreal Convention. There is no mention of either a wet floor or an uneven floor gap in either the FLA’s incident report, the CSA’s incident report, or the medical report. Although the FLA and CSA are the respondent’s employees and therefore may be considered interested witnesses, the doctor who prepared the medical report had no stake in the outcome of this dispute. The medical report says the applicant fell against the cockpit door, but gives no indication of any possible causes external to the applicant. The report concludes

that the applicant had an “unsteady episode”, meaning she suddenly felt unsteady on her feet. The report was created the day after the incident and describes the incident in detail. I find that, had the applicant believed that uneven floor levels or wetness contributed to her loss of balance, she likely would have mentioned it to the doctor, and that information likely would have made it into the 2-page report. Given the applicant’s inconsistent evidence about wetness, I find that there was no wetness present.

25. Even if the applicant did lose her balance because of uneven floor levels, I would not find that this was an accident under Article 17 of the Montreal Convention. In the *Barclay* case cited above, the passenger, lowering herself into her seat, slipped on a plastic strip between the seats. The court held that there was no incident external to the passenger and no event that happened independently of anything she did or failed to do. All that happened was that her foot came into contact with the inert strip, and she fell. Accordingly, there was no accident under Article 17 of the Montreal Convention. Here, the lip between the bridge and the aircraft is similarly inert. Applying the logic in *Barclay* to the present facts, it cannot be said that there was an accident under Article 17 of the Montreal Convention.
26. That does not conclude the inquiry, because Canadian cases interpreting Article 17 of the Montreal Convention indicate that a carrier’s *intentional* acts may constitute an accident in a “chain of causation” leading to injury. In *Balani v. Lufthansa German Airlines Corp.*, 2010 ONSC 3003, the flight attendant refused to provide the passenger with a wheelchair as she disembarked. The passenger was injured in the terminal. The court concluded that the incident was an accident under Article 17 of the Montreal Convention because there was a causal connection between the refusal to provide a wheelchair and the subsequent injury. Similarly, in *Gontcharov v. Canjet*, 2012 ONSC 2279, a flight attendant’s refusal to give a passenger a blanket, leading to bronchitis, was held to be an accident under Article 17 of the Montreal Convention.

27. These cases are relevant because the applicant's evidence was that the respondent's staff refused to help her disembark. However, on this point I prefer the respondent's position that the applicant was given the help she requested. The respondent's position is supported by the LFA incident report, in which the LFA said the applicant assured the LFA that she was okay to walk to the wheelchair on her own. It is also supported by the applicant's booking information, which indicated that she required a wheelchair only for long distances, and did not require one to travel the aisle and exit the plane. It is further supported by notes from a post-event conversation between a WestJet employee and a member of the applicant's family. The family member confirmed that the applicant was able to walk short distances and regularly used stairs without assistance. I find that the respondent provided the applicant with the help she requested, and she refused the LFA's offer of further assistance.
28. In conclusion, I find that the applicant has not proven, on a balance of probabilities, that she suffered an accident as defined in Article 17 of the Montreal Convention. Accordingly, the respondent is not liable for the applicant's injury.
29. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. The applicant was unsuccessful, so I dismiss her claim for tribunal fees. Neither party claimed dispute-related expenses.

## **ORDERS**

30. I dismiss the applicant's claims and this dispute.

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Micah Carmody, Tribunal Member