



Civil Resolution Tribunal

Date Issued: July 15, 2022

File: SC-2021-009704

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kalynn v. Air Canada*, 2022 BCCRT 809

B E T W E E N :

JESSICA KALYNN

APPLICANT

A N D :

AIR CANADA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Acting Chair and Vice Chair

INTRODUCTION

1. This dispute is about delayed baggage. The applicant, Jessica Kalynn, claims \$1,620.67 from the respondent, Air Canada, for interim expenses due to her baggage

being delayed by 2 days. Ms. Kalynn says her expenses were \$2,120.67 but since Air Canada only refunded \$500, she claims the \$1,620.67 difference. Ms. Kalynn says given her schedule for her 6-day trip, she needed the items she purchased.

2. Air Canada admits there was a 2-day delay in delivering Ms. Kalynn's baggage. It is undisputed Ms. Kalynn knew her bag was on its way (rather than being potentially lost). Air Canada says the \$500 paid was reasonable for the 2-day delay, given Ms. Kalynn purchased replacement items that Air Canada says were non-essential.
3. Ms. Kalynn is self-represented. Air Canada is represented by an employee.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
6. CRTA section 42 says the CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

8. The issue is whether Ms. Kalynn is entitled to \$1,620.67 as full reimbursement for the items she purchased while her baggage was delayed for 2 days.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Ms. Kalynn must prove her claim on a balance of probabilities (meaning “more likely than not”). I have read all the submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.
10. In a jointly submitted Statement of Facts, the parties agree:
 - a. This dispute is about expenses arising from the temporary delay of Ms. Kalynn’s luggage.
 - b. Ms. Kalynn flew Air Canada from Vancouver to Dubai on September 18, 2021.
 - c. Ms. Kalynn’s luggage was delayed 2 days out of the 6-day trip.
 - d. Ms. Kalynn claimed compensation from Air Canada for items valuing \$2,120.67.
 - e. Air Canada approved compensation of \$500 of the claimed \$2,120.67.
11. The undisputed evidence is that Ms. Kalynn’s baggage missed her connecting flight. When Ms. Kalynn submitted her claim to Air Canada, she noted she assumed her bag was en route.
12. I turn to the applicable law. The *Montreal Convention* is an international treaty with the force of law in Canada under the federal *Carriage by Air Act*: see *Thibodeau v. Air*

Canada, 2014 SCC 67. It applies to all international air carriage of people, baggage or cargo. The *Montreal Convention* limits the scope and type of claim that a person can make against a carrier like Air Canada. I find the *Montreal Convention* applies to this dispute, which is undisputed.

13. Under article 19 of the *Montreal Convention*, Air Canada is liable for “damage” due to baggage delay, unless it proves that it took all reasonable measures to avoid the damage or that it was impossible to take such measures. Article 22 limits compensation for baggage delay to 1,288 special drawing rights (about \$2,200) per passenger. Here, Air Canada does not dispute it owed Ms. Kalynn some compensation.
14. Ms. Kalynn complied with the notice and form requirements in making her claim, which undisputedly falls within the amount available under the *Montreal Convention*. Ms. Kalynn acknowledges she is not automatically entitled to the maximum compensation allowed under the *Montreal Convention*. This dispute is about whether Mr. Kalynn’s purchases were reasonable for a 2-day baggage delay.
15. Immediately on arrival at her destination, after realizing her baggage was delayed, Ms. Kalynn purchased \$2,120.67 worth of clothing and toiletries: 4 pairs of footwear, 6 bottoms, 5 tops, 1 bathing suit, 2 bras, 2 pairs of underwear, 1 package of socks (3 pairs in the package), and toiletries.
16. Air Canada argues the amount of clothing purchased for a 2-day delay was excessive and unreasonable. Air Canada says given the number of items purchased, Ms. Kalynn failed to mitigate her damages as required. Ms. Kalynn disagrees and says her 6-day trip was fully scheduled and she required the items for different planned activities (gym workouts, a work conference, casual clothes for personal time, and a dressy outfit for a work dinner at a high end restaurant).
17. I agree Ms. Kalynn had an obligation to mitigate her damages. The cases cited by Air Canada, from the Canadian Transportation Agency and Aviation ADR are not binding on me, which generally found the passenger’s purchases were excessive for a short

baggage delay. The prior CRT decision cited by Air Canada, *Maruf v. Air China Limited*, 2021 BCCRT 796, is not binding on me either. However, in that case the tribunal member found the applicant had not explained the necessity of purchasing multiple items of the clothing. Here, the applicant has provided an explanation, as noted above. In any event, I find what is reasonable depends on the circumstances.

18. Here, I find it was reasonable for Ms. Kalynn to purchase some different clothes and shoes given the activities she undisputedly had scheduled. However, I find some of the purchased replacement items were excessive given the 2-day delay. Even with the different activities, I find Ms. Kalynn has not adequately explained why she needed 4 pairs of footwear (in addition to what she wore on the plane) and 6 bottoms and 5 tops, even if she had to change her clothes during a day.
19. I find the purchase of 4 tops and 4 bottoms reasonable (1 set being for the gym). I find 1 pair of running shoes and 1 pair of dress shoes reasonable. I find the cost of the purchased running shoes at the equivalent of \$215 CAD excessive. I also find the cost of the bathing suit (\$108 CAD) and bra (\$98 CAD) excessive. The cost of other purchased branded items is somewhat excessive and given the CRT's mandate that includes proportionality I find it unnecessary to detail the entire 20-item list.
20. On a judgment basis, and given my findings above, I find Ms. Kalynn was reasonably entitled to reimbursement of \$1,200. Air Canada paid \$500 already, so I find Ms. Kalynn is entitled to \$700 in damages.
21. The *Court Order Interest Act* (COIA) applies to the CRT. I find Ms. Kalynn is entitled to pre-judgment interest on the \$700, under the COIA. Calculated from the September 19, 2021 purchase date to the date of this decision, this interest equals \$2.94.
22. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Ms. Kalynn was partially successful, I find she is entitled to reimbursement of half her paid CRT fees, which equals \$67.50. Ms. Kalynn did not claim dispute-related expenses.

ORDERS

23. Within 21 days of this decision, I order Air Canada to pay Ms. Kalynn a total of \$770.44, broken down as follows:
- a. \$700 in damages,
 - b. \$2.94 in pre-judgment COIA interest, and
 - c. \$67.50 in CRT fees.
24. Ms. Kalynn is entitled to post-judgment interest as applicable.
25. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Acting Chair and Vice Chair