



# Civil Resolution Tribunal

Date Issued: August 4, 2022

File: SC-2022-000458

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kuehn v. WestJet Airlines Ltd.*, 2022 BCCRT 882

BETWEEN:

JOHANN KUEHN

**APPLICANT**

AND:

WESTJET AIRLINES LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## INTRODUCTION

1. This dispute is about an airline ticket cancellation. The applicant, Johann Kuehn, purchased an international return ticket with the respondent airline, WestJet Airlines Ltd. (WestJet). Mr. Kuehn says he wanted to reschedule the return leg of his flight, but was unable to do so. He says this meant he had to cancel the return leg and purchase a new WestJet ticket for that travel. Mr. Kuehn says WestJet refunded the

cancelled flight price of \$308.84 as a “Travel Bank” credit, but did not provide a cash refund of that amount as he requested. Mr. Kuehn claims a \$308.84 cash refund. He also claims \$400 in “monetary and punitive” damages for loss of holiday enjoyment and time spent to recover the amount owed or assessed by the Civil Resolution Tribunal (CRT).

2. WestJet denies causing Mr. Kuehn loss or damage. It says that it provided refunds and Travel Bank credits under its applicable policies, and owes nothing further.
3. Mr. Kuehn is self-represented in this dispute. WestJet is represented by an in-house lawyer, Andrew Kay.

## **JURISDICTION AND PROCEDURE**

4. These are the CRT’s formal reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA 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. Section 39 of the CRTA 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. Further, 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. Section 42 of the CRTA 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.

## **ISSUES**

8. The 2 issues in this dispute are:
  - a. Whether WestJet failed to reasonably reschedule Mr. Kuehn's return flight, and if so whether it owes Mr. Kuehn's \$308.84 ticket refund in cash.
  - b. Whether WestJet is liable for \$400 in damages and punitive damages for loss of holiday enjoyment and time spent on this dispute.

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, Mr. Kuehn must prove his claims on a balance of probabilities, meaning "more likely than not." I have read the parties' submissions and evidence, but refer only to the evidence and arguments I find relevant to provide context for my decision.
10. The undisputed evidence is that on November 8, 2021, Mr. Kuehn booked a return flight to Mexico with WestJet. On November 24, 2021, he flew on the outbound leg from Abbotsford, BC to Mazatlán, Mexico, connecting in Calgary, AB. A flight reservation document in evidence shows that Mr. Kuehn's return flight was scheduled for December 11, 2021, but the reservation's "Coupon Status" was "RFND".
11. The parties agree that Mr. Kuehn cancelled the ticket's return leg on December 2, 2021. An eTicket in evidence also shows that on December 2, 2021, Mr. Kuehn booked a new WestJet flight from Mazatlán to Abbotsford for December 4, 2021. Mr. Kuehn undisputedly returned home on that earlier flight.
12. Mr. Kuehn says that WestJet changed the return leg of his original flight so that it departed on different date and arrived in Toronto. I find flight reservation documents

in evidence show that on January 10, 2022, an additional November 10, 2021 Calgary to Toronto flight reservation was made. WestJet says the Toronto flight reservation was an administrative error that it later removed, and it did not affect the flights disputed here. I find the flight documents in evidence show this November 10, 2021 reservation did not affect the original return leg of Mr. Kuehn's Mazatlán flight.

13. Mr. Kuehn says that after arriving in Mazatlán, he wanted to return to Abbotsford early "due to medical concerns with COVID-19", without further explanation. No medical evidence was submitted. Mr. Kuehn says that WestJet offered and allowed him to make free itinerary changes because of the COVID-19 "situation". WestJet agrees that its Flexible Change/Cancel policies for travel affected by COVID-19 (change policy) applied to Mr. Kuehn's flights. A submitted copy of the change policy shows that WestJet allowed a one-time fee waiver for flight changes or cancellations. The policy also said that if the ticket holder cancelled their flight, the refund would be returned as a Travel Bank credit.
14. Mr. Kuehn does not deny that the change policy was WestJet's offer of no-charge itinerary changes he refers to. I find that the change policy applied to Mr. Kuehn's flights and formed part of the parties' contract for air travel.
15. Mr. Kuehn says he attempted to change his flight itinerary online, but was unable to. He also says he was unsuccessful in contacting WestJet by phone, by email, by an instant messenger service, and by contacting the airport. Mr. Kuehn says that because WestJet allegedly failed to allow him to change his flight itinerary, he instead had to cancel the return leg of the original flight ticket online and pay for the new December 4, 2021 ticket. He says WestJet's alleged failure to allow an itinerary change means that WestJet owes him the \$308.84 ticket cancellation refund in cash, as damages, rather than the Travel Bank credits WestJet actually provided.
16. First, WestJet confirms that it issued Mr. Kuehn a refund of \$308.84 in Travel Bank credits for the cost of the cancelled flights, as set out in its change policy. This is the amount Mr. Kuehn claims as a cash refund. So, I find it is unnecessary to separately address Mr. Kuehn's allegation that WestJet also refunded a mistakenly-charged

\$100 cancellation fee as Travel Bank credits rather than cash, because I find that allegation does not affect his \$308.84 claim.

17. Next, I find it was an implied term of the parties' airline flight contract, including the change policy, that WestJet would provide Mr. Kuehn with a reasonable opportunity to reschedule the return leg of his flight. To show that WestJet owes a \$308.84 cash refund, Mr. Kuehn must prove that WestJet broke the contract by not allowing him to reasonably reschedule the return flight. For the following reasons, I find Mr. Kuehn has not proven that WestJet failed to enable his desired itinerary changes.
18. WestJet says nothing should have prevented Mr. Kuehn from rescheduling his flight through its website. Mr. Kuehn does not explain why he was allegedly unable to reschedule his flight online, but was still able to cancel it online. Further, I find the evidence before me does not show whether there was a WestJet website error or another WestJet issue that prevented Mr. Kuehn from rescheduling. I find Mr. Kuehn has not proven, with sufficient evidence, that WestJet unreasonably prevented him from changing his return flight itinerary online.
19. Mr. Kuehn says he tried to call WestJet several times but was unable to connect. He suggests this was WestJet's fault, perhaps due to understaffing, although I find the evidence before me does not support any staffing problems. Mr. Kuehn submitted a plain text list of alleged Skype internet phone calls he attempted over a period of less than 24 hours. He says this list shows 12 failed call attempts and 1 time waiting 3 hours on the phone to connect to WestJet customer service. However, I find the call log shows 12 missed or failed calls to 5 different phone numbers. WestJet says only one of those numbers was WestJet's number. I find Mr. Kuehn does not sufficiently explain his unsuccessful calls to WestJet, including whether those calls failed to connect at all, whether or how often he was on hold in a WestJet call queue, or whether something else occurred.
20. I find that the alleged Skype call list shows unexplained connection difficulties with several different phone numbers. Absent further evidence about those difficulties, I

find Mr. Kuehn has not proven that the alleged WestJet call failures resulted from an unspecified problem with WestJet's customer service lines.

21. As noted, Mr. Kuehn says he also sent WestJet emails and instant messages, and tried contacting the airport. However, I find he did not submit any documentary evidence in support of those allegations.
22. Based on the evidence before me, I find that Mr. Kuehn has not proven that WestJet failed to reasonably enable changes to his return flight itinerary. I find the evidence shows that Mr. Kuehn alone voluntarily cancelled the return portion of his ticket. I find that under the parties' flight contract and change policy, WestJet was permitted to refund the cancelled ticket as Travel Bank credits, which it undisputedly did.
23. Mr. Kuehn also says that WestJet violated the Part II of the *Canada Transportation Act's Air Passenger Protection Regulations* (APPR), specifically sections 5.2 and 5.3, which I infer means sections 5(2) and 5(3). He says that WestJet violated those sections by allegedly not allowing itinerary changes on its website, not responding to email, allowing excessive phone wait times, and insufficient staffing.
24. However, I find that APPR sections 5(2) and 5(3) specify where an airline must publish or make available to passengers certain terms and conditions of carriage, including information on passenger treatment, minimum compensation owed by an airline, and passengers' recourse. I find there is no evidence that WestJet failed to provide the required section 5(2) or 5(3) information to passengers, or that this could make WestJet liable to pay a cash refund for a passenger-initiated ticket cancellation.
25. Further, I find that the APPR relate to requirements and compensation for an airline's delayed or cancelled flights, denied boarding, lost or damaged baggage, or child seat assignments. I find the APPR do not provide compensation for a passenger's voluntary decision to cancel a flight ticket, which is what happened here, or even for an airline's failure to allow timely, voluntary itinerary changes as Mr. Kuehn alleges.
26. For the above reasons, I find WestJet did not breach the parties' airline flight contract or the APPR. So, under the contract's change policy, I find WestJet is not responsible

for providing the \$308.84 flight cancellation reimbursement as damages in cash. I dismiss Mr. Kuehn's claim for \$308.84 in cash.

27. Given my decision that WestJet did not breach the parties' contract or the APPR, and need not provide a cash refund, I also dismiss Mr. Kuehn's \$400 claim for loss of holiday enjoyment and time spent to recover the amount owed or assessed by the CRT. I note that under CRT rule 9.5(5), the CRT will not order compensation for a party's time spent on a CRT proceeding, except in extraordinary circumstances that are not present here. Further, given that I have not allowed any of Mr. Kuehn's claims, I find he is not entitled to a separate punitive damages remedy (see the non-binding decision *Youlton v. The Owners, Strata Plan VIS 4390*, 2022 BCCRT 639 at paragraph 49, which I find persuasive).

### ***CRT Fees and Expenses***

28. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Here, I see no reason not to follow that general rule. Mr. Kuehn was unsuccessful in this dispute, but WestJet paid no CRT fees. Neither party claimed CRT dispute-related expenses, apart from Mr. Kuehn's claim for "time spent" that I dismissed above. So, I order no reimbursements.

### **ORDER**

29. I dismiss Mr. Kuehn's claims, and this dispute.

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Chad McCarthy, Tribunal Member