



Civil Resolution Tribunal

Date Issued: September 14, 2022

File: SC-2022-000536

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Duguay v. Flair Airlines Ltd.*, 2022 BCCRT 1019

B E T W E E N :

JUSTIN ALEXANDRE DUGUAY

APPLICANT

A N D :

FLAIR AIRLINES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about compensation for lost baggage. The applicant, Justin Alexandre Duguay, says due to “check-in agent error”, the respondent airline, Flair Airlines Ltd. (Flair), lost their baggage. Mr. Duguay claims \$5,000 for their lost suitcase and its contents.

2. Flair admits it lost the baggage. It undisputedly paid Mr. Duguay \$2,300 to resolve the claim, which it says is the maximum required under the *Air Passenger Protection Regulation* (APPR), as discussed below. Mr. Duguay says the APPR and its maximum limit do not apply because they never checked in and instead left the airport, and so they say they were not an air passenger.
3. Mr. Duguay is self-represented. Flair is represented by an employee or principal.

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.

8. In its submissions about dispute-related expenses, Flair says "... the proper forum for a claim such as this should be under the Canadian Transportation Agency's APPR". The APPR is a regulation under the federal *Canada Transportation Act* (CTA). As noted, this dispute is largely about whether the APPR applies to Mr. Duguay's claim, because Mr. Duguay says they were not an air passenger because they did not check-in and instead took a taxi home after dropping off their bag. Nowhere else does either party suggest the CRT does not have jurisdiction to decide this dispute. In particular, neither party argues that the Canada Transportation Agency should have jurisdiction over this dispute rather than the CRT. There are no travel records in evidence and so there is nothing before me that indicates the parties agreed to a particular forum for any disputes. In the absence of evidence or clear argument that the CRT lacks authority to hear this dispute, I find that it does under its CRTA section 118 small claims jurisdiction over damages.
9. Next, other than Flair's submitted record of its payment to Mr. Duguay (discussed below), neither party submitted any documentary evidence. However, Mr. Duguay submits in a final reply submission that he could submit emails to Flair and receipts for his lost goods that he says he had earlier given to Flair. Given my conclusion below about the APPR's application, I find it unnecessary to obtain the email evidence from Mr. Duguay because I find it irrelevant because it would make no difference to the outcome.

ISSUE

10. The issue is whether Flair owes Mr. Duguay anything more than the \$2,300 it has already paid for Mr. Duguay's lost baggage.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Mr. Duguay must prove their 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. As noted, Mr. Duguay submitted no documentary evidence and chose not to submit any initial written arguments despite repeated reminders from CRT staff. Instead, they submitted only a final reply submission in response to Flair's submission. More on this below.

12. Neither of the parties provided any details about Mr. Duguay's scheduled flight, such as when it was booked, its departure date, or its destination. Mr. Duguay only said in their CRT application that they became aware of their claim in "December 2021". However, the parties expressly agree that Flair has paid Mr. Duguay \$2,300 for his claim for the lost suitcase and its contents. They also agree that the suitcase and its contents were lost while in Flair's care.
13. I note elsewhere the parties refer to Flair having paid \$2,100 and Flair submitted its record showing it paid \$2,100 on "02/07/2022". However, as noted above, the parties each expressly agree that Flair paid Mr. Duguay a total of \$2,300 so I find that is what Flair paid.
14. I turn then to whether the APPR applies. In their reply submission, as noted, Mr. Duguay says the APPR does not apply to their claim because they say the APPR is for air passengers. Again, Mr. Duguay says they were not an air passenger because they left the airport in a taxi, without being assigned a seat but after a check-in agent "sent my suitcase to be loaded". I do not accept this argument, for the reasons that follow.
15. First, as noted, Mr. Duguay chose not to provide any written submissions at first. In this dispute, Mr. Duguay only raised the suggestion they did not check-in or fly with the bag in their final reply, after Flair had provided its arguments. So, Flair is arguably prejudiced because it did not have an opportunity to respond. However, nothing turns on this given my conclusion below.
16. Second, Mr. Duguay cited no authority in support of their assertion the APPR does not apply to their lost baggage claim on the basis Mr. Duguay left the airport and was not themselves checked in or assigned a seat. Neither the CTA nor the APPR defines

“passenger”. There is also no limitation in the relevant APPR sections saying the APPR applies only if the person whose baggage was lost actually checked in or boarded a plane.

17. In the absence of any authority to the contrary, as a matter of common sense I find the APPR applies to Mr. Duguay’s lost baggage claim. I say this because it is undisputed the reason Mr. Duguay delivered the bag into Flair’s care was because Mr. Duguay was scheduled to be a passenger on Flair’s flight. There is also no evidence before me that Mr. Duguay ever communicated to Flair that they did not intend to fly when they handed their bag to Flair’s agent. In short, the bag was in Flair’s care because Mr. Duguay was scheduled as an air passenger. I find no reasonable basis to conclude that the APPR should not apply simply because Mr. Duguay unilaterally chose to leave the airport rather than take their flight.
18. Third, section 3 of the CTA says that the CTA applies “in respect of transportation matters” under the federal Parliament’s authority. Under section 55 of the CTA, “air service” is defined as “a service, provided by means of an aircraft, that is publicly available for the transportation of passengers or goods, or both”. “Tariff” is defined as a schedule of fares, rates, charges and terms and conditions of carriage applicable to the provision of an air service “and other incidental services”. I find that the APPR is a tariff under the CTA and I find the suitcase and contents were “goods”. I also find that Flair’s handling of Mr. Duguay’s suitcase reasonably fell within “a service ... publicly available for the transportation of passengers or goods” and fell within “incidental services”. This all supports the conclusion the APPR applies.
19. I turn then to the maximum amount Mr. Duguay is entitled to under the APPR, given that it is undisputed Flair lost the suitcase and its contents. Here, I note that Flair does not argue Mr. Duguay must prove their damages and instead agrees they are entitled to the APPR maximum.
20. Section 23(1) of the APPR applies the same baggage liability limits for domestic flights as the *Montreal Convention* sets out for international flights. Article 22 of the *Montreal Convention* limits liability for lost, damaged or delayed baggage to 1,000

“special drawing rights” (SDR). SDR is the currency of the International Monetary Fund (IMF) that can be exchanged for IMF member currencies. Neither party said what the applicable SDR value was in this dispute.

21. Article 24 of the *Montreal Convention* says the International Civil Aviation Organization will review Article 22’s limits at 5-year intervals, and revisions are binding on the parties. So, I find the baggage liability limit for flights as of December 28, 2019 is 1,288 SDR for each passenger.
22. Mr. Duguay did say he was entitled to \$2,300 under the APPR, plus the value of his checked baggage fee that I address separately below. While Flair originally said in its Dispute Response that the applicable APPR maximum was \$2,300, it later said the limit was \$2,100. Nothing turns on this because, as noted, the parties each agree Flair paid Mr. Duguay a total of \$2,300.
23. Article 23 of the *Montreal Convention* says conversion of SDR into national currency is calculated in accordance with the IMF’s method. I find that as of February 7, 2022 1,288 SDR equals \$2,292.98 CAD. This is just under the \$2,300 the parties agree Flair has already paid Mr. Duguay. So, I find Flair has already paid Mr. Duguay the maximum required under the APPR, which I have already found applies to Mr. Duguay’s lost baggage claim.
24. Finally, I turn then to the baggage fee. As noted, Mr. Duguay only mentioned this in his final reply submission, suggesting he paid roughly \$150 for it. There is no supporting evidence before me about what, if anything, Mr. Duguay paid. I decline to address this baggage fee because it is not part of Mr. Duguay’s \$5,000 claim set out in the Dispute Notice, which was for “contents of my lost suitcase and the suitcase itself”. Given all the above, I dismiss Mr. Duguay’s \$5,000 claim.
25. 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. The evidence shows Flair only paid Mr. Duguay after he started his CRT dispute but before Flair filed its Dispute Response. However, Mr. Duguay started the

CRT dispute on January 21, 2022, which I find did not allow Flair a reasonable opportunity to provide the required APPR payment after the “December 2021” loss. So, in these circumstances I exercise my discretion and dismiss Mr. Duguay’s claim for reimbursement of \$175 in CRT fees. Flair did not pay CRT fees and neither party claims dispute-related expenses.

ORDER

26. I dismiss Mr. Duguay’s claim and this dispute.

Shelley Lopez, Vice Chair