



# Civil Resolution Tribunal

Date Issued: November 9, 2022

File: SC-2022-001555

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stojsavljevic v. Flair Airlines Ltd.*, 2022 BCCRT 1231

BETWEEN:

GORDANA STOJSAVLJEVIC

**APPLICANT**

AND:

FLAIR AIRLINES LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This dispute is about cancelled flights and resulting expenses.
2. The applicant, Gordana Stojsavljevic, purchased a return airfare for a minor family member (M) on a flight operated by the respondent, Flair Airlines Ltd. (Flair). Mrs. Stojsavljevic says Flair failed to provide the agreed upon services, because it

cancelled the flights. She claims reimbursement of \$1,488.33 she says she spent on alternate airfare, hotel, and transportation expenses.

3. Flair says Mrs. Stojsavljevic's damages are limited by the terms of the website from which she purchased the tickets. Flair says it has provided a credit to "the passenger" and offered an additional \$125 in compensation, as required under the tariff and Canadian Transportation Agency regulations, which I infer are the *Air Passenger Protection Regulations* (APPR). Flair denies any responsibility for Mrs. Stojsavljevic's additional expenses.
4. Mrs. Stojsavljevic represents herself. An employee represents Flair.

## **JURISDICTION AND PROCEDURE**

5. 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). 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.
6. 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.
7. 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.

8. 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**

9. Must Flair reimburse Mrs. Stojsavljevic for any of her claimed expenses and, if so, how much?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, as the applicant Mrs. Stojsavljevic must prove her claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submissions and weighed the evidence, but only refer to that which is relevant to explain my decision. I note that Flair did not provide any documentary evidence, despite being given the opportunity to do so.
11. Based on emails and banking records Mrs. Stojsavljevic submitted, I find she used an online travel agency (FH) to book a December 17, 2021 Flair flight from Calgary to Abbotsford and a second Flair flight from Abbotsford to Calgary on January 3, 2022. She booked the travel in M’s name. Together, the flights cost \$259.71 plus \$12.29 agency fees, for a total cost of \$272.00.
12. Mrs. Stojsavljevic later rebooked the January 3<sup>rd</sup> flight to a January 6<sup>th</sup> flight, for an additional \$103.22 fee.
13. It is undisputed that Flair cancelled the December 17, 2021 flight. Mrs. Stojsavljevic says she received an email from Flair 14 hours prior to the flight, saying it was cancelled due to crew restrictions. Mrs. Stojsavljevic says she tried to call Flair to rebook the flight but could not get through. So, she booked M a one-way ticket from Calgary to Vancouver with another airline for December 17, 2021.
14. Banking records submitted by Mrs. Stojsavljevic show she paid Flair a \$102.90 baggage fee for M’s January 6, 2022 flight.

15. It is undisputed Flair cancelled the January 6, 2022 flight, rebooked it to the following morning then cancelled that flight as well. Mrs. Stojsavljevic says the flights were cancelled due to weather, which Flair does not deny and so I accept that as true.
16. Mrs. Stojsavljevic says Flair failed to provide alternate flights, food or accommodation for M after cancelling its flights, and so it should reimburse Mrs. Stojsavljevic these extra expenses. As noted, Flair says it is not responsible for the extra expenses, under the terms of Mrs. Stojsavljevic's agreement with FH, which includes the airline's tariff.
17. FH's flight itinerary confirmation email to Mrs. Stojsavljevic includes various terms and conditions for using the FH website. It specifically says that FH acts as agent for "providers of travel-related products and services", which I find includes Flair. Further, it is clear from Mrs. Stojsavljevic's evidence that she booked a flight on Flair airlines. So, I find FH expressly held itself out as agent for Flair. For this reason, I find any claim Flair makes that Mrs. Stojsavljevic's contract is with FH rather than Flair, cannot succeed.
18. In any event, FH's terms and conditions say that the airline's terms and conditions, or its tariff, apply to any flights booked through the FH website. So, I find Flair's tariffs apply here. Neither party provided a copy of that tariff as evidence.
19. Flair says it has already provided compensation to "the passenger" for the cancelled flights by way of a \$464.12 credit, as required under the tariff. As M was the passenger, I find it likely that Flair provided the travel credit in M's name.
20. Flair says this includes the \$102.90 baggage charge that was never used, \$258 for the "original itinerary" and \$103.22 flight change charge. I note that the original itinerary cost was \$259.71 but find the \$1.71 difference is trivial enough not to matter in this dispute.
21. Mrs. Stojsavljevic does not dispute that Flair provided a travel credit, or address it at all in her submissions, despite the opportunity to do so. So, I accept that Flair has

already compensated M the money paid to Flair for the cancelled flights and baggage fees.

22. Although Mrs. Stojavljevic argues Flair must compensate her for her extra expenses, she has not proven any legal basis for such compensation. Flair says it compensated the passenger for the flight costs, as required under its tariff. Mrs. Stojavljevic did not provide a copy of that tariff or any agreement between the parties which required Flair to compensate her for more. So, I find Mrs. Stojavljevic has not proven that she is entitled to reimbursement of the paid expenses, given Flair has already provided compensation for the costs of the cancelled flights.
23. I have also considered whether Flair is required to compensate Mrs. Stojavljevic for the extra expenses under the APPR. I find it is not. I find Flair already compensated M for the ticket's unused portion, as required under APPR section 17(2).
24. The APPR does not require an airline to reimburse extra expenses for cancelled flights. It does, however, require airlines to pay compensation to passengers according to a schedule, in certain circumstances. Flair says it offered M \$125 for the December 17, 2021 cancelled flight, which I find is in accordance with APPR sections 12 and 18(2)(b) of the APPR. Mrs. Stojavljevic does not dispute this, and so I accept it. So, I find Flair has met its obligations to M under the APPR, as M was the passenger.
25. On balance, I find Flair has provided compensation for the cancelled Flair itinerary as a credit to M. I find Mrs. Stojavljevic has not proven that Flair is required to reimburse any further travel expenses under the parties' agreement, including the APPR. So, I dismiss Mrs. Stojavljevic's claims as unproven.
26. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Mrs. Stojavljevic was unsuccessful in this dispute, I find she is not entitled to reimbursement of her paid CRT fees. As the successful respondent, Flair paid no CRT fees and claims no dispute-related expenses.

## **ORDER**

27. I dismiss Mrs. Stojavljevic's claims and this dispute.

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Sherelle Goodwin, Tribunal Member