



Civil Resolution Tribunal

Date Issued: May 19, 2023

File: SC-2022-005440

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Younus v. Flair Airlines Ltd.*, 2023 BCCRT 419

BETWEEN:

MUHAMMAD ADIL YOUNUS

APPLICANT

AND:

FLAIR AIRLINES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about compensation for alleged denial of boarding. The applicant, Muhammad Adil Younus, says the respondent airline, Flair Airlines Ltd. (Flair), denied

him boarding and so he claims \$2,692.12 in compensation under the *Air Passenger Protection Regulation* (APPR) and related travel expenses.

2. Flair says Mr. Younus' inability to board the booked flight was due to a technical "glitch", arising from the fact that when Mr. Younus booked the next-day flight a schedule change had already occurred. Flair says therefore it owes no "denial of boarding" compensation under the APPR, which it says covers only overbooking that it says was not an issue here. With that, Flair offers a total of \$934.94 in compensation, as discussed below.
3. Mr. Younus is self-represented. Flair is represented by in-house counsel, Keri Kurtz.

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. As the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.
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 in this dispute is whether Flair denied Mr. Younus boarding for his booked flight, and whether Flair owes him any compensation under the APPR or otherwise.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. Younus must prove his 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.
10. Section 1 of the APPR is titled “Definitions and Interpretation”. Section 1(3) says that, for the purposes of the APPR, “there is a denial of boarding” when a passenger is not permitted to board the plane because there are less seats available than there are passengers who are booked and ready to travel in those seats. In other words, when the plane has been overbooked.
11. APPR sections 11(5)(b) and 12(4)(b) say that, in the case of a denial of boarding, an airline must deny boarding in accordance with section 15.
12. Section 15 of the APPR says an airline must not deny boarding unless it first asks all passengers if anyone is willing to give up their seat. It also prohibits an airline from denying boarding to a passenger already on board. If “denial of boarding” is necessary, the airline must give priority for boarding to certain passengers including children, disabled persons, families, and passengers previously denied boarding. There is no evidence or suggestion that Flair asked any passengers if they were willing to give up their seat.

13. Notably, Mr. Younus admits that he was told at the check-in desk that there was “some ‘glitch’ in the system” that was not allowing him to be assigned a seat. That does not necessarily mean the flight was overbooked. However, I find the weight of the evidence indicates Flair overbooked the flight, contrary to Flair’s position. My reasons follow.
14. Flair says Mr. Younus was booked on flight F8223 that was scheduled to originally leave on July 18, 2022 at 1:45pm. That flight was delayed until 8:00am on July 19, 2022, as shown in the submitted evidence. Based on the evidence before me, I accept that Mr. Younus had booked his ticket on F8223 on July 18, 2022 at 9:00pm, at which point the F8223 flight schedule was *already* under a delay. In other words, I find the parties’ positions are essentially consistent. When he booked his seat on flight F8223, Flair told him and he understood that it was a July 19 flight departing at 8:00am. This was true, but it was also true that flight F8223 was originally scheduled to depart on July 18 at 1:45pm.
15. As noted, Flair denies the flight was oversold or overbooked. Flair says the “glitch” was that because of the existing delay Mr. Younus should not have been sent a booking notification. Yet, I find Flair does not adequately explain why Mr. Younus could not board the flight if it was not overbooked. Rather, Flair only says that the “next regularly scheduled flight”, scheduled to depart at at 7:00pm on July 19, but which was delayed and departed at 11:00pm., was in fact the first “eligible” flight for Mr. Younus to book. The difficulty for Flair is that it did book Mr. Younus on flight F8223. Its argument about eligibility does not mean that it did not overbook F8223. Rather, I find it supports Mr. Younus’ position that, through its own glitch, Flair did overbook flight F8223 and that Mr. Younus was denied boarding as a result.
16. Whether there was a glitch or not, ultimately I find it likely that Flair did not seat Mr. Younus on the plane because the plane was already full of passengers. There is no exemption in the APPR for overbooking due to glitches. I find Flair is the only party with access to information that would show if the plane was in fact overbooked or not, and here it did not do so. So, I draw an adverse inference against Flair and find it

more likely that the number of seats that could be occupied on flight F8223 was less than the number of passengers (including Mr. Younus) who had checked in, held a confirmed reservation, and had valid travel documentation. In short, I find Mr. Younus was denied boarding within the meaning of the APPR.

17. I turn then to the appropriate remedy. Mr. Younus claims a total of \$2,692.12. First, this is for \$2,400 in compensation under the APPR for denied boarding. I agree, and find \$2,400 is what Flair must pay under section 20 of the APPR for denial of boarding where the passenger's arrival is delayed by 9 hours or more. I order Flair to pay the \$2,400.
18. This leaves the remaining \$292.12 of Mr. Younus' claim. Mr. Younus seeks reimbursement of his July 19, 2022 expenses: hotel (\$233.85) and transportation costs to and from the hotel and airport (\$58.27). Those expenses are supported by receipts in evidence, and I note Flair expressly agreed to pay the \$233.85 for the hotel and \$58.09 for the transportation, as part of its offer in its written submissions to pay a total of \$934.94 to resolve this dispute. I find nothing turns on the few cents difference in the transportation calculation, noting again that the receipts in evidence support the \$58.27. Here, I find Flair is not bound by the offer to pay the hotel and transportation costs, because the dispute is not being resolved according to Flair's offer, which included paying \$500 for delay under the APPR rather than denial of boarding.
19. I turn then to the APPR provisions for accommodations and transportation costs. Section 14(2) sets out the airline's "accommodations" obligations where there is a delay. Section 16(2) sets out the same thing where boarding is denied. These sections say that if the airline expects the passenger will be required to wait overnight for their original flight or for an alternate flight, then the airline must offer a free hotel and associated transportation to and from the hotel.
20. Here, Mr. Younus did not have to wait overnight for his replacement flight. As noted above, his booked flight was supposed to depart at 8:00am and his actual flight was scheduled to leave at 7:00pm though it did not depart until 11:00pm. So, I find Mr.

Younus is not entitled to compensation under the APPR for his hotel and transportation expenses because I find he was not required to wait overnight for his alternate flight.

21. I next consider whether there is any other legal basis for me to award Mr. Younus the claimed hotel and transportation expenses. I find the answer is no. There is no evidence that the parties' contract or terms of carriage contemplated anything beyond what the APPR provides. In short, I dismiss the \$292.12 aspect of Mr. Younus' claim.
22. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Younus is entitled to pre-judgment COIA interest on the \$2,400. Calculated from July 20, 2022 to the date of this decision, this interest equals \$59.12.
23. 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 Mr. Younus was substantially successful, I allow his claim for reimbursement of \$125 in paid CRT fees. Mr. Younus also claims \$18 for a registry search, as a dispute-related expense, which I allow because I find it reasonable and supported by the receipt in evidence.

ORDERS

24. Within 21 days of this decision, I order Flair to pay Mr. Younus a total of \$2,602.12, broken down as follows:
 - a. \$2,400 in damages,
 - b. \$59.12 in pre-judgment interest under the COIA, and
 - c. \$143, for \$125 in CRT fees and \$18 in dispute-related expenses.
25. I dismiss the balance of Mr. Younus' claim.

26. 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, Vice Chair