



Civil Resolution Tribunal

Date Issued: August 8, 2023

File: SC-2022-006594

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mohamed v. Air Canada*, 2023 BCCRT 661

BETWEEN:

ABDALLAH MOHAMED and GHADA ALI

APPLICANTS

AND:

AIR CANADA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about compensation for international flight delay. The applicants, Abdallah Mohamed and Ghada Ali, say the respondent airline, Air Canada, delayed one leg of their international flight that resulted in their arriving at their final destination

over 56 hours later than originally scheduled. The applicants say the flight was delayed due to “staffing issues”, which they say is within Air Canada’s control. So, they claim \$5,000 under the *Air Passenger Protection Regulations* (APPR), based on \$1,000 for each of their 5 travelling family members.

2. Air Canada says the flight delay was outside its control, due to “air traffic control constraints”. So, Air Canada says it does not owe the claimed compensation under the APPR, because it undisputedly already provided the applicants’ family with alternate travel arrangements.
3. Dr. Mohamed represents the applicants. 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. Bearing in mind the CRT’s mandate that includes proportionality and prompt resolution of disputes, I decided to 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.

ISSUES

8. The issues in this dispute are whether the applicants' flight delay was within Air Canada's control and whether it owes them the claimed \$5,000 under the applicable tariff and APPR legislation.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants 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.
10. The applicants bought 5 tickets from Air Canada for themselves and 3 other family members to fly from Kelowna, BC to Cairo, Egypt. The international flight had 3 legs: a) Kelowna to Vancouver, b) Vancouver to London, England, and c) London to Cairo. The Kelowna to Vancouver flight, AC8279, was scheduled to leave Kelowna on July 4, 2022 at 17:30 and arrive in Vancouver at 18:27. The flight out of Vancouver, AC862, was scheduled to depart at 20:15 on July 4. The final arrival in Cairo was scheduled to arrive at 20:40 on July 5, 2022. None of this is disputed.
11. Flight AC8279 left Kelowna 2 hours and 9 minutes late. It landed in Vancouver at 19:47, instead of the scheduled 18:27 arrival time. AC8279 was then "onblock" (at its gate) at 20:32, after AC862 had departed at 20:15. Again, none of this is disputed. More below on why AC8279 was delayed.
12. Given AC8279's delay, Air Canada rebooked the applicants' and their family members' flights on a revised itinerary, including a departure flight out of Vancouver on July 6 at 18:00. This led to the applicants' arrival in Cairo over 56 hours later than originally scheduled. None of this is disputed.

13. I pause to note the applicants argue that since AC862 was expected to arrive in London 13 minutes early, Air Canada should have briefly delayed AC862's departure to await their arrival. I disagree. While it may be that Air Canada does delay planes' departures in some circumstances (and I have no supporting evidence before me that it does), I find it had no legal or contractual obligation to do so here.
14. It is undisputed that if the relevant delay here was outside Air Canada's control, then Air Canada does not owe the claimed compensation. So, under the applicable APPR legislation this dispute turns on whether flight AC8279 was delayed for reasons outside Air Canada's control.
15. The applicants say AC8279's delay was due to Air Canada's staffing issues, and so the delay was within Air Canada's control. Alternatively, the applicants argue that at least some of the delay was due to Air Canada's own staffing issues and had that delay not occurred they say they would have not missed their connecting AC862 flight. So, the applicants say Air Canada owes them \$1,000 for each of their family's 5 tickets, for flight delay under APPR sections 12(2) and 19. Those sections say that for situations within Air Canada's control, as a large carrier Air Canada must pay a minimum of \$1,000 to each passenger for inconvenience if their arrival at their destination is delayed by 9 hours or more, as was the case here.
16. In contrast, Air Canada says the overall delay was due to air traffic control (ATC) and a ground delay program (GDP) operated by Navigation Canada, and so the delay was outside Air Canada's control.
17. I turn to the applicable law. Here, I note Air Canada relies on a Canada Transportation Agency guide it submitted in evidence, which addresses multiple causes for delay and how to determine which is the primary cause. It basically explains that whatever reason had the biggest impact on the delay, that will be considered the primary reason for the delay. I agree with this approach as I find it is consistent with common sense.

18. Next, I agree with Air Canada that under the APPR a delay directly attributable to an earlier delay outside the carrier's control will be similarly categorized if the carrier took all reasonable measures to mitigate the impact of the earlier flight's delay. This is known as a "knock-on effect".
19. However, I find Air Canada is in the best position to provide evidence explaining the delay of its own flights. More on this below.
20. Section 10 of the APPR sets out Air Canada's obligations where the delay is outside its control and provides a non-exhaustive list of situations that are outside an air carrier's control. Staffing issues are not expressly listed but "airport operation issues" are listed. As noted, Air Canada provided an alternate flight itinerary, as required under APPR section 10(3).
21. Air Canada says the delay was due to "air traffic control restraints", which it says can include staffing issues and which falls within "airport operation issues". I agree with Air Canada that airport operation constraints or the airport's staffing issues are outside Air Canada's control, as I set out in my earlier decision in *Sull v Air Canada*, 2023 BCCRT 385 cited by Air Canada. However, I find Air Canada's own staffing issues for its crew or other Air Canada employees are within its own control. Again, the issue here is whether it was Air Canada's staff that primarily caused AC8279's delay. If not, then I find Air Canada does not owe the claimed compensation.
22. So, was AC8279's delay due to Air Canada's own staffing issues or the airport's staffing issues? I turn then to the submitted evidence about the delay's cause.
23. It is undisputed and I accept that the AC8279 plane (identified as FIN 411) was used for an inbound flight AC8278 immediately before AC8279's departure, as noted in a "Netline" document issued by Navigation Canada and submitted in evidence by Air Canada. More on that Netline document below. Air Canada submits "due to the overall delay", including AC8278's delayed landing in Kelowna and ATC issues, AC8279 landed in Vancouver at 19:47 instead of 18:27.

24. Based on the Netline document, I also accept that FIN 411 was delayed throughout the day, before AC8278 and AC8279, leading to a knock-on effect. Air Canada says the overall delay was due to ATC “flow control”. I find the Netline document establishes that at least some of the delay was attributable to ATC and related staffing delay that was outside Air Canada’s control. This is because I accept Air Canada’s undisputed evidence that ATC and GDPs are handled by Navigation Canada, a third party over which Air Canada has no control.
25. So, as noted above, the issue is whether the delay’s primary cause, or whether the delay that impacted the applicants’ ability to make their connecting flight AC862 was within or outside Air Canada’s control.
26. Air Canada also submitted an “SOC Operational Evening Report” for July 4, 2022 (GDP report). It did not mention AC8279 specifically. However, it set out that the Vancouver airport GDP was issued from 17:00 to 22:30, which covered AC8279’s arrival in Vancouver. It also said that the GDP for that time period was “due to staffing” and that the average delay was 48 minutes and the maximum was 97 minutes. I accept it is Navigation Canada that issues a GDP and so in context I find it likely the staffing issue that led to the GDP was not Air Canada’s staff but airport or other staff. In other words, I find it unlikely that Navigation Canada would issue a GDP for the entire Vancouver airport based on Air Canada’s own staffing issues.
27. I return to the submitted “Netline” document, which as noted specifically addresses July 4, 2022 and AC8279. Under “delays”, it provided the following codes: “04 / UA2 /0209”. Significantly, Air Canada does not explain what these codes mean, and as a sophisticated litigant I find it should have done so, particularly since Air Canada relies on this document as support for its position that the delay was outside its control.
28. The Netline document shows AC8279’s departure out of Kelowna was delayed due to FIN 411 being late arriving on its inbound flight AC8278, for various reasons (quotes reproduced as written, except where noted): “due to YVR ATC GDP ineffect/staffing”, “upline YVR sales agent constraints”, and “upline [delays] due YVR GDP due staffing”. AC8279 landed in Vancouver at 19:47 instead of 18:27. It was

“onblock” or at the gate in Vancouver by 20:32. As noted, AC862 from Vancouver to London had already left at 20:15.

29. Notably, Air Canada does not address the Netline document’s reference to “YVR sales agent constraints” in their submissions. On the evidence before me, I find it more likely than not that the reference to “sales agent” refers to Air Canada employees rather than airport staff. I say this because there is no explanation before me saying that there are sales agents employed by the airport and no explanation how any such airport sales agents impacted a flight’s schedule. So, on the weight of the evidence before me I find it unproven all of AC8279’s delay was outside Air Canada’s control. As noted, I find Air Canada is in the best position to provide evidence that proves the cause of the delay and bears the onus of proving the delay was outside its control.
30. In short, I find some of AC8279’s delay was outside Air Canada’s control, due to Navigation Canada’s GDP. However, I also find some of it was within Air Canada’s control, due to its own staffing issues impacting FIN 411. So, the issue here then is whether enough of AC8279’s delay was within Air Canada’s control such that the applicants could have made the AC862 flight out of Vancouver.
31. The applicants argue that the GDP report does not justify AC8279’s 2 hours and 9 minute delay from Kelowna to Vancouver. The applicants note the GDP report says the average reported delay was 48 minutes and the maximum delay was 97 minutes. Yet, the applicants say AC8279’s delay was 129 minutes and that Air Canada has not explained the additional 32 minutes of delay (if using the maximum 97 minute delay). The applicants say that if their AC8279 flight had arrived at Vancouver 32 minutes earlier, they would have been able to catch their connecting flight AC862 out of Vancouver to London.
32. The Netline document does not breakdown how much of the delay was due to “upline YVR sales agent constraints” and how much was due to the GDP. However, the time entries attributing delay to the GDP begin a 23:10 on July 4, after AC8729 had arrived

in Vancouver. Further, the GDP was only in effect from 17:00 to 22:30. I find this does not assist Air Canada's argument.

33. Further, Air Canada notably did not address the applicants' argument that a WestJet flight left Kelowna on time at 17:30, and how that was possible if the GDP was the primary factor for AC8729 being delayed in its departure. Again, I find Air Canada is in the best position to provide this evidence and I find it failed to do so.
34. So, while I have found there was a GDP outside Air Canada's control that had some impact on AC8279, I find the weight of the evidence does not show that was the primary cause. I find the onus is on Air Canada to show the primary cause of the delay that impacted the applicants' ability to make their connecting flight AC862 was outside their control and I find it has failed to do so.
35. Given the above, I find I do not need to address the applicants' arguments about Air Canada's inconsistent explanations of the delay when the applicants sought compensation. I also do not need to address the applicants' argument that Air Canada failed to take reasonable measures to mitigate the delay, on the basis Air Canada knew about FIN 411's delay earlier in the day and yet did not ensure the applicants would make their connecting flight to London.
36. I turn then to the appropriate remedy. As noted, the APPR says a large carrier like Air Canada owes \$1,000 for inconvenience. I find this entitlement is per passenger and is not based on who paid for the flights. Section 19 of the APPR does not specify who the air carrier must pay compensation to. However, section 2(1) of the APPR says that air carriers are liable to **passengers** for the carrier's obligations set out in sections 7 to 22 (my bold emphasis added). I find this means Air Canada's obligation to pay compensation for delay under section 19 is owed to the inconvenienced passenger, rather than the person who purchased the ticket on the passenger's behalf.
37. Here, the 2 named applicants claim a total of \$5,000 in APPR compensation for not just themselves, but also their 3 other family members travelling with them. Given I

find the APPR's compensation scheme is based on a passenger's entitlement, I find the applicants have no standing to claim compensation for their 3 other family members. So, I order Air Canada to pay each of the applicants \$1,000, for a total of \$2,000. I dismiss the balance of their claim. Nothing in this decision prevents the 3 remaining family members from claiming against Air Canada for their delayed flight, subject to the applicable limitation period.

38. While none of the parties cited it, I note 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). Article 19 of the *Montreal Convention* says an airline is liable for damages caused by delay. I note the applicants submitted a July 13, 2022 email to Air Canada summarizing the cost of their hotel and food expenses between July 4 and 6, totalling \$1,588.26. However, I make no order about these expenses because the applicants did not claim this as a remedy. Rather, they claimed only the compensation for delay under section 19 of the APPR, which I have addressed above.
39. The *Court Order Interest Act* (COIA) applies to the CRT. I find each of the applicants are entitled to pre-judgment interest on the \$1,000 award. Calculated from August 9, 2022 (30 days after Dr. Mohamed's July 10, 2022 compensation request) to the date of this decision, this interest equals \$33.99.
40. 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 the applicants were partially successful, I order Air Canada to reimburse Dr. Mohamed, as the primary applicant, ½ his paid CRT fees, which totals \$87.50. No dispute-related expenses were claimed.

ORDERS

41. Within 21 days of this decision, I order Air Canada to pay Dr. Mohamed a total of \$1,121.49, broken down as follows:

- a. \$1,000 in damages,
 - b. \$33.99 in pre-judgment interest under the COIA, and
 - c. \$87.50 for CRT fees.
42. Within 21 days of this decision, I order Air Canada to pay Dr. Ali a total of \$1,033.99, broken down as follows:
- a. \$1,000 in damages,
 - b. \$33.99 in pre-judgment interest under the COIA,.
43. The applicants are each entitled to post-judgment interest, as applicable.
44. 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