



# Civil Resolution Tribunal

Date Issued: September 21, 2023

File: SC-2022-004832

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Peterson v. Air Canada*, 2023 BCCRT 804

B E T W E E N :

BRENDA PETERSON

**APPLICANT**

A N D :

AIR CANADA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Alison Wake

## INTRODUCTION

1. This dispute is about delay in receiving a refund. The respondent, Air Canada, agreed to refund \$550 in excess baggage fees to the applicant, Brenda Peterson, after she was unable to board a flight on December 24, 2021. To date, Ms. Peterson has not received the refund. Ms. Peterson claims \$550 for the refund, as well as \$4,000 in damages for loss of income, financial hardship, and emotional, mental, and physical

suffering. She also asks that a travel credit Air Canada issued her be changed to a “non-expiring transferrable travel voucher”.

2. Air Canada acknowledges the delay in providing the refund, but says that it is not liable for Ms. Peterson’s claimed damages. It asks me to dismiss this dispute.
3. Ms. Peterson is self-represented. 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). Section 2 of the CRTA states that the CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
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.
7. As noted above, Ms. Peterson asks that a \$1,000 travel credit issued to her by Air Canada be changed to a non-expiring, transferrable travel voucher. Air Canada submits that such an order is outside the CRT’s jurisdiction. I agree. An order to do something, such as changing the terms of the travel credit, is known in law as injunctive relief. I do not have jurisdiction, or authority, under the CRTA to grant injunctive relief except in specific circumstances which I find are not present here. So, I decline to make the requested order.

## ISSUES

8. The remaining issues in this dispute are:
  - a. Must Air Canada refund Ms. Peterson \$550 for excess checked baggage fees?
  - b. Must Air Canada pay Ms. Peterson \$4,000 in damages for loss of income, financial hardship, and emotional, mental, and physical suffering?

## EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Ms. Peterson must prove her claims on a balance of probabilities (meaning “more likely than not”). While I have read all the parties’ submitted evidence and arguments, I have only referred to those necessary to explain my decision.

### ***Preliminary matter – late evidence***

10. Ms. Peterson provided additional evidence after her evidence deadline. Air Canada did not object to the introduction of this late evidence and had an opportunity to respond to it. So, I admit Ms. Peterson’s late evidence, though I find nothing turns on it given my conclusions below.
11. Air Canada submitted that it should also be permitted to provide late evidence and submitted a copy of its tariff issued October 29, 2021 (tariff). Air Canada says that the CRT should admit this copy of the tariff to replace a different version it had previously provided, as the October 29, 2021 version is the version that was in force at the time of Ms. Peterson’s booking. Ms. Peterson provided submissions on the previous version of the tariff, but did not have an opportunity to respond to the October 29, 2021 version. As I find the tariff is ultimately not relevant to my conclusions below, I decline to admit the updated version in evidence and so I did not seek further submissions from Ms. Peterson about it.

## ***Background***

12. The background facts are undisputed. Ms. Peterson booked a ticket on an Air Canada flight from Vancouver to Auckland, New Zealand, via Sydney, Australia, on December 24, 2021. Despite undisputedly arriving at the airport on time, Ms. Peterson's check-in process was delayed, and she was not able to reach the gate in time to board the flight.
13. Both parties made submissions and provided evidence about why the check-in was delayed and why Ms. Peterson did not arrive at the gate on time. However, I find I do not need to determine the delay's specific cause. This is because the parties undisputedly agreed that Ms. Peterson would accept a refund of the \$550 in excess checked baggage fees (refund), as well as a \$1,000 travel credit (credit), as compensation for missing her flight.
14. Air Canada argues it was not legally required to provide the refund or the credit to Ms. Peterson. However, whether or not it was legally required, I find Air Canada offered the refund and credit to Ms. Peterson in response to a complaint that she made to its customer service department. I find Ms. Peterson accepted the offer, so the parties had a binding agreement to resolve her complaint in exchange for the refund and credit. Air Canada undisputedly has not yet provided the refund to Ms. Peterson. The delay in providing the refund forms the basis of Ms. Peterson's claim for \$4,000 in damages, which I will discuss further below.
15. Ms. Peterson submitted a copy of a March 3, 2022 email from CB, a Special Assistance Representative with Air Canada Customer Relations. This email does not mention the \$550 refund. However, Air Canada does not dispute Ms. Peterson's assertion that CB told her during their phone call that she would receive the refund by cheque in the mail within 4 to 6 weeks.
16. On March 7, 2022, Air Canada sent Ms. Peterson an email saying, in part, "Your refund is confirmed! You can find your refund information below. However, your

payment card company may take one or two billing statements to add the credit to your account.” The email shows two refunds for \$225 each, and one for \$100.

17. Ms. Peterson undisputedly did not receive the refunds as promised. Evidence shows she sent follow up emails to Air Canada on April 5, June 7, and June 24, 2022 requesting updates and suggesting options for how the refund can be sent to her. There are no responses from Air Canada in evidence.
18. On August 25, 2022, after Ms. Peterson had filed this CRT dispute, Air Canada emailed her to say it could send a cheque to a North American mailing address, or provide an international direct bank transfer. The evidence shows several emails between Ms. Peterson and Air Canada in the ensuing months, but Ms. Peterson undisputedly still did not receive the refund.
19. Air Canada provided a screenshot which appears to show an undated, undeliverable etransfer of \$100 to Ms. Peterson. I agree with Ms. Peterson that this etransfer was sent to the wrong email address, and that Air Canada sent all of its previous correspondence with her to her correct email address. However, I find there is no evidence to suggest Air Canada intentionally or maliciously used the wrong email address for the e-transfer as Ms. Peterson argues.
20. Overall, the emails in evidence show that Ms. Peterson suggested several options for how Air Canada could send her the refund, including by registered mail, direct deposit to her bank account, a refund to her “visa debit cloud card”, or by courier to the Vancouver airport for her to pick up. It is not clear from the evidence before me why Air Canada did not provide the refund through one of Ms. Peterson’s suggested options. However, I find nothing turns on this given my conclusions below.

### ***Excess checked baggage fees***

21. As noted above, I find Air Canada is bound by its agreement to refund Ms. Peterson the \$550 for the excess checked baggage fees. While Air Canada asks that this dispute be dismissed, it also confirms in its submissions that it is still willing to provide this refund, and acknowledges that it has not yet done so. So, I find Air Canada must

refund Ms. Peterson \$550 within 21 days of this decision, as set out in my Order below.

***Additional claimed damages***

22. This leaves Ms. Peterson's claim for \$4,000 in damages for income loss, financial hardship, and emotional, mental and physical distress. Ms. Peterson says that Air Canada's failure to refund her excess checked baggage fees in a timely manner negatively affected her in several ways.
23. I infer Ms. Peterson alleges Air Canada breached its contract with her to provide the refund, acted negligently by failing to provide the refund in a timely manner, or both. I find I do not need to determine the precise legal basis for Ms. Peterson's claim, because in either case, I find she has not proven that she has incurred damages. My reasons for this follow.
24. Ms. Peterson argues that she has been under "immense stress" while waiting for the refund. She says that she had to cancel a flight she had booked to New Zealand in April 2022, because she had not yet received the refund and Air Canada told her it could not be issued once she left Canada. While Air Canada does not particularly dispute this assertion, I find it is unlikely as in an April 5, 2022 email to Air Canada, Ms. Peterson expressly stated she did not want a cheque to be mailed to New Zealand, so I find Air Canada likely offered this as an option at some point. It is unclear from Ms. Peterson's submissions whether she intended to move to New Zealand or simply visit, but I accept that she planned to be there for a prolonged period in any event.
25. Ms. Peterson says that while she was waiting for the refund to arrive, she could not "honestly" apply for a job without telling a prospective employer that she would be leaving as soon as she received the refund. Ms. Peterson also says that she no longer had a vehicle as she had "let [her] vehicle go" prior to her scheduled December 24, 2021 flight. She says that because of this, she had to take public transportation which caused her to experience pain from arthritis in her feet. Somewhat inconsistently, she

also says she had to purchase a “low-cost” vehicle. Lastly, Ms. Peterson says she had to re-negotiate her lease and move into a different room in the home she lived in, once she missed her December 24, 2021 flight.

26. The difficulty for Ms. Peterson is that even if I accept Air Canada breached its contract with Ms. Peterson to provide the refund within a certain timeframe, or was negligent in failing to provide the refund, she has provided no evidence that she incurred monetary damages as a result. For example, Ms. Peterson did not provide any evidence about the income she would have earned in the time she was waiting for the refund. She did not explain whether the re-negotiated lease led to increased costs for her, and provided no medical evidence to support her claims about arthritis pain.
27. Further, I agree with the reasoning in the non-binding but persuasive CRT decision *Eggberry v. Horn et al*, 2018 BCCRT 224, which says that for a claim for stress or mental distress to be successful there must be medical evidence supporting the stress or mental distress.
28. Ms. Peterson says that she has been frightened and unable to eat “while working on this issue”. However, Ms. Peterson provided no medical evidence in support of her claim for mental distress. I accept that it was likely stressful and burdensome for Ms. Peterson not to receive the refund despite repeated communication with Air Canada. However, in the absence of any medical evidence, I find that alone is insufficient to prove she is entitled to damages for mental distress.
29. In summary, while I acknowledge that Ms. Peterson has likely been frustrated and inconvenienced by Air Canada’s delay in processing her refund, I find she has not proven that she is entitled to damages as a result. So, I dismiss Ms. Peterson’s claim for \$4,000 in damages.
30. The *Court Order Interest Act* applies to the CRT. Ms. Peterson is entitled to pre-judgment interest on the \$550 refund. Given Ms. Peterson’s undisputed submission that Air Canada told her on March 2, 2022 that she would receive the refund within 4 to 6 weeks, I find it appropriate to award interest from April 13, 2022, which is six

weeks after Air Canada confirmed the refund would be processed, to the date of this decision. This equals \$23.58.

31. 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. Neither party paid CRT fees or claimed dispute-related expenses in this dispute and so I make no order for them.

## **ORDERS**

32. Within 21 days of the date of this order, I order Air Canada to pay Ms. Peterson a total of \$573.58, broken down as follows:

- a. \$550 in debt as a refund for the excess baggage fees, and
- b. \$23.58 in pre-judgment interest under the *Court Order Interest Act*.

33. Ms. Peterson is entitled to post-judgment interest, as applicable.

34. 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.

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Alison Wake, Tribunal Member