



# Civil Resolution Tribunal

Date Issued: November 8, 2023

File: SC-2022-007968

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tubajon-Sharma v. WestJet Airlines Ltd.*, 2023 BCCRT 966

BETWEEN:

ELIJAH TUBAJON-SHARMA and NOAH DEZIEL

**APPLICANTS**

AND:

WESTJET AIRLINES LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about compensation for a cancelled flight.
2. The applicants, Elijah Tubajon-Sharma and Noah Deziel, are friends who each booked airline tickets for flights operated by the respondent, WestJet Airlines Ltd. (WestJet). The applicants' international trip out of Vancouver had a connecting flight

in Toronto. The applicants say that when they landed in Toronto, they discovered WestJet had cancelled their connecting flight to London, England and automatically re-booked them on a flight leaving 2 days later. Instead, the applicants booked flights on a different airline, and they ultimately arrived at their destination less than 3 hours later than their originally scheduled arrival time.

3. The applicants say that WestJet breached the *Air Passenger Protection Regulations* (APPR). They claim a total of \$4,814.61, made up of \$1,000 each for delayed travel under the APPR, \$2,064.61 for what the applicants spent on alternate airfare, and \$750 for time spent dealing with WestJet.
4. WestJet says the reason for the flight cancellation was out of its control. WestJet denies that the applicants are entitled to any compensation under the APPR or otherwise.
5. The applicants are represented by TT, a family member of Mr. Tubajon-Sharma, who is not a lawyer. WestJet is represented by legal counsel, Sean Hedley.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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.

8. 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.

## **ISSUE**

9. The issue in this dispute is whether the applicants are entitled to compensation for the cancelled flight.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. The background facts are undisputed. On July 14, 2022, the applicants took a WestJet flight from Vancouver to Toronto, which landed at 7:52 pm local time. Their connecting flight to London was scheduled to depart Toronto just over an hour later, at 9:15 pm. During the flight from Vancouver to Toronto, WestJet sent the applicants an email advising that it had cancelled the flight to London, and they had been re-booked on a connecting flight to Halifax leaving Toronto at 10:00 am on July 16, 2022, with a 9-hour layover before departing to London. The new flights were scheduled to arrive in London more than 47 hours after the cancelled flight.
12. WestJet’s email to the applicants did not provide any reason for the flight cancellation. The applicants say they tried to speak with a WestJet representative in Toronto, but that WestJet closed its counter without providing any further information or any food, hotel, or taxi vouchers to those affected by the flight cancellation. WestJet does not particularly deny this.
13. Ultimately, the applicants bought 2 new tickets from Toronto to London on a different airline, which departed at 11:00 pm on July 14, 2022. They arrived in London less

than 3 hours later than the original WestJet flight was scheduled to arrive. The evidence shows these new tickets cost the applicants a total of \$2,064.62.

14. It is undisputed that the APPR applies to commercial air travel in Canada, including the cancelled flight at issue in this dispute. I also accept WestJet's evidence that it is bound by its International Tariff (tariff), filed with the Canadian Transportation Agency (CTA), a copy of which is in evidence. I find that the tariff essentially mirrors the obligations in the APPR related to flight cancellations.
15. The APPR and tariff set out an airline's obligations and available compensation for delayed and cancelled flights, among other disruptions. The obligations and remedies are different for "small carrier" airlines and "large carrier" airlines. There is no dispute that WestJet is a "large carrier" as defined in the APPR. The obligations and available compensation also depend on whether the delay or cancellation was within the carrier's control or outside the carrier's control.
16. WestJet says that the flight cancellation was outside of its control. It says that at approximately 6:00 am Eastern Standard Time (EST) on July 14, 2022, it experienced a network outage caused by a damaged fibre optic cable. WestJet says a train derailment then severed a second fibre optic cable later that morning, which prolonged the repairs. WestJet says the network outage impacted all critical systems used to manage its operations nation-wide, including the movement of aircraft, delivery of flight plans, crew communications, guest check-ins, and guest boarding. WestJet says that given the scope of the network outage, the ripple effects extended for several days, as aircraft, crew, guests, and bags had been displaced.
17. WestJet provided a statement from its vice president of IT airline operations, as well as a July 14, 2022 website bulletin providing updates on a IT outage, an internal IT outage report with various status updates on WestJet's internet connection issues on July 14, 2022, and a WestJet operations control centre report for July 14, 2022. I find this evidence supports WestJet's submission that there was a substantial impact on its operations across its entire airline network due to severed fibre optic cables on

July 14, 2022. I also accept WestJet's evidence that the relevant fibre optic cables belonged to a third party, which was responsible for the cable repairs.

18. While the applicants do not dispute that WestJet experienced an "IT issue" on July 14, 2022, they argue that the networking issue was unrelated to WestJet's decision to cancel their flight to London. They say that the plane scheduled to fly the cancelled flight, actually flew to Barcelona just after 11:30 pm on July 14, 2022. The applicants argue that WestJet likely sent the plane there empty to ensure its departing flights in Barcelona would be on time, as legislation governing compensation for delayed flights out of Europe is stricter than Canadian protections. So, the applicants say WestJet made a commercial decision to cancel their flight, which they say was within WestJet's control.
19. I find the applicants' submissions on this point are purely speculative. The applicants did not provide any evidence to support their submission that WestJet told them the tail number of the plane scheduled to fly the cancelled flight. Even if it did, I find WestJet likely provided the incorrect tail number. I say this because the applicants provided a printout from a website called "flightradar24", which purports to show all flights for the plane with the alleged tail number for the cancelled flight at the relevant time. While the website shows the plane departed Toronto for Barcelona at 11:34 pm on July 14, 2022, it says that flight had been scheduled to leave at 10:25 pm. It also shows the same plane was again scheduled to fly from Toronto to Barcelona 4 days later at 10:25 pm, with the same flight number. In other words, I find the applicants' own evidence suggests that the plane was likely scheduled in advance to fly to Barcelona on July 14, 2022, as part of its regular route. Therefore, I do not accept the applicants' submission that WestJet cancelled their flight to London so that it could use that plane to fly to Barcelona instead.
20. WestJet's website bulletin posted an update on July 14, 2022 at 1:41 EST, saying that while check-in and gate services had been restored about 2 hours earlier, more than 100 flights had already been delayed and 3 flights had been cancelled due to the network outage. The applicants point out that WestJet also posted an update at

9:00 EST, saying that all systems had been restored, which was before the cancelled flight was scheduled to depart. However, it was well after the applicants' flight had already been cancelled, and so I find it does not establish that the IT issues were unrelated to the flight cancellation.

21. WestJet did not explain why some flights were merely delayed while others, such as the applicants' flight to London, had to be cancelled. However, I find that multiple WestJet flights scheduled earlier in the day were likely significantly delayed by the network outage. I also generally accept that such flight delays earlier in the day can lead to later flights being cancelled. I note that APPR section 10(2) says that a delay or cancellation directly attributable to an earlier delay or cancellation that is due to situations outside the carrier's control, is considered to also be due to situations outside that carrier's control if the carrier took all reasonable measures to mitigate the impact of the earlier flight delay or cancellation. I find that section applies here.
22. Overall, I am satisfied that the primary reason WestJet cancelled the applicants' flight to London was the significant service interruptions it experienced from the damaged fibre optic cables. In coming to that conclusion, I place considerable weight on WestJet's operations control centre report for July 14, 2022, which stated the severed fibre optic cable brought operations "to a standstill" until connectivity resumed, which resulted in "significant delays and cancellations". The report set out a summary of 15 flights that had to be cancelled that day due to those IT issues, including the applicants' flight to London.
23. Given that I have found the damaged fibre optic cables caused the applicants' flight to be cancelled, and the cables undisputedly did not belong to WestJet, I find the reason for the flight cancellation was outside of WestJet's control.
24. There is no general compensation available to passengers under the APPR when a flight is cancelled for reasons outside the carrier's control. Section 19 of the APPR says a carrier must only provide compensation if the reason for the cancellation was within its control. So, I dismiss the applicants' claim for \$1,000 each in compensation under the APPR for their cancelled flight to London.

25. Under APPR section 18(1), if a flight cancelled for reasons outside the carrier's control, the carrier must provide the passenger with a confirmed reservation for the next available flight that is operated by the original carrier, or a carrier with which the original carrier has a commercial agreement. The new flight must be on any reasonable air route from the airport at which the passenger is located to the destination indicated on the passenger's original ticket and depart within 48 hours of the departure time indicated on that ticket.
26. WestJet says it complied with APPR section 18(1) when it re-booked the applicants on the connecting flight out of Halifax, departing at 10:00 am on July 16, 2022. I agree. The APPR does not require WestJet to book passengers on an earlier flight with a different carrier. They only require WestJet to book its own next available flight, so long as it departs within 48 hours of the original flight. WestJet says it booked the applicants on the next flight with available seats, and the applicants provided no evidence to the contrary. So, I find that WestJet complied with APPR section 18(1).
27. I agree with WestJet that the APPR does not entitle passengers to refuse a reservation that otherwise complies with APPR section 18, in favour of their own preferred alternative arrangements and recover reimbursement. Therefore, I dismiss the applicants' claim for reimbursement of the alternate airfare they purchased.
28. I note that the applicants also argue that WestJet failed to comply with APPR section 13, which requires an airline to provide certain information to passengers, including the reason for the delay or cancellation. However, the applicants did not request any compensation directly related to this alleged breach. Further, the CRT has previously held that a carrier's obligation to provide information to its passengers under the APPR is enforced by the CTA and does not fall within the CRT's jurisdiction: *McNabb v. Air Canada*, 2021 BCCRT 100. While not binding on me, I agree with the reasoning in *McNabb*. For these reasons, I decline to make any findings about whether WestJet breached APPR section 13.
29. As noted, the applicants also claim \$750 for time spent on "completing multiple claims to WestJet" about this matter. I find this is likely a claim for TT's time, as the evidence

suggests TT made inquiries with WestJet on the applicants' behalf and represented them in this CRT dispute. I find the applicants do not have standing (the legal right) to bring a claim for TT's time spent. The applicants also provided no evidence about the amount of time spent or the value of that time.

30. Further, to the extent that the applicants claim for any time spent on bringing this CRT dispute, I find that time spent on litigation is not generally recoverable as damages, though it may be recoverable as "costs" in a legal proceeding (see *Rossmore Enterprises Ltd. v. Ingram*, 2013 BCSC 894 at paragraph 48). While the CRT does not award costs, time spent may be considered a dispute-related expense. CRT rule 9.5(5) says that compensation for "time spent" is only awarded in extraordinary circumstances. I find this flight cancellation compensation dispute did not raise any novel issues, and no extraordinary circumstances exist. In any event, as the applicants were not successful on the main issues in this dispute, I find they are not entitled to reimbursement of dispute-related expenses. For all these reasons, I find the applicants are not entitled to the claimed compensation for time spent.
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. As noted, the applicants were unsuccessful, and so I dismiss their claim for CRT fees and dispute-related expenses. While WestJet was the successful party, it did not pay any fees or claim dispute-related expenses.

## **ORDER**

32. I dismiss the applicants' claims, and this dispute.

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Kristin Gardner, Tribunal Member