



# Civil Resolution Tribunal

Date Issued: December 19, 2023

File: SC-2022-008466

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Juniper v. Air Canada*, 2023 BCCRT 1115

B E T W E E N :

SCOTT HEATH JUNIPER

**APPLICANT**

A N D :

AIR CANADA

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. Scott Heath Juniper bought an international air travel ticket from Air Canada. Air Canada cancelled Mr. Juniper's flight the same day he was supposed to fly and rebooked him on a flight one day later. Mr. Juniper claims \$1,000 as compensation for the flight delay, \$260 for ground transportation, and \$94.85 for meals. In total, he claims \$1,354.85. Mr. Juniper represents himself.

2. Air Canada says the cancellation was due to weather conditions outside its control. It says under the *Air Passenger Protection Regulations* (APPR), it only had to provide alternative travel arrangements and not compensation. Air Canada says I should dismiss Mr. Juniper's claim. In-house lawyer Marlene Seita Lucas represents Air Canada.

## **JURISDICTION AND PROCEDURE**

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has authority 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.
4. 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.
5. 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**

6. The issue in this dispute is whether Mr. Juniper's flight delay was beyond Air Canada's control, and if not, what compensation is Mr. Juniper entitled to?

## EVIDENCE AND ANALYSIS

7. As the applicant in this civil proceeding, Mr. Juniper must prove his claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
8. On April 30, 2022, Mr. Juniper purchased an airline ticket with Air Canada for travel on June 3, 2022, from Kelowna to Amsterdam with 2 stops. On May 28, 2022, Air Canada advised Mr. Juniper that his itinerary had changed. The revised itinerary meant Mr. Juniper left later, arrived earlier, and had only 1 stop.
9. I pause to note that Mr. Juniper argues that if Air Canada had not changed his original itinerary, he would not have experienced any delays on his travel date. I disagree. The evidence shows that a partner airline changed a connecting flight, so the original itinerary was no longer possible. In any event, I find the May 28, 2022 change was not the reason for the delay.
10. On June 3, Air Canada advised Mr. Juniper that his flight leaving Kelowna that day was delayed. Eventually, Air Canada cancelled the flight. According to a generic Air Canada email sent at 1:01 pm that day, flight AC1910 from Kelowna to Toronto was cancelled due to bad weather at an unspecified location. Mr. Juniper says the only affordable option Air Canada offered was a flight leaving the next morning, June 4. Air Canada rebooked him on that flight, but later cancelled it. Air Canada then booked Mr. Juniper on a later June 4 itinerary. He eventually arrived in Amsterdam on June 5, 2022, at 7:35 pm, around 33 hours after the originally scheduled arrival.
11. Mr. Juniper relies on APPR section 19(1)(a)(iii), which generally says that a large carrier like Air Canada must provide \$1,000 compensation if a passenger's arrival at the destination indicated on the original ticket is delayed by 9 hours or more for reasons within the airline's control. There is no dispute that Mr. Juniper experienced a delay greater than 9 hours. The parties disagree about whether the delay was for reasons within Air Canada's control.

12. Air Canada relies on APPR section 10. In broad terms, that section says when there is a delay or cancellation due to situations outside the carrier's control, it must only provide travellers with alternate travel arrangements or a refund, not compensation. It says situations outside the carrier's control include unsafe weather conditions. It also says that a delay or cancellation is considered outside the airline's control if it is directly attributable to an earlier delay or cancellation that was outside the carrier's control. This is known as the knock-on effect. However, the carrier must take all reasonable measures to mitigate the impact of the earlier flight delay or cancellation.
13. Air Canada says the following. Flight AC1910 on June 3 from Kelowna to Toronto was scheduled to be operated on the same aircraft as flight AC1911, which was scheduled to arrive in Kelowna from Toronto at 10:16 am on June 3. The weather conditions that morning prevented flight AC1911's safe approach in Kelowna. Visibility was below regulated limits and there was a strong tailwind. Flight AC1911 was diverted to Calgary, resulting in flight AC1910's cancellation. On June 4, flight AC1911 from Toronto to Kelowna was diverted to Vancouver for similar reasons, which led to flight June 4's flight AC1910 also being cancelled.
14. Air Canada's submissions are supported by Systems Operation Control reports, Meteorological Aerodrome Reports, and a transcript of communications from the crew operating flight AC1911. Based on this evidence, I find that flights AC1910 on June 3 and June 4 were both cancelled because the corresponding flights AC1911 could not and did not land in Kelowna due to weather. I find the weather and resulting flight AC1911 diversions were circumstances outside Air Canada's control.
15. Mr. Juniper says other flights arrived at the Kelowna airport around the same time. However, he provided only a screen capture from the Kelowna airport website showing 5 flights that arrived and 1 that was cancelled. There is no date indicated for the flights, and no information about the airplanes' size or approach requirements. I place more weight Air Canada's more detailed evidence.
16. Air Canada says there were no other aircraft available to operate flight AC1910 on June 3 or June 4. It says the weather impacted a number of flights and Kelowna is a

smaller hub with limited aircraft available. Although it would have been preferable for Air Canada to provide documentary evidence of the number of aircraft available in Kelowna, I accept its submission because Kelowna is not a large city and Mr. Juniper did not dispute Air Canada's submissions about the Kelowna airport's size. The expectation of having additional aircraft and crews on standby for unforeseen circumstances is lesser in smaller airports compared to larger hubs. In the circumstances, I am satisfied that there were no reasonable measures for Air Canada to take to mitigate the impact of flight AC1911s' diversions. I therefore find Mr. Juniper's delay was due to a situation outside Air Canada's control, namely the knock-on effect of the weather and flight AC1911's weather-related diversions.

17. With that, I find Air Canada was not required to pay Mr. Juniper any compensation under the APPR, including for meals and transportation to and from the airport. Mr. Juniper does not provide any other legal basis for his claim, so I dismiss it.
18. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Air Canada was successful but did not pay CRT fees. I dismiss Mr. Juniper's claim for CRT fees. Neither party claims dispute-related expenses.

## **ORDER**

19. I dismiss Mr. Juniper's claims and this dispute.

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Micah Carmody, Tribunal Member