



Civil Resolution Tribunal

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File: SC-2022-008605

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cowden v. Air Canada*, 2024 BCCRT 34

B E T W E E N :

KURT COWDEN and CAMILA CASTELLANOS PACHECO

APPLICANT

A N D :

AIR CANADA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about compensation for an international flight delay. The applicants, Kurt Cowden and Camila Castellanos Pacheco, bought international flights from the respondent, Air Canada. The first leg of their return flight was delayed, so they missed their connecting flight. Air Canada rebooked them on a flight the next day, and they

arrived at their final destination more than 14 hours later than originally scheduled. The applicants claim \$2,000 as compensation for the delay.

2. Air Canada says the primary cause of the delay was outside its control. It says that under the *Air Passenger Protection Regulations* (APPR), it only had to provide alternative travel arrangements for the applicants and not compensation. Air Canada says I should dismiss the applicants' claims.
3. Mr. Cowden represents both applicants, and Air Canada is represented by a paralegal.

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. In resolving disputes, the CRT must apply principles of law and fairness.
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.
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 the applicants' flight delay was within Air Canada's control, and if so, whether the applicants are entitled to \$2,000 as compensation for the delay.

EVIDENCE AND ANALYSIS

9. The applicants in this civil proceeding must prove their claims on a balance of probabilities, which means more likely than not. The applicants were given the opportunity to provide reply submissions but chose not to do so. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision. For the following reasons, I dismiss the applicants' claims.
10. In May 2022, the applicants purchased round trip flights to Europe with Air Canada. For their return flights, they were scheduled to depart Milan on September 5, 2022 on flight AC895 at 1:15 p.m., arriving in Montreal for a layover at 3:45 p.m. the same day. Their connecting flight AC307 was scheduled to depart Montreal at 5:00 p.m. on September 5, 2022, arriving in Vancouver at 7:34 p.m. the same day.
11. The applicants' flight AC895 from Milan to Montreal was delayed by more than 2 hours, so they missed their connection in Montreal. Air Canada rebooked them on flight AC301 departing Montreal the following day, September 6, 2022, at 7:25 a.m., arriving in Vancouver at 10:01 a.m. that day. The applicants undisputedly arrived in Vancouver more than 14 hours later than originally scheduled.
12. The APPR applies to flights to, from, and within Canada, including connecting flights. So, I find the APPR applies to the flights at issue in this dispute. I also accept Air Canada's evidence that it is bound by its International Tariff, filed with the Canadian Transportation Agency, an excerpt of which is in evidence. I find that the tariff essentially mirrors the obligations in the APPR related to flight delays and cancellations.

13. APPR section 19(1)(a)(iii) says that a large carrier like Air Canada must provide \$1,000 compensation to a passenger if that 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 the applicants experienced a delay greater than 9 hours. The parties disagree about whether the delay was for reasons within Air Canada's control.
14. The applicants say their flight AC895 was delayed because of an aircraft technical issue, which was within Air Canada's control. They submitted undated text messages they received from Air Canada that appear to be live updates sent to passengers. Each of these text messages says the delay was due to an "aircraft technical issue". The applicants also submitted an October 6, 2022 email they received from Air Canada stating that the delay was due to a baggage system failure at the Montreal airport. The applicants maintain that the delay was within Air Canada's control.
15. Air Canada says the primary reason for the delay was the delay of an earlier flight which was outside its control. APPR section 10(2) says that a delay 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.
16. Air Canada says flight AC895 used the aircraft that previously operated as flight AC894 from Montreal to Milan. Air Canada acknowledges that flight AC894 was delayed partially because of maintenance requirements, but says this delay caused only 30 minutes of the 254 total minutes of the flight's delay. It says the primary reason for flight AC894's delay, which took 224 minutes, was a failure of the Montreal airport's baggage system.
17. Air Canada submitted a flight report for flight AC894, and 2 reports from the Montreal airport indicating a baggage system outage on September 4, 2022, all of which I find support its position. Since the applicants did not make reply submissions, they did not specifically dispute the lengths and causes of flight AC894's delay.

18. The APPR's parent legislation, the *Canada Transportation Act*, establishes the CTA. The CTA has, for any matter within its jurisdiction, all the powers, rights and privileges of a superior court. In decision 122-C-A-2021, the CTA determined that when multiple disruptions affect a traveler's itinerary, the primary reason for the delay is the most significant contributing factor to the overall delay. On the evidence before me, I am satisfied that the primary reason for flight AC894's delay was a baggage system failure at the Montreal airport. APPR section 10(1) says situations outside the carrier's control include airport operation issues, and I find an airport's baggage system is part of its operation. So, I find the primary reason for flight AC894's delay was outside of Air Canada's control.
19. Air Canada says flight AC895 was delayed for a total of 205 minutes. It says the primary reason for this delay, which constituted 144 minutes of the total delay, was the late arrival of flight AC894 in Milan. Air Canada submitted a flight report for flight AC895, which I find support its position. Again, since the applicants did not make reply submissions, they did not directly dispute this detailed evidence. I also find the text message and email the applicants submitted are not inconsistent with Air Canada's evidence. Since flight AC894 was delayed for a total of 254 minutes, and AC895 was delayed for only 205 minutes, I find there is no evidence that Air Canada failed to reasonably mitigate the impact of flight AC894's delay. I am satisfied that the primary reason for flight AC895's delay was the delay of flight AC894, which was outside of Air Canada's' control.
20. Under APPR section 10(3), when there is a delay or cancellation due to situations outside the carrier's control, it is only required to provide travellers with alternate travel arrangements or a refund, not compensation. Air Canada undisputedly provided the applicants with alternate travel arrangements, which I find met the requirements for such arrangements under section 18 of the APPR. On the evidence before me, I am satisfied that Air Canada met its obligations to the applicants under the APPR, so the applicants are not entitled to compensation.

21. 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. I see no reason in this case not to follow that general rule. Since the applicants were unsuccessful, I find they are not entitled to reimbursement of their CRT fees. Air Canada did not pay any CRT fees, and neither party claims any dispute-related expenses.

ORDER

22. I dismiss the applicants' claims and this dispute.

Sarah Orr, Tribunal Member