



Civil Resolution Tribunal

Date Issued: January 22, 2024

File: SC-2023-003211

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stark v. WestJet Airlines Ltd.*, 2024 BCCRT 64

BETWEEN:

MARY STARK

APPLICANT

AND:

WESTJET AIRLINES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about compensation for a cancelled flight. Mary Stark purchased a return ticket from Vancouver to Costa Rica with WestJet Airlines Ltd. (WestJet).

WestJet cancelled the itinerary's last flight, which was to take Ms. Stark from Toronto to Vancouver on December 21, 2022.

2. Ms. Stark says WestJet failed to provide alternative travel arrangements. She says as a result she incurred expenses of \$245.62 for a December 22 hotel stay and \$1,552.76 for a December 23 Toronto-to-Vancouver flight she booked herself. She also claims \$1,000 in compensation under the *Air Passenger Protection Regulations* (APPR). In total, she claims \$2,798.38.
3. WestJet undisputedly gave Ms. Stark meal vouchers and a hotel voucher for December 21, 2022. WestJet says it was in the process of arranging alternative travel for Ms. Stark when she asked for a fare refund. Therefore, WestJet says Ms. Stark is not entitled to hotel or flight reimbursement. WestJet concedes Ms. Stark may be entitled to \$400 under the APPR and \$229.90 as a refund for the cancelled flight, but says she is not entitled to anything else.
4. Ms. Stark represents herself. WestJet is represented by Sean Hedley, in-house legal counsel.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.

7. 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 court.
8. WestJet says Ms. Stark submitted emails containing settlement discussions in contravention of CRT rules. I agree with Ms. Stark that the emails disclosed, which were between the parties and the CRT, did not include settlement offers or substantive discussions. In any event, the emails are irrelevant and do not affect the outcome of this dispute.

ISSUES

9. The issues in this dispute are:
 - a. Must WestJet reimburse Ms. Stark for her hotel stay and alternative flight?
 - b. Must WestJet pay Ms. Stark compensation under the APPR for the flight cancellation, and if so, what amount?
 - c. What, if anything, must WestJet refund Ms. Stark for the cancelled flight?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Ms. Stark must prove her 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.
11. The background facts are undisputed. As noted, Ms. Stark purchased a return ticket from Vancouver to Costa Rica with WestJet. She completed the December 1, 2022, outbound trip without incident. The December 21 return trip involved a connection in Toronto. WestJet cancelled Ms. Stark's scheduled 10:25 pm Toronto-to-Vancouver flight. WestJet did not immediately rebook Ms. Stark on another flight. By email, WestJet provided Ms. Stark with a December 21 hotel check-in code and meal vouchers. In a separate email at 11:44 pm, WestJet told Ms. Stark that it had

cancelled the flight and could not offer an alternative flight at that time, but was attempting to find one. There was a “contact us” link at the bottom of the email.

12. Ms. Stark says the link to contact WestJet took her to a webpage with WestJet’s phone number. She undisputedly called WestJet and waited on hold for 4 hours before giving up. Ms. Stark then booked herself on a December 23 Air Canada flight to Vancouver in premium economy class for \$1,552.76.
13. Ms. Stark does not say when she asked WestJet for a refund. WestJet says she asked on December 22. The timing of the refund request is important because WestJet argues the refund request meant it no longer had to provide alternate travel arrangements. Ms. Stark points to a passenger reservation record that appears to indicate WestJet received her online refund request form on December 24, 2022. I find this record is inconclusive. The more reliable record, in my view, is the form submission email, which is dated December 22. I find this is when Ms. Stark requested her refund, and when WestJet received the refund request.
14. On January 5, 2023, Ms. Stark called WestJet to advise that she no longer wanted to proceed with the refund request. WestJet put the refund request on hold. To date, WestJet has not refunded any money.
15. On February 15, 2023, WestJet rejected Ms. Stark’s claim for compensation under the APPR, taking the position that the most significant reason for the flight disruption was “crew availability and was required for safety purposes”. On February 20, 2023, WestJet rejected Ms. Stark’s claim for out-of-pocket expenses (I infer, her December 22 hotel and meal costs) on the basis that she declined WestJet’s re-accommodation option and made her own travel arrangements.

The applicable law

16. It is undisputed that the APPR applies to the cancelled flight at issue in this dispute. I also accept WestJet’s evidence that Ms. Stark is bound by WestJet’s International 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. The tariff also incorporates liability rules set out in *Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention)*.

17. The APPR and the tariff set out WestJet's obligations and the available compensation for delayed and cancelled flights. 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 remedies also depend on whether the delay or cancellation was within or outside WestJet's control.
18. In the Dispute Response WestJet filed at the outset of this dispute, it generally denied all claims and said any loss was caused by situations outside of WestJet's control or required for safety purposes. In submissions, WestJet says the flight was cancelled due to pilot availability issues caused by earlier delays, many of which related to weather. However, WestJet does not specifically argue that the pilot shortage was outside its control, and its submissions about the APPR focus on the provisions applicable when the cancellation was for reasons within the airline's control. This is consistent with CTA decisions confirming that unless an airline can prove extenuating circumstances, crew shortages are within its control (see, for example, CTA Decision No. 89-C-A-2002). Given the above, I find December 21 flight cancellation was within WestJet's control.
19. APPR section 12(3) addresses an airline's obligations when the delay or cancellation is within the airline's control. Applied here, WestJet was required to provide reasonable food and drink, alternate travel arrangements or a refund as set out in section 17, and compensation for inconvenience as set out in section 19.

Alternate travel arrangements or a refund

20. APPR section 17(1) says the airline must provide alternate travel arrangements, free of charge. Under that section, WestJet was first required to rebook Ms. Stark on the next available flight to her destination on a reasonable route departing within 9 hours with WestJet or another airline with which WestJet has a commercial agreement. If

WestJet could not do that, which is undisputed here, it had to rebook Ms. Stark within 48 hours on any carrier flying a reasonable route to Ms. Stark's destination. There is a third option, but WestJet does not say it applied here. Instead, WestJet says it was attempting to rebook Ms. Stark on a reasonable flight leaving within 48 hours of her originally-scheduled departure time when she asked for a refund.

21. APPR section 17(2) says if the alternative arrangements do not suit the passenger's travel needs, the carrier will refund the unused portion of the ticket. Tariff rule 100(G)(4) says the same thing. Tariff rule 105(A)(10) says that the passenger's acceptance of a refund releases WestJet from further liability, subject to the APPR and the *Montreal Convention*.
22. Ms. Stark says she was still waiting for an alternative travel arrangement from WestJet when she requested a refund, and her refund request did not remove her from WestJet's list of passengers needing alternative travel arrangements. She says if it did, she would not have received a December 26 call from WestJet about her cancelled flight. She says this was an automated call that told her to press 0 to rebook, but when she did, nobody answered. WestJet does not explain this call, but I find it is not determinative of whether Ms. Stark was entitled to alternative travel arrangements after requesting a refund.
23. WestJet says a passenger cannot receive both an alternate travel arrangement and an airfare refund. I agree. APPR section 17 and the tariff are clear that under normal circumstances, the airline first presents the alternative flight option. The passenger may then accept it or ask for a refund of the ticket's unused portion. The question is what happens if the passenger asks for a refund before the airline offers an alternative flight, as Ms. Stark did here less than 24 hours after her originally-scheduled departure time.
24. WestJet's December 21 email said WestJet would attempt to find Ms. Stark a flight departing within 48 hours of her original departure time. The email then asked Ms. Stark to select from 2 options: complete an online form to request a refund, or contact WestJet if she would like WestJet to seek alternative travel arrangements on her

behalf or if she had a WestJet Vacations booking. The email was somewhat confusing in its presentation of options. However, I find the email was sufficiently clear that WestJet was already attempting to provide alternative travel arrangements within 48 hours. There was no indication that WestJet could not do that. I find that Ms. Stark's being on hold for 4 hours did not mean WestJet would be unable to provide alternative travel arrangements.

25. I find that by submitting her December 22 refund request, Ms. Stark confirmed that she did not want WestJet to provide alternate travel arrangements. I agree with WestJet that the APPR and the tariff do not provide for compensation for accommodation or self-booked flights after the passenger requests a refund.
26. Ms. Stark argues that the APPR does not mention a "refund request" and only refers to refunds, which she says means processed refunds. She says that for WestJet to issue the refund, both parties had to agree on the refund amount. She also says her refund request was for the full price of the roundtrip ticket, and she would have declined a refund of only the ticket's unused portion.
27. I disagree with Ms. Stark's interpretation of the APPR. The APPR and tariff do not treat refunds as negotiations. Tariff Rule 105(B)(4)(c) says if a portion of the ticket has been used, the amount refunded will be the difference between the fare paid and the fare for the transportation actually used. Rule 10 also explains how mileage is used to compute rates and charges under the tariff. Ms. Stark does not explain how she reasonably expected a full refund given she flew the outbound trip and 1 of 2 inbound flights.
28. APPR section 18.2(2) and tariff rule 105(B)(4)(d) say that WestJet will provide any refund owed under the APPR within 30 days after the refund request. On the evidence, I am satisfied that WestJet would have provided the refund within 30 days if Ms. Stark had not cancelled her refund request on January 5, 2023. Accepting Ms. Stark's interpretation would mean any passenger on a cancelled flight could immediately request a refund and then rebook their own flight before the airline processed the refund, and seek alternate flight compensation from the original airline.

29. Ms. Stark also argues that she is entitled to damages under the *Montreal Convention*. Specifically, she claims reimbursement for her hotel stay under article 19, which says airlines are generally liable for damage caused by delay of passengers, baggage and cargo. I find WestJet's liability for damages for Ms. Stark's delay stopped when Ms. Stark asked for a refund, indicating she would make her own travel arrangements. WestJet paid for her meals and her December 21 hotel stay, so Ms. Stark was not entitled to further compensation under the *Montreal Convention*.
30. With that, I dismiss Ms. Stark's claim for compensation for her December 22, 2022 hotel and her alternative flight.

Compensation for delay under APPR section 19

31. Ms. Stark claims \$1,000 under APPR section 19(1)(1)(iii). That section applies when the passenger accepts an alternate travel arrangement and their arrival is delayed. APPR section 19(2) says if the passenger's ticket is refunded under section 17(2), the carrier must only provide \$400. I find that WestJet refunded Ms. Stark's ticket under APPR section 17(2), so Ms. Stark is entitled to \$400.

Refund for cancelled flight

32. As noted, WestJet says Ms. Stark is eligible for a refund but it has not paid the refund because she paused her request. WestJet says it calculates refunds using the itinerary's total price to determine the price per mile and subtracting the unused portion from the total. I find this approach is supported by the tariff. WestJet says the Toronto-Vancouver flight was 26% of the total mileage and amounted to \$229.90. Working backwards from that figure, I find WestJet considered the total price \$884.24, which corresponds to the airfare plus taxes, fees and carrier-imposed charges, but does not include \$61.62 in bag charges and tax. I find the bag fees should be included given that tariff rule 85(C) says bag fees are refundable in the event of an itinerary cancellation. I find the total was \$945.86, so the 26% refund is \$245.92.
33. In total, Ms. Stark is entitled to \$645.92.

34. The *Court Order Interest Act* applies to the CRT. Ms. Stark is entitled to pre-judgment interest on the \$400 APPR compensation from February 15, 2023, when WestJet rejected her request for APPR compensation. Ms. Stark is entitled to pre-judgment interest on the \$245.92 refund from February 20, 2023, when WestJet denied her request for flight compensation. Interest on these amounts to the date of this decision equals \$28.70.
35. 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. Ms. Stark was partially successful, so I find she is entitled to reimbursement of \$62.50 for half her \$125 in paid CRT fees. Neither party claims dispute-related expenses.

ORDERS

36. Within 21 days of the date of this order, I order WestJet to pay Ms. Stark a total of \$737.12, broken down as follows:
- d. \$400.00 in compensation under the APPR,
 - e. \$245.92 as a refund for the cancelled flight,
 - f. \$28.70 in pre-judgment interest under the *Court Order Interest Act*, and
 - g. \$62.50 in CRT fees.
37. Ms. Stark is entitled to post-judgment interest, as applicable.
38. 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.

Micah Carmody, Tribunal Member

