



Civil Resolution Tribunal

Date Issued: January 26, 2024

File: SC-2023-001267

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Printz v. WestJet Airlines Ltd.*, 2024 BCCRT 082

B E T W E E N :

ROBERT PRINTZ and TRACEY HARROP-PRINTZ

APPLICANT

A N D :

WESTJET AIRLINES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. The applicants, Robert Printz and Tracey Harrop-Printz, bought a one-week all-inclusive vacation to Cancun from WestJet Vacations Inc. (WestJet Vacations). WestJet Vacations is not a party to this dispute. The respondent WestJet Airlines Ltd. (WestJet) provided the flights. The applicants say their baggage was delayed arriving in Cancun due to poorly trained staff and inadequate staffing levels, they missed the

shuttle to the resort because they were completing lost baggage paperwork at the airport, and their direct flight was changed to two legs with a connecting flight. They say all of this meant they did not enjoy their vacation. The applicants claim \$2,807.35, including \$2,668.30 for a partial refund of the vacation's price, and \$103 USD (\$139.05 CAD) for out-of-pocket expenses they incurred due to their delayed baggage.

2. WestJet denies the applicants' claims. It says this Civil Resolution Tribunal (CRT) dispute is an abuse of process because the applicants complained to the Canadian Transportation Agency (CTA) about the same issues they raise here, and that complaint was resolved but then reopened. So, WestJet says I should dismiss the dispute on this basis. Alternatively, WestJet says the *Montreal Convention* precludes the applicants from recovering for loss of enjoyment of their vacation. It says I should dismiss the applicants' claim, except for the \$139.50 for out-of-pocket expenses if the applicants prove they were reasonable in light of the baggage delay.
3. Robert Printz represents the applicants. Marion Unrau, legal counsel, represents WestJet.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act (CRTA)*. CRTA section 2 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. CRTA section 39 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 I am properly able to assess and weigh the documentary evidence and submissions before me, and an oral hearing is not necessary.

6. CRTA section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

ISSUES

7. The issues in this dispute are:
 - a. Is this CRT dispute an abuse of process?
 - b. If not, are the applicants entitled to the claimed \$2,807.35 for a partial refund of their vacation and out-of-pocket expenses for baggage delay?

EVIDENCE AND ANALYSIS

8. 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 information I find necessary to explain my decision.

Abuse of process – the respondent's argument

9. WestJet says the applicants complained to the CTA about the same issues they raise here. It says the applicants' complaint was resolved, but the applicants asked the CTA to reopen it as they were not satisfied with the resolution. WestJet says the CTA complaint is currently awaiting adjudication, so this dispute is an abuse of process.
10. The applicants acknowledge they complained to the CTA on May 29, 2022, before submitting their application for dispute resolution to the CRT on February 16, 2023. They say WestJet incorrectly told the CTA their complaint had been resolved, so they asked the CTA to reopen it in April 2023.
11. On review of the parties' submissions and evidence, it was not clear to me whether the CTA complaint raised the same issues as this dispute does, and whether it had

been reopened as requested. Through CRT staff, I asked the applicants for a copy of their CTA complaint, and for confirmation of its status, both of which they provided.

12. The complaint was briefly described as “delayed luggage – refund expenses.” It also said there was “further action pending small claims court”, though there is no evidence the applicants had filed any claims in small claims court or at the CRT at that time. The complaint referred to related documents the applicants also submitted in this dispute. I find those documents show the applicants’ CTA complaint is the same as this dispute, including their request for compensation for loss of enjoyment (partial reimbursement of the vacation’s cost) and reimbursement of out-of-pocket expenses. Further, the applicants confirmed with documentary evidence that their complaint is currently in line for review.
13. The applicants also said that, if necessary, they would withdraw their CTA complaint in favour of their CRT dispute. They requested advice on whether to cancel their complaint.
14. I find this is effectively a request for legal advice about strategy for proceeding to resolve the issues raised. It is not the CRT’s role, nor is it within its mandate, to give such advice. As a neutral decision maker, it would be improper for me to offer the applicants my view on whether to withdraw their CTA complaint. That is a matter for the applicants to determine themselves, or with the help of legal advisors.
15. Given the applicants’ confirmation that their CTA complaint remains open and awaiting review, and the similarities between it and this dispute, I find WestJet’s abuse of process argument is a live issue that I must consider. I turn to it now.

Abuse of process – applicability

16. Abuse of process is a doctrine available to prevent the misuse of a court’s (or tribunal’s) process by litigation for an improper purpose. It is established where allowing the litigation to proceed would violate important principles like economy, consistency, finality, and the integrity of the justice system (see *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63).

17. The courts have said it can be an abuse of process where a plaintiff starts more than one action against a defendant in relation to the same dispute or matter (see *Lacharity v. University of Victoria Students' Society*, 2012 BCSC 1819). In *Ari v. Insurance Corporation of British Columbia*, 2021 BCCA 180, the court confirmed there is no need for an ulterior or improper intent to find an abuse of process. It is enough that there is an intent to maintain multiple actions.
18. Here, I acknowledge the applicants indicated their willingness to withdraw their CTA complaint in favour of their CRT dispute. But, they have not done so. The applicants say the respondent should have raised the abuse of process argument earlier in these proceedings, presumably to allow them more time to respond to it. However, I find the applicants had the opportunity to consider it and to respond in their final reply submissions, or to request additional time to review their options. In these circumstances, I find the applicants intend to continue with both the CTA complaint and the CRT dispute at this time.
19. I turn to the substance of the two proceedings. The CTA complaint and the CRT dispute involve all the same parties. The applicants have raised identical issues and claims based on the same set of facts, for compensation for delayed baggage and a ruined trip. I am unable to conclude there is any substantive difference between the complaint and the dispute.
20. The applicants say it was their understanding that the CTA regulates the airline industry and the CRT resolves disputes. However, they do not explain why that matters here. I find it does not, since the remedy the applicants seek in both proceedings is the same. I note that in addition to being an economic regulator, the CTA is a tribunal that, for any matter within its jurisdiction, has all the powers, rights, and privileges of a superior court (see the federal *Canada Transportation Act*).
21. Based on the above, I find this CRT dispute duplicates the pre-existing CTA complaint, and is an inappropriate use of limited resources. I also find resolving it would not result in finality, since the applicants could continue to pursue their

complaint at the CTA. So, I find the applicants' request for resolution is an abuse of process.

22. CRTA section 11(1)(b) says the CRT may refuse to resolve a claim or a dispute within its jurisdiction if the request for resolution does not disclose a reasonable claim or is an abuse of process. I refuse to resolve this dispute under CRTA section 11(1)(b) for the reasons given above.

23. 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. The applicants were unsuccessful, but the respondent did not pay CRT fees or claim dispute-related expenses. So, I make no order for reimbursement.

ORDER

24. I refuse to resolve this dispute under CRTA section 11(1)(b).

Megan Stewart, Tribunal Member