



# Civil Resolution Tribunal

Date Issued: March 14, 2024

File: SC-2023-000479

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Vu v. Flair Airlines Ltd.*, 2024 BCCRT 264

BETWEEN:

BRIAN VU

**APPLICANT**

AND:

FLAIR AIRLINES LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Peter Mennie

## INTRODUCTION

1. This dispute is about delayed baggage.
2. The applicant, Brian Vu, flew from British Columbia to Ontario with the respondent, Flair Airlines Ltd. (Flair). Mr. Vu says that one of his checked bags was delayed by

five days. He says that perishable items in his bag spoiled during the delay. He claims \$594.45 for his baggage fee and the cost of the spoiled items.

3. Flair says it should not be liable because Mr. Vu was not allowed to pack perishable items in his checked bags.
4. Mr. Vu is self-represented. Flair is represented by an authorized employee.

## **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 says 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 a court of law.
8. Mr. Vu submitted a video as evidence which I was unable to open. Mr. Vu's description says the video is of the spoiled items in his bag. Given that Flair does not dispute that these items spoiled because of the bag's delayed delivery, I find I can issue my decision without seeing this evidence. So, bearing in mind the CRT's mandate that includes proportionality, speed, and efficiency, I have proceeded to issue this decision without viewing this video.

## ISSUE

9. The issue in this dispute is what, if anything, Flair must pay Mr. Vu as compensation for his delayed baggage.

## EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mr. Vu must prove his claims on a balance of probabilities. 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. Mr. Vu travelled on a domestic flight with Flair from British Columbia to Ontario on November 6, 2022. He paid \$72.45 to check each of his bags. One of his two checked bags did not arrive at his final destination. Flair delivered the missing bag to Mr. Vu on November 10, 2022. None of this is disputed.
12. Mr. Vu packed crab meat, fish cakes, sea cucumbers, and dandelion root in his checked bag. He says these items spoiled while the bag was delayed. Mr. Vu estimates that he paid \$250 for the crab meat, \$120 for the fish cakes, \$80 for the sea cucumbers, and \$72 for the dandelion root. Flair does not contest these valuations, so I accept them.
13. Flair provided a copy of its domestic tariff which is its contract with each passenger. It relies on Clause 14(F) of the tariff which says that a passenger cannot pack perishable items in their checked bags and that Flair is not liable for any spoilage of perishable items. Flair says that passengers must declare they are not carrying restricted items during the check-in process. Flair also provided a screenshot of its website which says that perishable items must not be included in checked bags.
14. I turn to the applicable law.
15. Section 23(2) of the *Air Passenger Protection Regulations* (APPR) applies to compensation claims for checked bags lost for less than 21 days. Section 23(2) says

that Flair must provide compensation equal to or greater than the sum of (1) the fees paid to check the bag and (2) what Mr. Vu would be entitled to under the federal *Carriage by Air Act*, Schedule VI, titled Convention for the Unification of Certain Rules for International Carriage by Air, which is commonly referred to as the *Montreal Convention*.

16. I start with Mr. Vu's claim for his \$72.45 baggage fee. As noted above, section 23(2) of the APPR says that if baggage is lost for 21 days or less, then the airline must repay the baggage fees. It is undisputed that Mr. Vu's bag was lost for five days. Flair does not object to refunding Mr. Vu's baggage fee. So, I order Flair to pay \$72.45 to Mr. Vu.
17. I turn to Mr. Vu's spoiled items. Article 17(2) of the *Montreal Convention* says that an airline is liable for damage to checked baggage that occurs on board the aircraft or during any period within which the checked baggage was in the care of the airline. Article 20 of the *Montreal Convention* says that the airline is not liable if the damage is caused by the negligence or wrongful act of the passenger.
18. Flair argues that it is not liable because the APPR and *Montreal Convention* state that damage must be the result of the airline's actions. It says it did not cause any damage to Mr. Vu's bags, rather the items spoiled on their own. I do not accept this argument. Article 17(2) states that an airline is liable if damage occurs during any period where the checked bag was in the airline's care. Flair does not dispute that Mr. Vu's items spoiled while the bag was in its care and because of Flair's delay in delivering the bag to Mr. Vu.
19. Flair argues further that it is not liable under the tariff. Mr. Vu argues that Flair cannot rely on the tariff because it does not meet the standards set out in the APPR. I agree with Mr. Vu. The Canadian Transportation Agency (CTA) has repeatedly held that if an airline accepts checked baggage then the airline assumes liability for the baggage even if the airline has not agreed to transport certain items (see, for example, Decision No. 244-C-A-2014). This is because section 86.11(4) of the *Canada Transportation Act* does not permit an airline to contract out of its liability set out in

the APPR and the *Montreal Convention*. While not binding upon me, I find this analysis persuasive. I find that the APPR and Article 17(2) of the *Montreal Convention* do not permit Flair's tariff to exempt Flair from liability for perishable items.

20. It follows that Flair must pay Mr. Vu compensation equal to the damage to his checked baggage. As noted above, Flair did not contest Mr. Vu's valuation of his spoiled items. So, I order Flair to pay Mr. Vu \$522 as compensation for his spoiled items.

## **INTEREST, FEES, AND EXPENSES**

21. The *Court Order Interest Act* applies to the CRT. Mr. Vu is entitled to pre-judgment interest on the baggage fee and value of the spoiled items, being \$594.45, from November 6, 2022, the date Flair lost his luggage, to the date of this decision. This equals \$35.77.
22. 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. Flair says in its submissions that it agrees to pay Mr. Vu's CRT fees and pay its own CRT fees. So, I order Flair to reimburse Mr. Vu \$150 for his CRT fees. Neither party claimed any dispute-related expenses.

## **ORDERS**

23. Within 30 days of the date of this order, I order Flair to pay Mr. Vu a total of \$780.22, broken down as follows:
- a. \$594.45 for his baggage fees and spoiled items,
  - b. \$35.77 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$150 in CRT fees.
24. Mr. Vu is entitled to post-judgment interest, as applicable.

25. This is a validated decision and order. 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.

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Peter Mennie, Tribunal Member