



# Civil Resolution Tribunal

Date Issued: March 15, 2024

File: SC-2022-008186

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *O'Donoghue v. WestJet Airlines Ltd.*, 2024 BCCRT 266

BETWEEN:

KEAGAN O'DONOGHUE and RORY O'DONOGHUE

**APPLICANTS**

AND:

WESTJET AIRLINES LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. This dispute is about delayed baggage on an international flight. The applicants, Keagan O'Donoghue and Rory O'Donoghue, say they travelled from Vancouver to London, UK with the respondent airline, WestJet Airlines Ltd (WestJet). Their

checked bag never arrived in London. Eventually, WestJet returned it to the applicants' home in Vancouver. The applicants claim \$1,913.33 for clothing and other necessities. Keagan O'Donoghue represents the applicants.

2. WestJet says the applicants' claim is out of time. It says if the claim is not out of time, it should be limited to \$705.17. WestJet is represented by in-house counsel Carina Chen.
3. As I explain below, I dismiss the applicants' claim because it is out of time.

## **JURISDICTION AND PROCEDURE**

4. 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 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
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 court.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money, return personal property, or do things required by an agreement about personal property or services. The order may include any terms or conditions the CRT considers appropriate.

## ISSUES

8. The issues in this dispute are:
  - a. Is the applicants' claim out of time?
  - b. If not, to what extent must WestJet compensate the applicants for delayed baggage?

## EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants must prove their 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.
10. Keagan O'Donoghue's submissions are largely written in the first-person singular (I, me), without reference to Rory O'Donoghue. Similarly, WestJet's submissions refer to Keagan O'Donoghue as a single applicant, despite the Dispute Notice and Dispute Response indicating two applicants. There is no airline ticket or itinerary in evidence to confirm that Rory O'Donoghue had a ticket, or whether he checked a bag. Given this, I find Rory O'Donoghue has not established his standing, or legal interest to bring a claim, and I dismiss his claim. In the rest of this decision, I refer to Keagan O'Donoghue as Mr. O'Donoghue.
11. On July 27, 2022, Mr. O'Donoghue was a passenger on WestJet flights from Vancouver to London, UK, with connections in Kelowna and Calgary. He checked one piece of baggage. That baggage was not delivered to London and instead arrived at Mr. O'Donoghue's home on August 10, 2022. Mr. O'Donoghue returned to Vancouver either August 22, 2022 (according to WestJet) or August 27, 2022 (according to Mr. O'Donoghue). Otherwise, none of this is disputed.
12. I turn to the applicable law. The *Montreal Convention* is an international treaty with the force of law in Canada under the federal *Carriage by Air Act* (see *Thibodeau v. Air Canada*, 2014 SCC 67). It applies to all international air carriage of people,

baggage, and cargo. The *Montreal Convention* limits the scope and type of claims a person can make against a carrier like WestJet.

13. Article 31 of the *Montreal Convention* provides a deadline of 21 days for Mr. O'Donoghue to complain in writing about the baggage delay. WestJet's International Tariff, which I find applied to Mr. O'Donoghue, says the same thing. If the complaint is not made within 21 days, no claim can be made against WestJet except in the case of fraud, which is not alleged here. The time starts when the baggage is returned.
14. WestJet says Mr. O'Donoghue did not make a claim for expenses until October 29, 2022, so he is out of time. Mr. Donoghue says WestJet ignores its own failure to acknowledge his "earlier communications and claims."
15. WestJet does not dispute Mr. O'Donoghue's submission that he submitted a baggage irregularity report at London Heathrow on July 28, 2022. However, I find the baggage irregularity report did not constitute a "complaint" in writing as required by Article 31 (see the non-binding but consistent reasoning in Canadian Transportation Agency Decision No. 8-C-A-2020, at paragraphs 14-15).
16. There is no other evidence that Mr. O'Donoghue contacted WestJet in writing at any time before October 29, 2022. This was well after the 21-day deadline, even accepting Mr. O'Donoghue's evidence that he did not retrieve his bag until August 27, 2022.
17. Mr. O'Donoghue further argues that the *Montreal Convention* and the Tariff should not be used to unjustly preclude his legitimate claim. While I accept that there is merit to his underlying claim, the deadline in Article 31 of the *Montreal Convention* is mandatory. I do not have discretion to overlook or extend it. With that, I dismiss Mr. O'Donoghue's claim.
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. WestJet was successful but did not pay CRT fees. I dismiss Mr. O'Donoghue's claim for CRT fees. None of the parties claimed dispute-related expenses.

## **ORDER**

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

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Micah Carmody, Tribunal Member