



Civil Resolution Tribunal

Date Issued: April 29, 2024

File: SC-2023-000176

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Levinstein v. Flair Airlines Ltd.*, 2024 BCCRT 404

BETWEEN:

RAFAEL LEVINSTEIN

APPLICANT

AND:

FLAIR AIRLINES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about compensation for a cancelled flight.
2. The applicant, Rafael Levinstein, booked a flight with the respondent airline, Flair Airlines Ltd. (Flair). Mr. Levinstein says Flair cancelled the flight due to a lack of crew members. He says Flair then booked him on another flight 5 days later, which was

after his scheduled return flight. Mr. Levinstein requests \$1,000 in compensation for the cancelled flight.

3. Flair admits the booked flight was cancelled, but says it followed the applicable legislation. Flair says it offered Mr. Levinstein a rebooked flight, but he declined it, so he is only entitled to \$125 in compensation.
4. Mr. Levinstein is self-represented in this dispute. Flair is represented by an employee.

JURISDICTION AND PROCEDURE

5. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required even where credibility is at issue. As the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.
7. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.

ISSUE

8. Is Mr. Levinstein entitled to \$1,000 in compensation for the cancelled flight?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Mr. Levinstein, as the applicant, must prove his claims on a balance of probabilities. I have read the parties' submitted evidence and arguments, but refer only to what I find relevant to provide context for my decision.

10. The evidence shows that on November 18, 2022, Mr. Levinstein bought a return ticket from Vancouver to San Francisco with Flair, leaving on at 7:30 am on December 1, 2022 and returning on December 3, 2022.
11. Mr. Levinstein says the outbound flight from Vancouver to San Francisco was delayed several times, then cancelled. Flair admits this.
12. Flair says it followed the *Air Passenger Protection Regulations* (APPR). These regulations, enacted under the *Canada Transportation Act*, govern consumer remedies for flight cancellations in Canada. I agree that the APPR applies to this dispute.
13. The APPR obligations and remedies are different for “small carrier” and “large carrier” airlines. A small carrier is defined in the APPR as a carrier that transported less than 2 million passengers worldwide in each of the 2 preceding calendar years.
14. Flair says it is a small carrier. Mr. Levinstein did not dispute this, and given the absence of contrary evidence, I accept that Flair is a small carrier. While prior CRT decisions are not binding on me, I note that the CRT also found that Flair is a small carrier for the purposes of the APPR in *Welsh v. Flair Airlines Ltd.*, 2023 BCCRT 107.
15. Under the APPR, a carrier also has different obligations depending on whether the reason for the cancellation is within or outside of its control. Flair’s December 1, 2022 email to Mr. Levinstein says the flight was cancelled due to “controllable late arrival of crew.” Based on this, I find Flair cancelled the flight for a reason within its control.
16. APPR section 17(1) says that when a small carrier cancels a flight for a reason within its control, it must provide alternate travel arrangements. Section 17(1)(b) says that for a small carrier, the alternate travel arrangement must be a confirmed reservation for the next available flight to the same destination operated by the original carrier, or a carrier with which the original carrier has a commercial agreement: section 17(1)(b).

17. APPR section 17(2) says that if the offered alternate travel arrangements do not accommodate the passenger's travel needs, and the passenger is still at the point of origin of their original ticket, the carrier must refund the unused portion of the ticket.
18. The evidence shows that Flair offered to rebook Mr. Levinstein on an outbound flight to San Francisco on December 6, which was 3 days after he was scheduled to return to Vancouver. So, I accept the offered flight did not meet Mr. Levinstein's travel needs. The evidence shows that Flair refunded the unused portion of Mr. Levinstein's ticket.
19. APPR section 19(2)(b) says that if a small carrier provides a refund under APPR section 17(2) (as in this case), the passenger is entitled to \$125 in compensation. Flair admits Mr. Levinstein is entitled to \$125, although it appears Flair has not paid him yet.
20. Mr. Levinstein says that offering him an outbound flight 3 days after his return flight was unreasonable and not feasible, since he had to be in San Francisco on December 2. He says he is entitled to damages for lost time, plus compensation for a new ticket with a different airline and a non-refundable payment for a rental car he arrived too late to pick up.
21. I agree with Mr. Levinstein that the replacement flight Flair offered him was untenable. However, under APPR section 17(1)(b), to be entitled to more than a ticket refund and \$125, Mr. Levinstein must show that Flair or another airline with which Flair had a "commercial agreement" had an available flight to San Francisco "on any reasonable air route."
22. In a January 6, 2022 email to Mr. Levinstein, Flair said the December 6 flight was the next available flight after December 1. Flair also says it has no commercial agreements with other airlines. Mr. Levinstein has not provided contrary evidence. In particular, he did not say or provide proof that Flair had earlier flights to San Francisco that it could have booked him on but did not.

23. I note that under the APPR, large carriers have broader obligations to book passengers on another airline following a cancelled flight. However, these do not apply to Flair, since it is a small carrier.
24. As noted in its January 6, 2022 email, Flair owes Mr. Levinstein \$125 under the APPR. Flair did not provide evidence that it has paid this amount. So, I order Flair to pay Mr. Levinstein \$125.
25. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Levinstein is entitled to pre-judgment interest from December 1, 2022 (the date of the cancelled flight). This equals \$8.20.
26. I find Mr. Levinstein was largely unsuccessful in this dispute. So, I find that under CRTA section 49 and the CRT's rules, he is not entitled to reimbursement CRT fees. Neither party claimed dispute-related expenses, so I order none.

ORDERS

27. I order that within 30 days of this decision, Flair must pay Mr. Levinstein a total of \$133.20, broken down as follows:
 - a. \$125 in compensation, and
 - b. \$8.20 in pre-judgment interest under the COIA.
28. Mr. Levinstein is entitled to post-judgment interest under the COIA, as applicable.

29. This is a validated decision and order. Under CRTA section 58.1, a validated copy of the CRT's order can be enforced through the BC Provincial Court. Once filed, a CRT order has the same force and effect as an order of the BC Provincial Court.

Kate Campbell, Tribunal Member