



Civil Resolution Tribunal

Date Issued: May 3, 2024

File: SC-2023-005145

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gillies v. WestJet Airlines Ltd.*, 2024 BCCRT 426

BETWEEN:

RONALD GILLIES

APPLICANT

AND:

WESTJET AIRLINES LTD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about compensation for a cancelled flight. Ronald Gillies says he purchased 5 round-trip tickets for himself and his family for a flight operated by WestJet Airlines Ltd. (WestJet). WestJet delayed and eventually cancelled the flight from Vancouver to Los Angeles on December 19, 2022.

2. Mr. Gillies acknowledges the flight was ultimately cancelled due to adverse weather, but says the initial delay was due to a crew shortage. Mr. Gillies says had the flight left on time, weather would not have been an issue. Mr. Gillies claims \$5,000 in compensation under the *Air Passenger Protection Regulations* (APPR) for the cancelled flight.
3. WestJet says the flight delays and cancellation were outside its control, and Mr. Gillies is not entitled to any compensation under the APPR. WestJet says Mr. Gillies rebooked with another airline and has already received a refund for the cancelled flight.
4. Mr. Gillies is self-represented. WestJet 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 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. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

Late evidence

9. In his reply submissions, Mr. Gillies says he attempted to include evidence of his bank statement to show he paid for all 5 tickets, and screenshots of other flights departing while his flight sat on the runway. He says the “text box” would not allow him to paste it, and the CRT platform would not allow him to include this evidence. Given these submissions, I was concerned that Mr. Gillies had been unable to provide evidence due to a CRT technical issue. Therefore, I asked CRT staff to provide Mr. Gillies with an opportunity to submit this evidence, and WestJet with an opportunity to review and provide submissions on it.
10. WestJet objected to the late evidence, and argued that Mr. Gillies was impermissibly splitting his case. WestJet says Mr. Gillies should have provided the late evidence when he originally submitted his evidence in this dispute. WestJet says it is prejudiced by this late evidence because Mr. Gillies has had the opportunity to learn WestJet’s entire litigation strategy and craft additional evidence to address those arguments. Mr. Gillies provided his bank statement in reply to WestJet’s response argument that Mr. Gillies does not have standing over certain aspects of his claim, which I address further below. WestJet did not raise the standing issue in its Dispute Response, so I find the bank statement is proper reply evidence. The other late evidence is screenshots of other flights’ statuses, that Mr. Gillies says were departing while his flight sat on the runway. Mr. Gillies explicitly made this argument in his initial submissions and this late evidence does not raise any new issues. I find there is nothing to suggest that Mr. Gillies was attempting to “split his case” or “craft evidence” in response to WestJet’s response submissions.
11. WestJet says allowing the late evidence will deprive WestJet of its equal opportunity to be heard, and is procedurally unfair. As noted above, WestJet was provided with the opportunity to review and provide submissions on the late evidence, and WestJet

has done so. Consistent with the CRT's mandate that includes flexibility, I find there is no procedural unfairness in admitting the late evidence. Where relevant I have considered it below.

Standing

12. Mr. Gillies claims a total of \$5,000 in APPR compensation for not just himself, but also 4 other passengers who I infer were family members travelling with him. Mr. Gillies says his daughter initially booked the flights and he reimbursed her for the cost, so he paid for the tickets. WestJet says even if Mr. Gillies purchased the tickets, he does not have standing to bring claims for the 4 other passengers. For the following reasons, I agree.
13. APPR section 2(1) says that air carriers are liable to **passengers** for the carrier's obligations set out in sections 7 to 22 (my bold emphasis added). In *Mohamed v. Air Canada*, 2023 BCCRT 661, a vice-chair found that the APPR's compensation scheme is based on a passenger's entitlement. While not binding on me, I find this analysis persuasive and I adopt it here. I find WestJet's obligation to pay compensation for delay or cancellation under sections 18 or 19 is owed to the inconvenienced passenger, rather than the person who purchased the ticket on the passenger's behalf. I find Mr. Gillies has no standing to claim compensation for the 4 other passengers. So, I do not need to determine whether he purchased the tickets, and nothing turns the bank statement Mr. Gillies provided as late evidence, discussed above.
14. Given the above, I dismiss Mr. Gillies' claims for APPR compensation for the 4 other passengers. Nothing in this decision prevents the 4 other passengers from claiming against WestJet for the cancelled flight, subject to the applicable limitation period. I will proceed to consider Mr. Gillies' own passenger claim for \$1,000 in APPR compensation.

Additional claims

15. In submissions Mr. Gillies made further allegations about baggage and other APPR requirements, including status updates. However, Mr. Gillies only claimed compensation for the cancelled flight in his Dispute Notice, and did not claim any compensation for any missing baggage or any other alleged APPR issues in his Dispute Notice. So, I find those alleged issues are not properly before me and I have not addressed them in this dispute.

ISSUE

16. The issue in this dispute is whether WestJet must pay APPR compensation to Mr. Gillies for the flight delay and cancellation, and if so, what amount?

EVIDENCE AND ANALYSIS

17. As the applicant in this civil proceeding, Mr. Gillies must prove his claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence but refer only to what I find necessary to explain my decision.

18. Mr. Gillies booked a December 19, 2022, WestJet flight from Vancouver, BC to Los Angeles, California. The flight was originally scheduled to depart at 4:15 pm. The flight was delayed several times on December 19, 2022, and ultimately cancelled around 11:30 pm. Shortly after the flight was cancelled, Mr. Gillies re-booked himself on a different flight to Los Angeles departing from Bellingham, Washington on December 20, 2022, with a different carrier. None of this is disputed.

19. It is undisputed that the APPR applies to the cancelled flight at issue in this dispute. The APPR sets 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.

20. APPR section 19(1)(a)(iii) says that a large carrier like WestJet must provide \$1,000 compensation to a passenger if that passenger's arrival at the destination indicated on the original ticket is delayed by 9 hours or more for reasons within the airline's control. There is no dispute that Mr. Gillies experienced a delay greater than 9 hours when the flight was cancelled.
21. As noted, the parties dispute whether the delay and cancellation were within or outside WestJet's control. Mr. Gillies acknowledges that when the flight was ultimately cancelled, there were "weather issues", so I find he does not dispute that the flight was ultimately cancelled due to weather, which was outside WestJet's control. However, Mr. Gillies says that the initial delays were within WestJet's control. Mr. Gillies says when the flight was delayed, WestJet employees told him it was due to crew issues. He says at that time other flights were arriving and departing from Vancouver despite the snow on the ground. Mr. Gillies argues that if there had been no earlier crew delays, which he says were within WestJet's control, the flight could have departed earlier and would not have been cancelled due to weather issues that developed.
22. Mr. Gillies also says that when he received a scheduled callback from WestJet on December 29, 2022, a WestJet employee told him the reason the flight was cancelled was "ramp controllable", which he says is within WestJet's control. Mr. Gillies says WestJet redacted its employee's side of the recording. However, WestJet provided an unredacted copy of the recording in evidence, and does not dispute that its employee told Mr. Gillies the reason for the delay was ramp controllable, which is within WestJet's control. WestJet says "ramp controllable" means related to the ramp crew who worked on the tarmac and within WestJet's control. However, WestJet says Mr. Gillies was provided with inaccurate information on the call. WestJet says the delays were not ramp controllable.

23. For its part, WestJet says the flight delays were outside its control due to worsening weather conditions in Vancouver. WestJet provided a 34-page YVR Report and Action Plan for the December 2022 Travel Disruption issued by the Vancouver Airport Authority (YVR Report). The YVR Report indicated that between December 18 and December 24, 2022, YVR experienced severe winter weather that led to the cancellation of 1,300 out of approximately 4,100 scheduled flights between December 18 and December 24, 2022, and impacted airline operations extending well beyond YVR. Mr. Gillies says the significant snowfall did not start until the evening of December 19, 2022, after the flight should have departed.
24. WestJet provided a statement from MR, a WestJet employee who worked with the Irregular Operations teams for 15 years, including on December 18 to December 20, 2022. In her statement, MR said she reviewed various WestJet and Vancouver airport documents and provided detailed explanations for WestJet's recorded reasons for the delays and the weather events and airport operation issues on December 19, 2022, which I find unnecessary to detail here. In summary, MR said the flight delays and cancellation were due to following, all of which I find supported by the documentary evidence WestJet provided:
- a. Delayed arrival of the aircraft – 40 minutes. Caused by delays with the two previous flights that used the same aircraft. One flight was delayed due to the weather and runway conditions in Vancouver. The other flight was delayed in offloading passengers because of the lack of available gates due to the runway and weather conditions in Vancouver.
 - b. Connecting crew delays – 155 minutes. A flight crew was scheduled on another WestJet flight that was delayed due to de-icing in Calgary. The crew was also scheduled to operate another WestJet flight, which was then delayed and caused a down-line reaction of delays on 3 more flights, including the flight which contained the crew for the flight Mr. Gillies was booked on. The last 3 flights were further delayed by the need to maintain extra fuel on the aircraft in the event of runway and tarmac delays which were anticipated due to the weather conditions, and because the Vancouver airport implemented a flow

control program that staggered flights further apart than normal in an attempt to avoid overloading the tarmac and runways, which were periodically unusable due to the weather conditions.

- c. Passenger handling delay – 35 minutes. MR said this delay is usually for additional time needed for passengers to board the aircraft. WestJet acknowledged that it has been unable to identify documents further explaining this delay. Mr. Gillies says a passenger asked to deplane which I find likely explains this delay.
 - d. Adverse weather delays in Vancouver – 175 minutes. MR said the weather conditions at YVR were quite cold as compared to the normal climate with snow and ice, causing significant issues with the ramps and runways, and gridlocking the airfield. MR also said that as the evening went on, the weather conditions rendered de-ice holdover times (the length of time an aircraft can sit in between being sprayed with de-icing fluid) so short that aircraft were unable to taxi and depart within the de-icing holdover time period.
 - e. Cancellation due to adverse weather at the Vancouver airport.
25. WestJet also provided the hourly weather report for the Vancouver airport on December 19, 2022, showing temperatures ranging from -6 to -8, snow in the early morning between 3 and 5 am, and then more snow and fog from 1pm until midnight. It also provided an airfield condition report from 3:32am on December 19, 2022, that indicates wet and dry snow and slippery conditions on the runway. Finally, WestJet provided a Vancouver airport “Ground Stop Operations Bulletin” that suspended all operations at 12:45am on December 20, 2022, shortly after the flight was cancelled. I find the above evidence WestJet submitted, including the statement from MR, supports a finding that the flight delays and cancellation were due to adverse weather.
26. Mr. Gillies also says it would have been prudent for WestJet to have a reserve crew. However, even if some portion of these flight delays were within WestJet’s control, such as the 35 minute passenger handling delay, based on the evidence before me I find that the delays and cancellation were primarily outside WestJet’s control. Mr.

Gillies himself acknowledges that there were contributing weather issues and a deteriorating forecast on December 19, 2022. He also acknowledges that the flight was ultimately cancelled due to weather. The APPR's parent legislation, the *Canada Transportation Act*, establishes the CTA. The CTA has, for any matter within its jurisdiction, all the powers, rights and privileges of a superior court. In decision 122-C-A-2021, the CTA determined that when multiple disruptions affect a traveler's itinerary, the primary reason for the delay is the most significant contributing factor to the overall delay. On the evidence before me, I am satisfied that the most significant contributing factor for the delays and cancellation was a significant weather event at the Vancouver airport and resulting airport operation issues. APPR section 10(1) says situations outside the carrier's control include among other things, meteorological conditions that make the safe operation of the aircraft impossible, and airport operation issues. So, I find the primary reason for the flight's delays and cancellation was outside of WestJet's control.

27. Under APPR section 10(3), when there is a delay or cancellation due to situations outside the carrier's control, it is only required to provide travelers with alternate travel arrangements or a refund, not compensation. As noted, Mr. Gillies booked an alternate flight with another carrier, and WestJet undisputedly refunded Mr. Gillies for the cancelled flight, which I find met the requirements for such arrangements under APPR section 18. On the evidence before me, I am satisfied that WestJet met its obligations to Mr. Gillies under the APPR when it provided a refund. I dismiss Mr. Gillies' claims.

CRT fees and expenses

28. 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. As Mr. Gillies was unsuccessful, I dismiss his fee claim. WestJet did not pay any fees and neither party claimed any dispute-related expenses.

ORDER

29. I dismiss Mr. Gillies' claims and this dispute.

Leah Volkers, Tribunal Member