



# Civil Resolution Tribunal

Date Issued: May 16, 2024

File: SC-2023-003752

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Allbee v. WestJet Airlines Ltd.*, 2024 BCCRT 458

BETWEEN:

CORRINE ALLBEE

**APPLICANT**

AND:

WESTJET AIRLINES LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Megan Stewart

## INTRODUCTION

1. This dispute is about compensation for baggage delay on an outbound domestic flight.
2. Corrine Allbee says WestJet Airlines Ltd. temporarily lost her baggage while she was travelling from Prince George to Ottawa on vacation. She says she bought essentials

to use while her baggage was missing, but WestJet only offered to reimburse her for a portion of the amount she spent. Mrs. Allbee claims \$945.85 for the total she spent on clothing and toiletries.

3. WestJet denies Mrs. Allbee's claims. It says if Mrs. Allbee is entitled to compensation for the baggage delay, then she is bound by her ticket's terms and conditions and WestJet's domestic tariff, which limit her interim expenses to items that were reasonably necessary.
4. Mrs. Allbee is self-represented. Carina Chen, a lawyer, represents WestJet.

## **JURISDICTION AND PROCEDURE**

5. These are the Civil Resolution Tribunal's (CRT) 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 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.
6. 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 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. CRTA section 42 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. I was unable to open one piece of Mrs. Allbee's evidence. However, based on the title, I inferred the document was a duplicate of a receipt WestJet submitted that I was able to open, so I did not ask Mrs. Allbee to resubmit it in an accessible format.

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.

## **ISSUE**

9. The issue in this dispute is whether WestJet must compensate Mrs. Allbee for incidental expenses she incurred while her baggage was delayed, and if so, how much it must pay.

## **EVIDENCE AND ANALYSIS**

10. As the applicant in this civil proceeding, Mrs. Allbee must prove her claims on a balance of probabilities, meaning more likely than not. I have read all the parties' submissions and evidence, but refer only to information I find necessary to explain my decision.

### ***The applicable law***

11. 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 establishes airline liability for lost, delayed, or damaged baggage that is transported internationally. It also limits the scope and type of damages an applicant can recover from an airline for baggage delay or loss.
12. The federal *Air Passenger Protection Regulations* (APPR) apply the *Montreal Convention's* rules about liability for lost, delayed, or damaged baggage to domestic services. Section 23(2) of the APPR addresses compensation for baggage lost for less than 21 days, which is the case here. Applied to the facts of this dispute, section 23(2) says WestJet must provide compensation equal to or greater than the sum of the paid baggage fee and what the airline would pay for delayed baggage had Mrs. Allbee's flight been an international flight.

## **Background**

13. It is undisputed that on August 28, 2022, Mrs. Allbee flew from Prince George to Ottawa with two checked bags. The bags did not arrive in Ottawa with Mrs. Allbee on August 29, 2022. She reported the missing bags to WestJet, and it created a delayed bag report.
14. Mrs. Allbee says on the way to her accommodation in the countryside, she stopped at Walmart to purchase essential items to replace those in her missing baggage. She also purchased clothing online from Lululemon. Mrs. Allbee says she only bought what was necessary. The total cost of her purchases is the \$945.85 she claims in this dispute. Mrs. Allbee does not claim a baggage fee, and there is no evidence she paid one.
15. WestJet says the baggage delay was approximately 27 hours from the time Mrs. Allbee arrived in Ottawa, which is supported by the submitted delayed bag report. However, Mrs. Allbee says her bags were delivered on August 31<sup>st</sup> not August 30<sup>th</sup>, resulting in a 51-hour delay. Even if Mrs. Allbee is correct, I find this does not change my decision, as explained further below.
16. WestJet also says the amount Mrs. Allbee claims for her incidental expenses is unreasonable. Before this dispute, WestJet offered Mrs. Allbee \$302.25 as compensation for the delayed baggage, which Mrs. Allbee declined.

## ***Mrs. Allbee's delayed baggage and incidental expenses***

17. WestJet's domestic tariff, which I find applies to Mrs. Allbee, reflects the *Montreal Convention* and APPR baggage compensation limits. It says if baggage does not arrive on the same flight as a passenger, WestJet will pay for any lost item up to 1,288 Special Drawing Rights (about \$2,300 CAD) including incidental expenses, unless the passenger bought excess valuation, meaning additional coverage for her baggage contents. There is no evidence Mrs. Allbee bought excess valuation. I note WestJet also relies on the terms and conditions of Mrs. Allbee's ticket to limit her right

of recovery, but neither party submitted a copy of the ticket. So, I was unable to consider it in this decision.

18. The tariff also says WestJet will deliver located delayed baggage to a passenger at their accommodation, which WestJet undisputedly did. The question is, to what extent is she entitled to compensation for her incidental expenses, that is, the clothing and toiletries she bought when her baggage did not arrive as expected.
19. I find submitted receipts show Mrs. Allbee incurred expenses as a result of the delayed baggage. However, I find only reasonably necessary and essential items were appropriate in the circumstances. This is supported by the submitted BC Provincial Court's unreported decision in *Khabazian-Isfahani v. WestJet Airlines Ltd.*, 2012 BCPC 09-28034 and recent CRT decisions (see, for example, *Brown v. WestJet Airlines Ltd.*, 2023 BCCRT 456 and *Audette v. WestJet Airlines Ltd.*, 2024 BCCRT 038). While these decisions are not binding on me, I find their reasoning about compensable expenses persuasive.
20. I turn to the items Mrs. Allbee purchased. First, I find she is not entitled to compensation for her Lululemon purchases. I say this because while she ordered clothing online before her baggage was delivered to her on August 30<sup>th</sup> or 31<sup>st</sup>, it did not arrive until September 1<sup>st</sup>. The Lululemon return policy in evidence shows Mrs. Allbee had 30 days from the delivery date to return the items online or in-store. I find it would have been reasonable for Mrs. Allbee to do this, since she had her own clothing back before the order arrived.
21. Next, the Walmart purchases. I acknowledge that at the time she made the purchases, Mrs. Allbee did not know when her baggage would arrive and her accommodation was in the countryside. Mrs. Allbee says she needed different clothing for the various activities she had planned, although she does not explain what these were. She also says she needed a wide variety of toiletries, and in particular hair products, given her hair type. Even so, I find the \$588.20 she spent at Walmart excessive, in the circumstances. On a judgment basis, I allow \$215.27 for the 2 hoodies, 2 tops, 2 tanks, 2 bras, 1 pair of joggers, 1 item of footwear, and socks

she bought. I also allow \$100 for toiletries, for a total of \$315.27. I dismiss the balance of Mrs. Allbee's claim.

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

22. The *Court Order Interest Act* applies to the CRT. Mrs. Allbee is entitled to pre-judgment interest on the \$315.27 damages award from October 1, 2022 (30 days after her reimbursement request to WestJet, a date I find reasonable) to the date of this decision. This equals \$22.33.

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. Since the parties had mixed success and WestJet offered Mrs. Allbee \$302.25 in compensation before she began this dispute, which is very close to the damages award, I decline to order reimbursement of Mrs. Allbee's CRT fees. WestJet did not pay fees, and neither party claims dispute-related expenses.

## **ORDERS**

24. Within 14 days of the date of this order, I order WestJet to pay Mrs. Allbee a total of \$337.60, broken down as follows:

- a. \$315.27 in damages, and
- b. \$22.33 in pre-judgment interest under the *Court Order Interest Act*.

25. I dismiss the balance of Mrs. Allbee's claims.

26. Mrs. Allbee is entitled to post-judgment interest, as applicable.

27. 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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Megan Stewart, Tribunal Member