



Civil Resolution Tribunal

Date Issued: June 13, 2024

File: SC-2023-003046

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Isaacs v. Air Canada*, 2024 BCCRT 542

BETWEEN:

JAMES ISAACS and GARY HAMMOND, Executor of the Estate of
MICHAEL HAMMOND, Deceased

APPLICANTS

AND:

AIR CANADA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. James Isaacs and Michael Hammond were passengers on an Air Canada flight itinerary from Atlanta, Georgia to Victoria, British Columbia on July 13, 2022. One of their flights was cancelled. They each claim \$1,000 in compensation for the cancellation under the *Air Passenger Protection Regulations* (APPR).

2. Air Canada says that the cancellation was required for safety purposes, and so it does not have to pay the applicants compensation under the APPR.
3. As Mr. Hammond is now deceased, the co-applicant in this dispute is Gary Hammond, the executor of Mr. Hammond's estate. Mr. Isaacs represents both applicants. Air Canada is represented by its in-house lawyer, Marlene Lucas.

JURISDICTION AND PROCEDURE

4. 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). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
5. 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. Considering the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
6. 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.

ISSUES

7. The issues in this dispute are whether the applicants' flight cancellation was required for safety purposes, and if not, whether Air Canada must pay the applicants \$1,000 each under the APPR.

EVIDENCE AND ANALYSIS

8. As the applicant in this civil proceeding, 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.
9. The background facts are undisputed. The applicants were scheduled to fly from Atlanta to Montreal at 3:20 pm on July 13, 2022, and from Montreal to Victoria at 8:55 pm the same day. The flight from Atlanta to Montreal, AC8570, was initially delayed but left the gate at 5:00 pm. However, the aircraft then returned to the gate before takeoff and the flight was ultimately cancelled, as explained further below.
10. Air Canada rebooked both applicants on new flights. The applicants arrived in Victoria at 11:34 am on July 14, 2022, about 12 hours after their originally scheduled arrival time.
11. The applicants claim \$1,000 each as compensation under the APPR. The APPR applies to flights to, from, and within Canada, including connecting flights. So, I find the APPR applies to the applicants' flights. I also accept Air Canada's argument that the applicants are bound by its International Tariff, which refers to and essentially mirrors the APPR provisions regarding flight delays and cancellations.

Alleged APPR violations

12. The applicants say that they applied to Air Canada for compensation under the APPR on July 16, 2022, but did not receive a response until September 1, 2022. They also say Air Canada did not provide adequate information about its reasons for denying compensation until providing its submissions in this dispute. The applicants say that these are both violations of APPR section 19(4), which requires a carrier to either provide compensation or explain why it is not doing so within 30 days of receiving a compensation request.

13. The applicants did not request specific remedies for Air Canada's alleged breaches of APPR section 19(4), and in any event, there are no provisions in the APPR or its parent legislation, the federal *Canada Transportation Act* (CTA), that entitle a passenger to compensation for an airline's failure to comply with this section. Instead, sections 32 and 33 and the Schedule to the APPR list various administrative monetary penalties payable for a contravention of the APPR. The Schedule states that there is a maximum \$25,000 penalty for a contravention of section 19(4) of the APPR. The CRT has no jurisdiction to administer penalties under the CTA. So, I make no findings about whether Air Canada breached APPR section 19(4) as the applicants allege.

Delay compensation

14. I turn to the applicants' compensation claims. APPR section 19(1) requires a large carrier, such as Air Canada, to compensate passengers \$1,000 for a delayed or cancelled flight if their ultimate arrival time is delayed by 9 hours or more. However, this only applies if the delay or cancellation is within the carrier's control and is not required for safety purposes. For delays that are within the carrier's control but are required for safety purposes, the carrier must provide alternate travel arrangements, food, and drink, but is not required to provide additional compensation for the delay.

15. So, was the delay in this case required for safety purposes? The applicants argue that it was not. They say that Air Canada has repeatedly changed its reasoning for the AC8570's delay. The applicants provided 2 screenshots of notifications from Air Canada about the delay. The first says that the flight has been delayed by 1 hour and 32 minutes due to pilot scheduling issues. The second says that the flight is delayed by 1 hour and 49 minutes due to an operational issue from an earlier flight.

16. In Air Canada's initial response to the applicants' APPR compensation request on August 31, 2022, it said that the flight was disrupted due to crew constraints. In further correspondence between the parties, on October 16, Air Canada advised that the delay was due to unscheduled maintenance required for safety. Later, in an October 21 email, Air Canada said the root cause of the delay was an unforeseen operational

constraint. Finally, in an October 23 email, Air Canada said that the most significant reason for the delay was unscheduled maintenance required for safety, with crew constraints as a secondary reason.

17. In submissions, Air Canada says that the applicants' delayed arrival was caused by the cancellation of their Atlanta to Montreal flight, which was due to unscheduled maintenance required for safety. It says that the flight was originally delayed for approximately 1 hour and 40 minutes due to knock-on delays from previous flights. It says that after the flight left the gate, the crew encountered a "spoiler fault snag". The crew attempted "resets" to fix the issue, but was not successful, so the aircraft returned to the gate. As noted, the flight was ultimately cancelled and passengers, including the applicants, were rebooked on alternate flights.
18. Air Canada does not explain specifically what the "spoiler fault" issue means, but I infer, and the applicants do not dispute, that it was a mechanical issue that required repair before the flight could take off. This is supported by flight data documents and maintenance logs in evidence. Air Canada says that AC8570 was cancelled because of the required unscheduled maintenance, and that this cancellation was the primary reason for the applicants' delayed arrival in Victoria.
19. In contrast, the applicants say that the primary cause of their delayed arrival in Victoria was crew scheduling issues. They acknowledge that despite the initial delays, AC8570 left the gate at 5:00 pm, which would have allowed them time to catch their connecting flight in Montreal. However, they say that they would have missed their connecting flight in any event because of the reset attempts to fix the spoiler fault issue. They say that the spoiler fault issue could have been detected earlier if the incoming flight was not delayed by crew constraints, and they could have been placed on an earlier flight. In other words, the applicants argue that but for the original delays due to the crew scheduling issues, their arrival in Victoria would not have been delayed by 12 hours. In the absence of supporting documentary evidence, I find the applicants' arguments about the possibility of being placed on an earlier flight speculative and unproven.

20. In Canadian Transportation Agency decision 122-C-A-2021, the Agency 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. Here, I find the most significant contributing factor to the applicants' overall delay was the cancellation of AC8570, which I find was due to unscheduled maintenance. I accept that this maintenance was required for safety purposes. So, I find the applicants are not entitled to compensation for the delay under the APPR, and I dismiss their claims.

CRT FEES AND EXPENSES

21. Under CRTA section 49 and the CRT Rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The applicants were unsuccessful, so I dismiss their claim for CRT fees. Air Canada was successful but did not pay CRT fees, so I make no order for them. Neither party claimed dispute-related expenses.

ORDERS

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

Alison Wake, Tribunal Member