



Civil Resolution Tribunal

Date of Original Decision: June 25, 2024

Date of Amended Decision: June 26, 2024

File: SC-2023-010642

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mugridge v. WestJet Airlines Ltd.*, 2024 BCCRT 596

B E T W E E N :

AIMEE MUGRIDGE

APPLICANT

A N D :

WESTJET AIRLINES LTD.

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. This dispute is about compensation for a missed flight connection. Aimee Mugridge purchased a return ticket from Kelowna, BC to Phoenix, AZ, connecting through Calgary, AB, with WestJet Airlines Ltd. (WestJet). Dr. Mugridge's flight from Kelowna to Calgary was delayed, and so she missed her flight from Calgary to Phoenix.

2. Dr. Mugridge booked herself on a different flight to Phoenix, with a different carrier. She says that WestJet is responsible to reimburse her for the replacement flight and other expenses. She claims \$2,462 for these expenses, plus interest.
3. WestJet denies most of Dr. Mugridge's claims, but agrees to refund her for the unused portion of her ticket. WestJet also acknowledges that Dr. Mugridge may be entitled to compensation under the *Air Passenger Protection Regulations* (APPR) for the delay.
4. Dr. Mugridge is represented by her partner. WestJet is represented by an employee.ⁱ

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). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
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. Considering the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
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.
8. Where permitted by CRTA section 118, 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.

9. In her submissions, Dr. Mugridge referenced settlement discussions between herself and WestJet in the CRT's facilitation stage. WestJet says that it did not consent to the disclosure of settlement discussions. CRT Rule 1.11 says that settlement discussions must not be disclosed to a tribunal member unless the parties agree. So, I have not considered Dr. Mugridge's submissions about the parties' settlement discussions in this decision.
10. Dr. Mugridge provided evidence about expenses incurred by her partner, DH. DH is not a party to this dispute, and WestJet says that Dr. Mugridge does not have standing to claim expenses on his behalf. I agree. In this decision, I have considered only Dr. Mugridge's expenses.

ISSUES

11. The issues in this dispute are:
 - a. Must WestJet reimburse Dr. Mugridge \$808 for her rebooked flights?
 - a. Must WestJet refund Dr. Mugridge \$654 for her unused flights?
 - b. Must WestJet pay Dr. Mugridge \$1,000 in APPR compensation?

EVIDENCE AND ANALYSIS

12. As the applicant in this civil proceeding, Dr. Mugridge must prove her 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.
13. Dr. Mugridge booked a WestJet flight from Kelowna to Phoenix on December 21, 2022, with a connection through Calgary. Her first flight, WS 460, was to depart Kelowna at 1:05 pm PST and arrive in Calgary at 3:06 pm MST. Her second flight, WS 1536, was to depart Calgary at 6:50 pm MST and arrive in Phoenix at 10:52 pm MST.

14. WS 460 was delayed, so Dr. Mugridge did not arrive in Calgary until 11:12 pm and missed her connecting flight to Phoenix. Dr. Mugridge booked herself on a flight from Calgary to Phoenix via Seattle on December 22, 2022, operated by Alaska Airlines.
15. Dr. Mugridge claims reimbursement of the cost of the Alaska Airlines flight, plus a refund of her unused WestJet flight to Phoenix. She also claims compensation for the delay under the APPR.
16. The APPR applies to flights to, from, and within Canada, including connecting flights. So, I find the APPR applies to Dr. Mugridge's flights. I also accept WestJet's argument that Dr. Mugridge is bound by its International Tariff, a copy of which is in evidence. I find the tariff essentially mirrors the APPR provisions regarding flight delays. Because Dr. Mugridge's itinerary included an international flight, it is also subject to the *Convention for the Unification of Certain Rules for International Carriage by Air* under the *Carriage by Air Act*, commonly known as the *Montreal Convention*.
17. The APPR provides different obligations for "small carrier" and "large carrier" airlines. There is no dispute that WestJet is a "large carrier" as defined in the APPR. The obligations and available compensation also depend on whether the delay was within or outside the carrier's control.
18. WestJet argued in its Dispute Response that any loss or damage suffered by Dr. Mugridge was beyond its control. However, in submissions, WestJet relies on APPR section 17, which applies when a flight is delayed for reasons within a carrier's control, or within its control but required for safety purposes. So, I find WestJet acknowledges that Dr. Mugridge's flight delay was within its control.

Rebooked and unused flights

19. Under APPR section 17(1), for delays of more than 3 hours within a large carrier's control, the carrier is obligated to rebook the passenger on the next available flight to their destination on a reasonable route departing within 9 hours with the original carrier or with another carrier with which it has a commercial agreement. If the carrier

is unable to do so, it must rebook the passenger on any reasonable air route to their destination within 48 hours.

20. Under APPR 17(2), if the offered alternate travel arrangements do not accommodate the passenger's travel needs, the carrier must refund the unused portion of the ticket.
21. WestJet argues that it was in the process of making alternate travel arrangements for Dr. Mugridge, but she rebooked herself on a new flight within 2 hours of her delayed arrival in Calgary. This is supported by Dr. Mugridge's Alaska Airlines booking confirmation in evidence, which shows that she received it at 1:11 am on December 22, 2022.
22. Dr. Mugridge says that there were no WestJet flights to Phoenix for several days, but as noted above, it was open to WestJet to provide alternate travel arrangements on another carrier. Through CRT staff, I asked the parties to provide submissions about whether WestJet offered alternate travel arrangements to Dr. Mugridge.
23. Dr. Mugridge says that WestJet did not offer her alternate travel arrangements at any time. WestJet acknowledges that it did not offer Dr. Mugridge alternate travel arrangements, but says that she did not wait for a rebooking within the 48-hour deadline under the APPR before booking her own arrangements. However, Dr. Mugridge says that she never contacted WestJet to advise that she had made her own arrangements, and yet WestJet did not contact her at any point during her trip, or even after her return, to offer her alternate travel arrangements. WestJet does not dispute this, and the parties agree that Dr. Mugridge did not contact WestJet to cancel the second leg of her itinerary.
24. WestJet relies on *Stark*¹, a recent CRT decision, in support of its argument that passengers are not entitled to reimbursement of their own self-booked alternate travel arrangements.

¹ *Stark v. WestJet Airlines Ltd.*, 2024 BCCRT 64

25. However, I find the circumstances in *Stark* are distinguishable from the circumstances in this dispute. In *Stark*, WestJet emailed the passenger advising that it would attempt to find her a flight departing within 48 hours of her original departure time, and offered her the option to either complete an online form to request a refund, or contact WestJet for alternate travel arrangements. The passenger submitted a refund request the following day, which was still within 48 hours of her original departure time. The tribunal member found that by submitting this refund request, the passenger had confirmed to WestJet that she did not want it to provide alternate travel arrangements.
26. Here, in contrast, the evidence shows that Dr. Mugridge did not request a refund from WestJet until December 27, 2022, or 6 days after the delayed flight. WestJet provided no evidence that it offered Dr. Mugridge alternate travel arrangements at any time, or that it knew that alternate arrangements were no longer required. So, I find these circumstances are not the same as in *Stark*, and WestJet cannot rely on Dr. Mugridge's later refund request to relieve it from its obligations to offer her alternate flight arrangements under the APPR.
27. While I agree with WestJet's submission that the APPR does not provide for damages for failure to comply with APPR section 17, the *Montreal Convention* also applies to this dispute, as noted above. Article 19 of the *Montreal Convention* says that a carrier is liable for damages resulting from passenger delay, unless it proves that it took reasonable measures to avoid that damage.
28. WestJet relies on Article 20 of the *Montreal Convention*, which says that a carrier is not liable for damages if it proves that the person claiming compensation committed a negligent or wrongful act or omission that caused or contributed to the damage. I find WestJet has not proven that Dr. Mugridge committed a wrongful act that contributed to her damages.
29. WestJet also relies on Article 29, which says that an action against a carrier is subject to the conditions and limits of liability under the *Montreal Convention* and that punitive, exemplary, or any other non-compensatory damages are not recoverable. Article 22 limits a carrier's liability for delay of a passenger to 4,150 Special Drawing Rights,

which is equivalent to approximately \$7,500. Dr. Mugridge's claims are well within this limit.

30. WestJet argues that Dr. Mugridge is not entitled to damages because she incurred her alternate flight expenses before it failed to offer her alternate travel arrangements itself. It says that because of this, Dr. Mugridge is only entitled to a refund of the unused portion of her ticket under APPR section 17(2). I disagree. Section 17(2) applies where the carrier offers alternate flight arrangements in accordance with section 17(1), and those arrangements do not accommodate the passenger's travel needs. Here, as I have found above, WestJet did not offer Dr. Mugridge alternate travel arrangements at all. If it had, and she had refused them in favour of her own self-booked arrangements, then she would only have been entitled to a refund under section 17(2). However, here section 17(2) is not engaged because there is no evidence that WestJet offered alternate travel arrangements.
31. So, I find Dr. Mugridge is entitled to the cost of her alternate travel arrangements as damages under the *Montreal Convention*. While Dr. Mugridge claimed \$808 for the Alaska Airlines flight, the receipt in evidence shows that it cost \$575.64. Dr. Mugridge does not explain this discrepancy. So, I find Dr. Mugridge has not proven she is entitled to a higher amount. I order WestJet to reimburse Dr. Mugridge \$575.64 for her Alaska Airlines flight.
32. Dr. Mugridge also claims \$654 as a refund of the unused portion of her flight. I agree with WestJet's submission that the APPR provides for alternate travel arrangements or a refund of the unused portion of the passenger's ticket, but not both. Because I have awarded Dr. Mugridge damages for the cost of her alternate travel arrangements, I find she is not also entitled to a refund of the unused portion of her flight. I dismiss this part of her claim.

APPR compensation for delay

33. Dr. Mugridge claims \$1,000 in delay compensation under the APPR. WestJet notes in its submissions that Dr. Mugridge did not explicitly claim APPR compensation in

her Dispute Notice. However, Dr. Mugridge did claim this amount in a breakdown of her claimed compensation amount in evidence. WestJet had an opportunity to provide submissions about Dr. Mugridge's claim for APPR compensation, and it did so. I find it is consistent with the CRT's mandate, which includes flexibility and accessibility, to consider this part of Dr. Mugridge's claim in this decision.

34. APPR section 19(1) requires a large carrier to compensate a passenger \$1,000 for inconvenience if the arrival of their flight at the original destination is delayed by 9 hours or more. APPR section 19(3) says that to receive delay compensation, a passenger must file a request for compensation with the carrier within one year of the delay. WestJet says that Dr. Mugridge did not file a request for APPR compensation, but did file a request for reimbursement of expenses, which is a different form.
35. WestJet acknowledges receiving an APPR request from DH, Dr. Mugridge's partner, but says that it was made under a separate reservation code from Dr. Mugridge's reservation. WestJet says that it did not receive a request for APPR delay compensation for Dr. Mugridge's reservation.
36. Dr. Mugridge does not dispute that she did not file her own APPR request with WestJet. However, she says that DH filed a request on behalf of both of them. She says this is what WestJet instructed, but she provided no evidence of WestJet's instructions on this point. She also did not provide a copy of DH's APPR request, so I find it unproven that DH included her name in his request.
37. On balance, I find WestJet's position is supported by the documentary evidence. Dr. Mugridge submitted an email showing that WestJet contacted her directly about her expense claim. A separate email, addressed to DH, responds to his request for APPR compensation. That email includes DH's name and reservation code, but does not mention Dr. Mugridge or her reservation code. I find that Dr. Mugridge has not proven that she submitted an APPR compensation request to WestJet as required by APPR section 19(3). So, I dismiss this part of her claim.

INTEREST, CRT FEES, AND EXPENSES

38. Dr. Mugridge claims \$177 in interest, but provided no breakdown of how she calculated that amount. There is no evidence that the parties had any agreement about interest, so the *Court Order Interest Act* applies. I find Dr. Mugridge is entitled to pre-judgment interest on the \$575.64 reimbursement of her alternate flight expense, from December 22, 2022, the date she incurred that expense, to the date of this decision. This equals \$41.85.
39. 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. As Dr. Mugridge was partially successful, I find she is entitled to reimbursement of half of her CRT fees, or \$62.50. Neither party claimed dispute-related expenses.

ORDERS

40. Within 21 days of this decision, I order WestJet to pay Dr. Mugridge a total of \$679.99, broken down as follows:
- a. \$575.64 in damages,
 - b. \$41.85 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.
41. Dr. Mugridge is entitled to post-judgment interest, as applicable.
42. I dismiss Dr. Mugridge's remaining claims.

43. 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 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.

Alison Wake, Tribunal Member

ⁱ Paragraph 4 has been amended under section 64(b) of the CRTA to correct an inadvertent error.