



Civil Resolution Tribunal

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File: SC-2023-003017

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Torrens v. Koninklijke Luchtvaart Maatschappij N.V. – K.L.M. Royal Dutch Airlines, 2024 BCCRT 627*

B E T W E E N :

DIANA LYNN TORRENS and DANICA EIRIN TORRENS

APPLICANTS

A N D :

KONINKLIJKE LUCHTVAART MAATSCHAPPIJ N.V. – K.L.M. ROYAL DUTCH AIRLINES and DELTA AIR LINES, INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This dispute is about a cancelled flight.

2. The applicant, Diana Lynn Torrens, paid for a flight from Vancouver to Oslo for her daughter, Danica Eirin Torrens. Since the applicants share the same last name and first initial, and meaning no disrespect, I will refer to them by their first names throughout this decision.
3. Diana booked Danica's itinerary through the respondent, Koninklijke Luchtvaart Maatschappij N.V. – K.L.M. Royal Dutch Airlines (KLM). The respondent Delta Airlines, Inc. (Delta) operated the itinerary's first leg, from Vancouver to Seattle. Delta scheduled that flight to depart on December 20, 2022 at 12:35pm.
4. On December 20, 2022, Delta cancelled the first leg of Danica's flight. Diana contacted KLM through WhatsApp to try to find a new flight for Danica. Danica flew out on December 25 at 3:30pm on a flight operated by Air France.
5. Diana and Danica claim \$1,000 in compensation under the *Air Passenger Protection Regulations* (APPR). They ask me to order compensation from the respondents jointly and severally, which means both respondents would be responsible for the payment.
6. KLM says it has no obligation to pay compensation under the APPR, since it did not operate the cancelled flight.
7. Delta did not file a response and is in default. I address Delta's participation in greater detail below.
8. Diana represents the applicants. A customer care officer represents KLM. While an employee represented Delta during facilitation, given their default status, they are unrepresented here.
9. For the reasons that follow, I find Delta must pay Danica \$1,000 in compensation for the cancelled flight.

JURISDICTION AND PROCEDURE

10. These are the Civil Resolution Tribunal (CRT)'s formal written reasons. The CRT has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. CRTA section 2 states that 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.
11. CRTA section 39 says the CRT has discretion to decide the hearing's format, 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.
12. 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.
13. 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.
14. In their application, the applicants say they filed a complaint with the Canadian Transportation Agency (CTA). They do not provide any details of the complaint. No party suggested the CTA has since issued a decision, and despite reviewing the CTA's published decisions, I was unable to find one with these parties. So, I have considered this decision on its merits.

ISSUE

15. The issue in this dispute is whether one or both respondents must pay compensation to one or both applicants.

EVIDENCE AND ANALYSIS

16. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
17. No party disputes the facts that determine this matter.
18. On December 20, 2022, Danica went to Vancouver Airport to board her flight to Seattle. This was the first leg of her itinerary that ended in Oslo. Diana had booked Danica's itinerary through KLM. Delta was responsible for operating the first leg.
19. Delta cancelled the flight from Vancouver to Seattle. Danica discovered the cancellation when she was unable to check in for her flight. She called KLM who confirmed the flight was cancelled but did not provide a reason.
20. Diana contacted KLM through WhatsApp, a text messaging platform, to try to make alternate arrangements. In the end, KLM rebooked Danica on a flight from Vancouver to Oslo on December 25.

APPR

21. The APPR applies to flights to, from, and within Canada, including connecting flights. So, I find the APPR applies to Danica's flight.
22. The APPR provides different obligations for "small carrier" and "large carrier" airlines. There is no dispute that each respondent is a "large carrier" as defined in the APPR.
23. APPR sections 10 to 14 and 17 to 19 address a carrier's obligations when it cancels flights.
24. APPR section 2(1) says, in part, it is the carrier operating the flight that is liable for the obligations in APPR sections 7 to 22. APPR section 2(2) provides exceptions for obligations under section 7, 22, and 24, but none apply here.

25. Since Delta undisputedly operated the itinerary's first leg, I find KLM has no obligations for the first leg's cancellation under the APPR. I dismiss the applicants' claims against KLM.

Delta's Default Status

26. As noted above, Delta did not file a dispute response. It also did not file any arguments or evidence. Evidence shows the CRT served Delta with the Dispute Notice. Delta actively participated in the CRT's facilitation stage. I have no trouble finding Delta had notice of these proceedings. Since it did not file a dispute response, Delta is in default.

27. Where a respondent is in default, I am entitled to assume it is liable as alleged. I do so here. I turn now to Delta's obligations.

Compensation

28. The applicants say they are entitled to \$1,000 in compensation.

29. APPR section 19(1)(a)(iii) provides a large carrier must pay \$1,000 compensation for a cancelled flight, within its control, where arrival is delayed by 9 hours or more. APPR section 19(4) requires the carrier to do so within 30 days of the day it received a request for compensation.

30. Given Delta's default status, I find it must pay \$1,000 in compensation.

31. I find this entitlement is per passenger and is not based on who paid for the flights. APPR section 19 does not specify to whom the air carrier must pay compensation. However, APPR section 2(1) says that air carriers are liable to passengers for the carrier's obligations set out in sections 7 to 22. I find this means Delta's must pay compensation for delay under section 19 to the inconvenienced passenger, rather than the person who purchased the ticket on the passenger's behalf.

32. So, I dismiss Diana's claim against Delta. I order Delta to pay Danica \$1,000.

33. The *Court Order Interest Act* applies to the CRT. Danica is entitled to pre-judgment interest on the compensation award from April 18, 2023, 30 days after the date she filed her dispute with the CRT, to the date of this decision. This equals \$59.62.
34. 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. I see no reason in this case not to follow that general rule. I find Danica is entitled to reimbursement of \$125 in paid CRT fees. She did not claim any dispute-related expenses.

ORDERS

35. Within 21 days of the date of this order, I order Delta to pay Danica a total of \$1,184.62, broken down as follows:
- a. \$1,000 in damages,
 - b. \$59.62 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
36. Danica is entitled to post-judgment interest, as applicable.
37. I dismiss the applicants' remaining claims.
38. 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.

Christopher C. Rivers, Tribunal Member