



Civil Resolution Tribunal

Date Issued: August 7, 2024

File: SC-2023-009776

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Donner v. Flair Airlines Ltd.*, 2024 BCCRT 753

BETWEEN:

OLIVIA DONNER and JAMES BROADHURST

APPLICANTS

AND:

FLAIR AIRLINES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Jeffrey Drozdiak

INTRODUCTION

1. This dispute is about a cancelled flight.
2. The applicants, Olivia Donner and James Broadhurst, booked a flight from Vancouver to Calgary with the respondent, Flair Airlines Ltd. (Flair). Flair cancelled the flight and rebooked the applicants on a flight leaving the next day. The applicants each seek

\$500 for the flight cancellation under the *Air Passenger Protection Regulations* (APPR), plus \$500 for time spent dealing with this dispute.

3. Flair says it cancelled the flight because the airplane for the flight experienced bird strikes while landing in Vancouver. So, Flair argues the delay was outside the carrier's control and it does not owe the applicants \$1,000.
4. The applicants are self-represented. An employee represents Flair.

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. The CRT conducts most hearings by written submissions, but it has discretion to decide the format of the hearing, including by telephone or videoconference. Based on the evidence and submissions provided, I am satisfied that I can fairly decide this dispute without an oral hearing.
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.

ISSUE

9. The issue in this dispute is whether Flair should compensate the applicants for the cancelled flight under the APPR.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning “more likely than not”). 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. Flair had the opportunity to provide evidence and submissions but did not do so. I have therefore relied on Flair’s statements in its Dispute Response filed at the start of this proceeding.
11. The applicants were booked on an August 29, 2023 flight from Vancouver to Calgary operated by Flair. The flight was scheduled to leave at 3:10 p.m. and arrive at 5:40 p.m.
12. On August 29, 2023 at 9:41 a.m., Flair notified the applicants that their flight had been cancelled due to a bird strike outside the airline’s control. The applicants were booked on the next available flight leaving on August 30, 2023 at 5:25 a.m. The rebooked flight landed over 14 hours after the originally scheduled landing.
13. On September 14, 2023, Ms. Donner emailed Flair requesting compensation under the APPR. In the emailed response, Flair wrote that the delay was caused by weather and was therefore outside Flair’s control. So, Flair denied the applicants’ claim for compensation.

Should Flair Compensate the Applicants for the Cancelled Flight?

14. APPR section 12(3) says if a carrier cancels a flight within its control less than 14 days before the scheduled flight, it must compensate the passenger. APPR section 19 outlines the minimum compensation available depending on how long the flight was delayed, and whether the airline was a small carrier or a larger carrier. Flair says it is a small carrier. The applicants do not dispute this. So, I accept that Flair is a small carrier under the APPR.
15. As noted, Flair cancelled the flight on the day of the flight. The applicants’ rebooked flight also landed over 14 hours after it was originally scheduled to. So, under APPR

section 19(1)(b)(iii), if the flight cancellation was within Flair's control, it owes the applicants \$500 each in compensation.

16. In its Dispute Response, Flair says while landing in Vancouver, tail 905 experienced several bird strikes. Flair claims its flight crew took the required steps to notify the tower that a strike may have occurred. Flair says an aircraft maintenance expert identified that multiple bird strikes caused damage and documented it through an internal SMS system. So, Flair argues the cancellation was outside its control. I note that APPR section 10(3) does not provide compensation for a passenger if the flight cancellation was outside the carrier's control.
17. The applicants provided their search results from the Civil Aviation Daily Occurrence Reporting System (CADORS) for August 27-30, 2023. They argue the results show that Flair did not experience any reported bird strikes during that time. In its Dispute Response, Flair says the tower sends any occurrences to Transport Canada for input into CADORS. Flair argues it does not know why the bird strike was not reported.
18. As noted, Flair did not provide any evidence. So, there is no evidence before me, other than Flair's bare assertion, showing that a bird strike cancelled the flight. Flair also does not explain why it emailed the applicants on September 14, 2023 saying the delay was caused by weather.
19. In its Dispute Response, Flair refers to maintenance and fleet records, and an internal SMS system to document bird strikes. Notably, Flair did not provide this evidence. When a party does not provide relevant evidence with no explanation, the CRT may make an adverse inference. An adverse inference is when the CRT assumes the party did not provide the relevant evidence because it would have damaged their case. I find an adverse inference is appropriate here.
20. Based on this adverse inference, I find the flight cancellation was likely within Flair's control. So, I find the applicants are entitled to \$500 each under APPR section 19(1)(b)(iii).

21. In reply submissions, Ms. Donner asks that I order Flair to compensate her \$500 for the 7 hours she spent dealing with this dispute. CRT rule 9.5(5) says the CRT does not award compensation for time spent on a dispute except in extraordinary circumstances. I find extraordinary circumstances are not present here, especially considering Flair never provided any evidence or submissions. So, I decline to order this amount.
22. In their Dispute Notice, the applicants waived their claim to pre-judgment interest under the *Court Order Interest Act*, so I do not award any.
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. The applicants were successful, so, I find they are entitled to reimbursement of \$125 in CRT fees. The applicants did not claim dispute-related expenses, so I order none.

ORDERS

24. Within 15 days of the date of this order, I order Flair to pay the applicant, Olivia Donner, a total of \$562.50, broken down as follows:
 - a. \$500 in compensation, and
 - b. \$62.50 for CRT fees.
25. Within 15 days of the date of this order, I order Flair to pay the applicant, James Broadhurst, a total of \$562.50, broken down as follows:
 - a. \$500 in compensation, and
 - b. \$62.50 for CRT fees.
26. The applicants are 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.

Jeffrey Drozdiak, Tribunal Member