



Civil Resolution Tribunal

Date Issued: August 12, 2024

File: SC-2023-006619

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zimmerman v. Air Canada*, 2024 BCCRT 768

B E T W E E N :

MICHAEL ZIMMERMAN

APPLICANT

A N D :

AIR CANADA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about compensation for a cancelled flight.
2. The applicant, Michael Zimmerman, booked a ticket to fly from Fredericton to Vancouver. After he arrived at the Fredericton airport, the respondent airline, Air Canada, cancelled the flight leg from Montreal to Vancouver, and re-routed Mr. Zimmerman through Kelowna. Mr. Zimmerman says his arrival in Vancouver was

delayed more than 3 hours, but less than 6 hours. Mr. Zimmerman claims \$400 in compensation under the *Air Passenger Protection Regulations* (APPR).

3. Air Canada says the flight in question was cancelled due to unforeseen engine maintenance performed for safety purposes. Air Canada says Mr. Zimmerman was re-booked on the next available flight based on market capacity, so under the APPR, he is not entitled to any compensation.
4. Mr. Zimmerman is self-represented in this dispute. Air Canada is represented by an employee.
5. For the reasons set out below, I find in favour of Mr. Zimmerman in this dispute.

JURISDICTION AND PROCEDURE

6. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. These are the CRT's formal written reasons.
7. 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. 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.
8. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.
9. There is a related dispute, SC-2023-006620, about the same issue. The applicants in the 2 disputes are spouses, and the facts and arguments are essentially identical.

However, since the parties are different, I have written a separate decision for each dispute.

Preliminary Issue – Admission of Affidavits

10. Mr. Zimmerman says the statements from Air Canada employees AC and GW should not be accepted as evidence because they are not properly sworn affidavits. However, sworn affidavits are not necessary for witness statements in CRT disputes. So, I find this is not a basis to exclude the statements from evidence.
11. Mr. Zimmerman also says these statements should not be accepted as expert evidence because they are not consistent with the CRT's rules on expert evidence. Mr. Zimmerman also says the statements contain hearsay.
12. Hearsay is admissible in CRT proceedings, although it may limit the weight the evidence is given. I discuss that in my reasons below. I find it unnecessary to admit the statements as expert evidence. Rather, I accept the witness statements on a limited basis, as an explanation of event chronology and attached documents that would be within the witnesses' knowledge in their job positions. In any event, since I find in favour of Mr. Zimmerman in this dispute, I find there is no prejudice to him in accepting the statements as evidence.

ISSUE

13. Is Mr. Zimmerman entitled to \$400 in compensation under the APPR?

EVIDENCE AND ANALYSIS

14. I have read the parties' submitted evidence and arguments, but refer only to what I find relevant to provide context for my decision.
15. As noted above, the parties agree that the portion of Mr. Zimmerman's flight from Montreal to Vancouver was cancelled, and that he was re-routed through Kelowna.

Air Canada says Mr. Zimmerman arrived in Vancouver just over 4 hours later than his originally scheduled arrival. As it is not disputed, I accept that as accurate.

16. APPR section 19(1)(a)(i) requires a large carrier, such as Air Canada, to compensate passengers \$400 for a delayed or cancelled flight if their ultimate arrival time is delayed between 3 and 6 hours. However, APPR section 11(1) specifies that section 19(1)(a)(i) only applies if the delay or cancellation is within the carrier's control and is not required for safety purposes.
17. Air Canada says the cancellation was required for safety purposes. It says the scheduled airplane, an Airbus A330 (FIN 938), had an engine delamination fault, so it could not fly safely. Air Canada also says no alternate plane was available.
18. For the following reasons, I find Mr. Zimmerman is entitled to \$400 in compensation under the APPR for the cancelled flight.
19. Mr. Zimmerman cites Canadian Transportation Agency (CTA) Decision No. 122-C-A-2021. That decision says that where there are multiple reasons for a flight delay or cancellation, the primary reason or "most significant contributing factor" is the appropriate test to determine how to categorize the event. At paragraph 64, the decision says the CTA interprets APPR section 19(4) as requiring carriers to provide passengers with sufficient information to decide whether they wish to appeal the carrier's denial of compensation.
20. Generally, in a civil proceeding like this one, Mr. Zimmerman, as the applicant, must prove his claim on a balance of probabilities. However, in *Mohamed v. Air Canada*, 2023 BCCRT 661, a CRT member reasoned that in a claim under the APPR, an airline respondent has the onus of proving whether a delay was within its control, because it is in the best position to provide evidence explaining the delay of its own flights. This is consistent with CTA decisions, including Decision No. 20-C-A-2023, which says that when a carrier claims that a disruption was within its control but required for safety purposes, it must establish this claim by providing evidence that supports its categorization of the disruption.

21. Although CTA and CRT decisions are not binding on me, I find the reasoning of the decisions cited above persuasive, so I adopt and apply it here. I find Air Canada must prove that the flight was cancelled due to safety-related maintenance.
22. Air Canada provided maintenance records showing that on June 25, 2023, an inspection showed “delamination on engine 1 outboard”. Based on these records, particularly the Netline/Ops Opslink record dated June 25, 2023, I accept that FIN 938 was grounded due to unforeseen maintenance. Since the maintenance involved engine repairs, I accept that the maintenance was required for safety.
23. Mr. Zimmerman cites another CTA Decision No. 20-C-A-2023. In that case, the CTA found in paragraphs 10-12 that the primary reason for the disputed flight disruption was preventable if the airline had taken reasonably foreseeable preventative measures. So, a passenger will be entitled to compensation under the APPR if the maintenance issues leading to the flight disruption are foreseeable.
24. In Decision No. 20-C-A-2023, the CTA found the maintenance problem was foreseeable because the aircraft was parked on the ground in Regina in winter, with the aircraft heater turned off, which led to a frozen and ruptured lavatory pipe. The CTA said the delay could have been prevented if the maintenance and ground crew had been “prudent and diligent”.
25. There is no evidence before me to suggest that the engine delamination could similarly have been prevented through prudence and diligence. However, Mr. Zimmerman argues that Air Canada could have avoided the cancellation by using a different aircraft.
26. Air Canada does not dispute that it had a duty to mitigate the effects of the grounded aircraft. This duty is set out in decisions such as the CTA’s Decision No. 122-C-A-2021, and the CRT’s *Lai v. Air Canada*, 2023 BCCRT 772 at paragraph 20.
27. The statement from Air Canada employee GW says the flight was not cancelled until after employees had unsuccessfully tried to find another Airbus A330 aircraft.

However, as Mr. Zimmerman argues, Air Canada has not explained why it only considered replacing FIN 938 with another Airbus A330.

28. GW's statement says "no other viable alternative could have been carried out to render the Applicant to his final destination on time." However, I find Air Canada has not proved this assertion. Air Canada has a large fleet. Also, the flight was scheduled to depart from Montreal, Canada's second largest city. As noted in *Lai* and 122-C-A-2021, at larger airports and domestic airports there is a higher expectation that the carrier will have alternate aircraft and crew available compared to smaller and international airports.
29. As noted, Air Canada has not shown why it could not replace the grounded aircraft with another type of aircraft. Also, GW's statement and the attached records indicate there was another Airbus A330 in Montreal, and also one in Toronto, but they were "out of service." Air Canada has not explained why these aircraft were out of service, and why they could not have been used to replace FIN 938. I find that Air Canada's mere assertion that the aircraft were out of service is not enough to meet its burden of proving that the cancellation was unavoidable.
30. For these reasons, I find Air Canada has not proved that it met its duty to mitigate the effects of the engine delamination. This means Air Canada has not proved that the cancellation was required for safety purposes. So, I find Mr. Zimmerman is entitled to \$400 under APPR section 19(1)(a)(i).
31. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Zimmerman is entitled to pre-judgment interest from July 25, 2023 (the date Mr. Zimmerman's compensation was due). This equals \$21.38.
32. 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 Mr. Zimmerman was successful in this dispute, under CRTA section 49 and the CRT's rules I find he is entitled to reimbursement of \$125 in CRT fees.

33. Mr. Zimmerman argues that I should order costs against Air Canada because it did not disclose detailed information about maintenance and scheduling until after he filed this dispute. Mr. Zimmerman did not provide evidence of legal costs. Also, CRT rule 9.5 says the CRT will not order a party to pay another party's legal fees in a small claims dispute unless there are extraordinary circumstances. I find no extraordinary circumstances here. Rather, I find this is a routine claim for compensation under the APPR.
34. Also, to the extent Mr. Zimmerman is asking for a penalty against Air Canada for breaching APPR section 19(4), I find that is not within the CRT's jurisdiction to order. See *Isaacs v. Air Canada*, 2024 BCCRT 542 at paragraph 13.
35. So, I dismiss Mr. Zimmerman's claim for reimbursement of dispute-related expenses.

ORDERS

36. I order that within 30 days of this decision, Air Canada must pay Mr. Zimmerman a total of \$546.38, broken down as follows:
- a. \$400 in compensation under the APPR,
 - b. \$21.38 in pre-judgment interest under the COIA, and
 - c. \$125 in CRT fees.
37. Mr. Zimmerman is entitled to post-judgment interest under the COIA, as applicable.

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 BC Provincial Court. Once filed, a CRT order has the same force and effect as an order of the BC Provincial Court.

Kate Campbell, Vice Chair