



Civil Resolution Tribunal

Date Issued: September 13, 2024

File: SC-2023-007103

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Davidson v. WestJet Airlines Ltd.*, 2024 BCCRT 907

BETWEEN:

STEVEN JAMES DAVIDSON

APPLICANT

AND:

WESTJET AIRLINES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Mark Henderson

INTRODUCTION

1. This dispute is about compensation for a missed flight connection. Steven James Davidson purchased a return ticket from Kamloops, BC to Phoenix, Arizona connecting through Calgary, Alberta, with WestJet Airlines Ltd. Mr. Davidson's flight from Kamloops to Calgary was delayed and so he missed his flight from Calgary to Phoenix.

2. Mr. Davidson was booked on a later flight to Phoenix and arrived approximately 4.5 hours after his originally scheduled arrival. Mr. Davidson also paid for a Premium Class seat on the original flight from Calgary to Phoenix. Mr. Davidson was seated in an Economy Class seat on the rebooked flight. Mr. Davidson seeks \$400 under the *Air Passenger Protection Regulations* (APPR) for the delay and \$1,031 as compensation for the seat downgrade.
3. WestJet says the delay was outside of its control and so Mr. Davidson is not entitled to compensation for delay under the APPR. WestJet also says that any refund for the downgrade from Premium to Economy class should be limited to \$160.
4. Mr. Davidson is self-represented. WestJet is represented by a lawyer.

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 *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.
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 and I find that an oral hearing is not necessary in the interests of justice.
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.

ISSUES

9. The issues in this dispute are:
 - a. Does WestJet owe Mr. Davidson \$400 in APPR compensation?
 - b. Does WestJet owe Mr. Davidson \$1,031 for the seat downgrade on his rebooked flight?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mr. Davidson must prove his 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.
11. Mr. Davidson was booked on WS3314 from Kamloops to Calgary on March 30, 2023. His flight was to depart Kamloops at 10:41 am and arrive in Calgary at 12:53 pm. His second flight, WS1516, was to depart Calgary at 2:30 pm and arrive in Phoenix at 4:34 pm.
12. WS3314 was delayed, so Mr. Davidson did not arrive in Calgary until 1:49 pm and missed his connecting flight to Phoenix. Mr. Davidson was rebooked on WS1536 from Calgary to Phoenix which arrived in Phoenix at 9:09 pm. So, Mr. Davidson was delayed approximately 4.5 hours from his scheduled arrival in Phoenix.
13. Mr. Davidson was booked in a Premium seat for WS1516. Since there was no Premium Seat available on WS1536, Mr. Davidson was seated in an Economy class seat.
14. The APPR applies to flights to, from, and within Canada, including connecting flights. So, I find the APPR applies to Mr. Davidson's flights. I also accept WestJet's argument that Mr. Davidson 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.

15. 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.

Does WestJet owe Mr. Davidson for the delay?

16. APPR section 19(1) requires a large carrier to compensate a passenger \$400 for inconvenience if the arrival of their flight at the original destination is delayed by 3 to 6 hours and the delay is within the carrier’s control.

17. APPR section 18(1) requires a large carrier to provide a confirmed reservation for the next available flight to the passenger’s destination where the delay or cancellation is outside the carrier’s control.

18. APPR section 10(1)(c) says meteorological conditions that make the safe operation of the aircraft impossible is a situation outside of the carrier’s control.

19. WestJet says the reason for the late departure of WS3314 was a combination of weather delay and crew delay on two earlier flights WS3540 and WS3111. WestJet provided evidence of its Irregular Operations (IROPS) report to support this submission.

20. The IROPS shows WS3111 was the preceding flight from Calgary to Kamloops. WS3111 and WS3314 used the same aircraft and crew.

21. WS3111 was delayed by a total of 54 minutes. The IROPS report shows that WS3111 was delayed by 41 minutes because it was waiting for the crew from WS3540. There was also a delay of 13 minutes for fog.

22. The IROPS report shows that WS3540 arrived in Calgary 55 minutes late due to fog. The Captain and First Officer for WS3111 were inbound on WS3540.

23. I accept WestJet’s evidence that WS3540 was delayed due to fog, and WS3111 was delayed due to a combination of fog and the earlier delay of WS3540. WestJet

did not say that the fog in Calgary made the safe operation of the aircraft impossible, but I infer that the reason for the delays in Calgary was because it was unsafe to operate the aircraft in the fog. So, I find that the delays to WS3540 and WS3111 were outside of WestJet's control. I also find that the delay of WS3314 was due to the earlier delays of WS3111 and WS3540.

24. APPR section 10(2) says a delay that is directly attributable to an earlier delay that is outside the carrier's control is also considered to be outside the carrier's control if the carrier took all reasonable measures to mitigate the impact of the earlier delay.
25. So, I must consider whether WestJet took all reasonable measures to mitigate the impact of the earlier delay on WS3314. I find that WestJet is in the best position to provide information about what reasonable measures were available or taken to mitigate the impact of the delay. WestJet did not provide any details of steps that it took to mitigate the impact of the earlier delays on WS3314. So, I draw an adverse inference against WestJet for failing to provide relevant evidence that it took all reasonable measures to mitigate the impact of the earlier weather delay and crew delay.
26. I find the delay of WS3314 was within WestJet's control because it did not mitigate the earlier delay of WS3111 and WS3540. So, I find the applicant is entitled to \$400 in compensation for delay-related inconvenience as provided in APPR section 19(1)(a)(i).

Does WestJet owe Mr. Davidson for the seat downgrade?

27. Mr. Davidson was originally booked in a Premium class seat on WS1516. On WS1536 he had to accept a lower fare Economy class seat.
28. Mr. Davidson seeks \$1,031 for the difference in the cost of the flight class that he booked and the seat that he had on WS1536. It is undisputed that Mr. Davidson retained his seat selection on the other segments of his travel from Kamloops to Calgary and on the return trip from Phoenix back to Kamloops.

29. APPR section 18.1(2) provides that if the rebooked flight results in a lower class of service than the original ticket, the carrier must refund the difference in the cost of the applicable portion of the ticket.
30. WestJet says Mr. Davidson's entire round-trip cost was \$1,152.14 so the total cost of his outbound flights was \$576.07. WestJet calculates the base fare at \$493 with the remainder consisting of taxes and fees. WestJet did not provide any documents to support these calculations. It is not clear if WestJet had access to the actual fare breakdown for Mr. Davidson's trip. However, Mr. Davidson does not dispute these figures, so I accept WestJet's method of breaking down the cost of the outbound flights.
31. WestJet also said that since the downgrade only occurred on WS1536, the applicable portion of the ticket is the flight segment from Calgary to Phoenix.
32. WestJet says the cost of the Calgary to Phoenix flight is determined by performing a calculation of the mileage of that flight compared to the mileage of the total outbound flights. The Calgary to Phoenix segment was 1,225 miles of the total outbound distance of 1,508 miles (Kamloops to Calgary - 283 miles) or 81% of the total distance travelled. So, WestJet suggests that the total cost of the Calgary to Phoenix segment was 80% of the total base fare of \$493 or \$399.92.
33. WestJet says that under APPR section 18.1(2) Mr. Davidson is entitled to less than \$399.92 as this would be a refund of the entire flight. WestJet proposes that a reasonable amount to compensate Mr. Davidson is 40% of the total base fare for the Calgary to Phoenix segment or approximately \$160. WestJet did not provide the average fare difference between classes to support this percentage.
34. Mr. Davidson provided fare comparisons of single flights from Calgary to Phoenix in the Premium class to support his argument. However, I find that these fare comparisons reflect prices that are higher than the total cost of Mr. Davidson's return trip from Kamloops to Phoenix.

35. Considering that APPR section 18.1(2) describes a refund of the “applicable portion” of the ticket, I find that Mr. Davidson’s proposed reimbursement exceeds APPR section 18.1(2).
36. I also disagree with WestJet’s submission that reimbursement is calculated from the base fare for the Calgary to Phoenix leg rather than the total cost including taxes and fees. APPR section 18.1(2) uses the term “cost” rather than “fare”. So, I find that Mr. Davidson is entitled to reimbursement based on the total cost of the Calgary to Phoenix segment.
37. On that basis, I find the appropriate calculation is 81% of the total cost of the outbound segment (\$576.07) or \$466.62. While WestJet has submitted that Mr. Davidson is entitled to 40% of this figure, I find, on a judgment basis, that Mr. Davidson is entitled to 50% of \$466.62 or \$233.31 for reimbursement of the seat downgrade on WS1536.
38. The *Court Order Interest Act* applies to the CRT. Mr. Davidson is entitled to pre-judgment interest on the compensation award from March 30, 2023, the date of the flight to the date of this decision. This equals \$45.85.
39. 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. I find the applicant is entitled to reimbursement of \$150 in CRT fees. Neither party claimed dispute-related expenses.

ORDERS

40. Within 30 days of the date of this order, I order WESTJET AIRLINES LTD. to pay STEVEN JAMES DAVIDSON a total of \$829.16, broken down as follows:

c. \$633.31 in damages,

d. \$45.85 in pre-judgment interest under the *Court Order Interest Act*, and

e. \$150 in CRT fees.

41. The applicant is entitled to post-judgment interest, as applicable.

42. 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.

Mark Henderson, Tribunal Member