



Civil Resolution Tribunal

Date Issued: September 17, 2024

File: SC-2023-007075

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *RA v. WestJet Airlines Ltd.*, 2024 BCCRT 915

B E T W E E N :

RA, SB, and RA as Litigation Guardian of MB

APPLICANTS

A N D :

WESTJET AIRLINES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Peter Mennie

INTRODUCTION

1. This dispute is about compensation for a cancelled flight.
2. The applicants, RA, SB, and MB purchased a flight from Hawaii to Vancouver with the respondent, WestJet Airlines Ltd. (WestJet). Their flight was diverted to Victoria. The applicants say that WestJet agreed to pay for their hotel, travel, and food costs

caused by the flight change, however WestJet only reimbursed part of their costs. The applicants also say WestJet agreed to refund their flights but now refuses to pay.

3. WestJet says that reimbursement for the applicants' hotel, travel, and food costs is limited by its policies. It says that it is only required to refund the unused portion of the applicants' tickets which it calculates at \$16.17.
4. The applicants are self-represented. WestJet is represented by an authorized employee. MB is a minor and is participating through their litigation guardian, RA. While the parties did not request it, I have anonymized the applicants' names in the published version of this decision to protect MB's identity.

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)*. Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing. Given the evidence and submissions before me, I find that I can decide this dispute through written submissions.
7. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.
8. Where permitted by section 118 of the CRTA, 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 the applicants \$430.80 for their hotel, travel, and food costs?
 - b. Does WestJet owe the applicants \$1,395.18 as a refund for their flights?

EVIDENCE AND ANALYSIS

10. 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.
11. The background facts are not disputed. The applicants purchased a flight with WestJet from Hawaii to Vancouver. Their flight was diverted to Victoria because of smoke from a volcano. They landed in Victoria late in the evening on April 13, 2023.
12. The applicants say that a WestJet employee on the plane told them to go to the WestJet desk in the airport because hotel rooms were reserved for families with young children. The applicants say they and other families with young children waited over an hour at the WestJet desk which was not staffed. At around 12:30am, a second WestJet employee arrived and told the applicants that there were no hotel rooms so they should book their own accommodation. The second WestJet employee told the applicants that WestJet would reimburse their hotel, travel, and food expenses. The applicants found a hotel and paid \$784.90 for their room, meals, and taxis.
13. WestJet emailed the applicants later that night about alternate travel arrangements to Vancouver. WestJet's email offered the applicants three choices: take a flight at 12pm from Victoria to Vancouver, choose a different flight, or request a refund for the flight-only itinerary booked with WestJet. The applicants chose the third option

and requested a refund. WestJet sent the applicants an email confirming that the refund request was being processed.

14. WestJet reimbursed the applicants \$354.10 for their hotel, travel, and food costs, but denied the full amount because its policies limit the amount of reimbursement. The applicants followed up multiple times with WestJet about the flight refund and received contradictory responses. Eventually a WestJet employee told the applicants that their refund was not approved.
15. In this dispute, the applicants claim (1) a refund for their flights and (2) the full amount for their hotel, travel, and food costs. I deal with each of these issues below. I also deal with a preliminary issue, namely the application of 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*.

Montreal Convention

16. In its Dispute Response, WestJet says that the *Montreal Convention* is the exclusive recourse against airlines for claims arising in the course of international air travel. It points to article 29 of the *Montreal Convention* which says that an action against an airline can only be made under the *Montreal Convention*. The *Montreal Convention*, if applicable, limits WestJet's liability. WestJet did not elaborate on this argument in its submissions, and instead argued that the *Air Passenger Protection Regulations* (APPR) limits its liability.
17. In any event, I find that article 29 does not apply to this dispute and is not a bar to the applicants' claims. The Federal Court of Appeal held that Article 29 is limited to the situations covered by Articles 17 to 19 of the *Montreal Convention* (see *International Air Transport Association v. Canadian Travel Agency*, 2022 FCA 211 at para. 105). Articles 17 to 19 deal with injury to passengers, damage to baggage and cargo, and flight delays. As I discuss below, the applicants' claims are not related to injury, damage, or delay, rather their claim is to enforce offers WestJet made to reimburse expenses and refund flights.

Flight refund

18. WestJet says that the applicants are only entitled to a refund for the “unused portion” of their tickets under section 18(1.1) of the APPR. It calculates the distance travelled from Hawaii to Victoria as 98.84% of the total flight mileage from Hawaii to Vancouver. It says that the unused portion of the applicants’ tickets is the remaining 1.16%, so they should receive \$16.17 which is 1.16% of their flight costs. WestJet argues that it never guaranteed a refund amount in its email to the applicants so it should only pay what it must under the APPR.
19. The applicants say that WestJet’s email offered a refund of their flights, not the unused portion of their tickets. They point to the email’s wording which says they can request a refund of the “flight-only itinerary” of their original booking. I agree with the applicants that the plain and ordinary meaning of a refund of the “flight-only itinerary” is the full cost of the applicants’ flights. So, I find that WestJet’s email offered to refund the full cost of the applicants’ flights.
20. WestJet argues that its offer to refund the flights is not enforceable because the applicants did not provide fresh consideration, meaning something of value given by the applicants to make the agreement enforceable. I disagree. WestJet provided three options and the applicants chose a refund. In doing so, the applicants gave up their right to a second flight. This was a detriment to the applicants and a benefit to WestJet which no longer had to fly the applicants to Vancouver. I find that this was good consideration which makes WestJet’s refund offer enforceable.
21. Additionally, a contract is enforceable without fresh consideration where parties agree to vary the contract’s terms (see *Rosas v. Toca*, 2018 BCCA 191 at para. 183). The parties had a contract for a flight from Hawaii to Vancouver. WestJet offered to refund the applicants’ flights when circumstances changed. That is, the parties agreed to change the contract and the law in British Columbia holds WestJet to this new agreement.

22. In sum, I find that WestJet must refund the applicants' flights. The applicants paid \$1,395.18 for their flights. So, I order WestJet to pay the applicants \$1,395.18. The applicants make a further claim for a \$50 USD baggage fee. However, they did not provide proof of payment, so I make no award for this claim.

Hotel, travel, and food costs

23. WestJet says that the APPR and its tariff do not require it to pay for hotel, travel, and food costs where a delay is due to causes outside of its control. It also points to its policies which limit the amount of compensation for hotels, travel, and food. It says it paid \$354.10 as a gesture of goodwill to partially reimburse the applicants.

24. In its Dispute Response, WestJet includes a blanket denial of the applicants' allegations. However, WestJet does not specifically deny that its employee promised to reimburse the applicants' costs for hotel, travel, and food. WestJet also did not provide any evidence on this point such as a statement from the employee. So, I accept the applicants' evidence that a WestJet employee promised that WestJet would reimburse these costs and did not say the amount was limited by its policies.

25. As noted above, parties can agree to vary a contract. WestJet's employee offered to pay the applicants' hotel, travel, and food costs after their flight was diverted. The applicants accepted and relied on WestJet's offer. So, I find that WestJet is bound by its employee's statement and must reimburse the applicants' costs.

26. WestJet says generally that it should not be required to pay these costs because that would make it an insurer for passengers regardless of whether the delay was within its control. I agree that the APPR does not require WestJet to reimburse these expenses. However, WestJet's employee told the applicants that it would pay these costs. WestJet must be clear in its statements to its passengers if it wants to limit its payments to the minimum standards set by the APPR.

27. I find that the applicants' hotel, travel, and food costs were reasonable. So, I order WestJet to pay \$430.80 to the applicants as reimbursement for the portion of these

costs that WestJet has not yet reimbursed. In total, I find WestJet must reimburse the applicants \$1,825.98 for the refund of their flights and their hotel, travel, and food costs.

FEES, EXPENSES, AND INTEREST

28. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on the cost of their flights from April 14, 2023, the date they requested a refund to the date of this decision. This equals \$99.20. The applicants are entitled to pre-judgment interest on their hotel, travel, and food costs from April 14, 2023, the date they paid these amounts to the date of this decision. This equals \$30.63. The total amount of pre-judgment interest equals \$129.83.
29. 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 see no reason in this case not to follow that general rule. I find the applicants are entitled to reimbursement of \$125 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

30. Within 30 days of the date of this decision, I order WestJet to pay the applicants a total of \$2,080.81, broken down as follows:
- a. \$1,825.98 in debt,
 - b. \$129.83 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
31. The applicants are entitled to post-judgment interest, as applicable.
32. 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.

Peter Mennie, Tribunal Member