



Civil Resolution Tribunal

Date Issued: September 25, 2024

File: SC-2023-007068

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *GK v. Air Canada*, 2024 BCCRT 953

BETWEEN:

GK, SK, SAK, LJK and PMK

APPLICANTS

AND:

AIR CANADA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Mark Henderson

INTRODUCTION

1. This dispute is about compensation under the *Air Passenger Protection Regulations* (APPR) for a delayed flight.
2. The applicants, GK, SK and their minor children, SAK, LKJ and PMK, were passengers with the respondent airline, Air Canada.

3. The applicants purchased flights from Edmonton to Vancouver. The flight from Edmonton to Vancouver was delayed. The applicants seek \$2,000 (\$400 each) for compensation under the APPR and \$90.91 for additional rental car expenses due to the flight delay.
4. Air Canada says the delay was due to an unforeseen maintenance issue that created a knock-on effect, and so the applicants are not entitled to compensation for delay under the APPR. Air Canada also says that it paid the applicants \$90.91 for rental car expenses and this portion of the claim should be dismissed.
5. SK represents the applicants. The respondent is represented by an authorized employee.
6. SK is also the litigation guardian for the applicants, SAK, LJK, and PMK. Normally I would have amended the style of cause to reflect the litigation guardian. But given my conclusion set out below, I did not do so.
7. I have anonymized the parties' identities to protect the identity of the minor children.

JURISDICTION AND PROCEDURE

8. 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.
9. 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.

10. 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. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
11. 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

12. The issue in this dispute is whether Air Canada owes the applicants \$400 each in APPR compensation.

EVIDENCE AND ANALYSIS

13. 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.
14. The applicants were booked on AC245 from Edmonton to Vancouver on May 22, 2023. The flight was scheduled to leave Edmonton at 17:15 MST and arrive in Vancouver at 17:52 PST. AC245 was delayed and arrived in Vancouver at 21:04 PST, a delay of 3 hours and 12 minutes.
15. The APPR applies to flights to, from, and within Canada. So, I find the APPR applies to the applicants' flight. The APPR provides different obligations for "small carrier" and "large carrier" airlines. There is no dispute that Air Canada 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.
16. Air Canada provided an invoice of payment of \$90.91 to GK on May 6, 2024. So, I find this part of the applicants' claim has already resolved, and I dismiss it.

Does Air Canada owe the applicants compensation for the delay?

17. 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.
18. APPR section 11(2) provides that a delay attributable to an earlier delay or cancellation within the airline's control but required for safety purposes, is also considered to be within the airline's control but required for safety purposes, if the airline took all reasonable measures to mitigate the impact of the earlier delay. Where the delay is required for safety purposes, the airline does not owe compensation for the delay.
19. Air Canada also relies on Rule 80(B)(3)(e) of its Domestic Tariff which provides that a passenger is not entitled to delay or cancellation compensation where a passenger is delayed at arrival due to a delay or cancellation outside of Air Canada's control or within Air Canada's control but required for safety purposes.
20. On May 21, 2023, Air Canada notified the applicants that AC245 on May 22, 2023 would be delayed due to additional time needed to substitute the aircraft.
21. AC245 was the return flight of AC240 which flew from Vancouver to Edmonton. The aircraft used on AC240 and AC245 was a Boeing 737. Air Canada says the scheduling conflict was caused by the knock-on effect of another Boeing 737 (FIN 517) that required unscheduled maintenance for safety reasons. On May 20, 2023, aircraft FIN 517's winglet was damaged while parked. The damaged winglet required repair. This unscheduled maintenance affected the availability of Air Canada's fleet of Boeing 737s.
22. Air Canada says there are several factors it must consider when operating shorthanded in this manner. First, several aircraft are reserved strictly for operating routes over bodies of water and so these routes are prioritized. The second factor is which Boeing aircraft are operational and readily positioned in Vancouver.

23. Air Canada provided a copy of its Netline document showing the available aircraft in Vancouver at the time AC240 was scheduled to leave Vancouver. The Netline shows there were nine aircraft in Vancouver at the time.
24. Air Canada describes the following constraints:
- a. FIN 505 was assigned to operate AC344 from Vancouver to Ottawa and was a crew critical flight because Ottawa is not a crew hub.
 - b. FIN 507 had four segments of assigned flying (Vancouver-Kelowna-Vancouver-Calgary-Vancouver) which would have impacted four operating flights. The Vancouver to Calgary segment was prioritized to position crew in Calgary for a departing international flight.
 - c. FIN 512 had three assigned flying segments and was required to be in Edmonton overnight for maintenance.
 - d. FIN 519 was assigned to operate from Vancouver to Las Vegas, Nevada which could not incur a lengthy delay due to crew limitations.
25. The Netline also shows four other Boeing 737s in Vancouver at the time of AC240's scheduled departure. Air Canada did not specify the limits in using these other aircraft, but I note the following:
- a. FIN 525 was scheduled to fly to Newark, New Jersey,
 - b. FIN 526 had already departed Vancouver for Los Angeles, California and was then continuing to Toronto,
 - c. FIN 530 was scheduled to fly to Los Angeles, California and back, and
 - d. FIN 532 was scheduled to fly to Anchorage, Alaska.
26. The Netline shows that FIN 525, 526, 530 and 532 were all longer duration flights than AC240.

27. Air Canada ultimately used FIN 514 for AC240. FIN 514 had arrived in Vancouver from Montreal.
28. The applicants do not dispute that a knock-on effect impacted Air Canada's Boeing 737 fleet but the applicants dispute whether the knock-on effect impacted AC245 specifically. The applicants say that the two preceding flights on FIN 514 arrived on time. The applicants say this is evidence that the delay of AC240 and AC245 was a scheduling decision within Air Canada's control.
29. Air Canada does not dispute that the scheduling change was within its control. Air Canada relies on APPR section 11(2) which acknowledges delays that are within the carrier's control but required for safety reasons. Air Canada says the scheduling conflict arose because of the maintenance issues and the safety factor necessitated removing FIN 517 from use which had a knock-on effect on all the Boeing 737 scheduling.
30. The applicants say there were numerous flights that still landed on time despite the unavailable aircraft and that disruption from the maintenance of FIN 517 had largely been resolved by the time of their scheduled flight. The applicants did not refer to the Netline document. The applicants relied on publicly available data to make their submissions, but they did not include this data in evidence. So, I find the applicants argument is not supported.
31. I accept Air Canada's evidence that the delay of AC240 and AC245 was caused by a shortage of aircraft arising from unscheduled maintenance of FIN 517 that posed a safety issue, namely damage to the winglet.
32. I next must consider whether Air Canada took all reasonable steps to mitigate the impact of the unscheduled maintenance of FIN 517 on AC245. Air Canada relies on its explanation that the other Boeing 737s in Vancouver were already assigned to other routes. I find that Air Canada has provided reasonable explanations for the unavailability of FIN 505, FIN 507, FIN 512, and FIN 519.

33. Air Canada also said that all the Boeing 737s in Vancouver at the scheduled departure of AC240 had assigned flights and Air Canada deemed the impact of delaying those flights was greater than the impact of delaying AC240 and AC245.
34. I accept Air Canada's evidence that all the Boeing 737s positioned in Vancouver had other assignments. Air Canada's evidence shows that the unscheduled maintenance was required for safety purposes and that there were no reasonable measures Air Canada could have taken to mitigate the impact of the earlier delay. I therefore dismiss this aspect of the applicants' claims.
35. Under CRTA section 49 and the CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Air Canada was successful but did not pay CRT fees. I dismiss the applicants' claims for CRT fees. Neither party claimed dispute-related expenses.

ORDER

36. I dismiss the applicants' claims and this dispute.

Mark Henderson, Tribunal Member