



Civil Resolution Tribunal

Date Issued: December 4, 2024

File: SC-2023-007614

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Philps v. WestJet Airlines Ltd.*, 2024 BCCRT 1226

BETWEEN:

PAUL PHILPS

APPLICANTS

AND:

WESTJET AIRLINES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. When Paul Philps flew domestically with WestJet Airlines Ltd. (WestJet), WestJet lost Mr. Philps' bag. Mr. Philps says WestJet offered him some compensation, but he is entitled to more. He seeks \$4,307.06. Mr. Philps represents himself.

2. WestJet generally denies Mr. Philips' claims and says its liability for lost baggage is limited by article 22 of the *Montreal Convention*. WestJet is represented by an employee.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has authority over small claims brought under section 118 of the *Civil Resolution Tribunal Act (CRTA)*. Section 2 of the CRTA says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
4. The CRT conducts most hearings by written submissions, but it has discretion to decide the hearing's format, 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.
5. 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 court.
6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money, return personal property, or do things required by an agreement about personal property or services. The order may include any terms or conditions the CRT considers appropriate.

WestJet's name

7. In its Dispute Response, WestJet says that Mr. Philips' flights were operated by "WestJet, an Alberta Partnership". In submissions, WestJet addressed the merits of the claim, did not provide any details about a partnership, and did not say it was not the appropriate respondent. Therefore, I am satisfied that WestJet is the correct respondent in this dispute.

ISSUES

8. The issues in this dispute are:
 - a. Is WestJet's liability for lost baggage limited under the *Montreal Convention*?
 - b. What compensation is Mr. Philips entitled to?

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Mr. Philips must prove his claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. On November 18, 2022, Mr. Philips flew from Toronto to Vancouver via Calgary. At some point on that trip, WestJet lost Mr. Philips' only checked bag and did not recover it.
11. The *Air Passenger Protection Regulations* (APPR) govern, among other things, compensation for lost baggage on domestic flights. APPR section 23(1) says that in case of lost baggage, the passenger is entitled to compensation equal to at least the sum of the baggage fees and the amount payable under the *Montreal Convention*. The *Montreal Convention* is an international treaty with the force of law in Canada under the *Carriage by Air Act*. Mr. Philips is not seeking a refund of any baggage fees but is seeking the compensation payable under the *Montreal Convention*.
12. The parties agree that article 22(2) of the *Montreal Convention* limits liability for lost, damaged or delayed baggage to 1,288 "special drawing rights" (SDR). SDR is the currency of the International Monetary Fund (IMF) that can be exchanged for IMF member currencies. Canada is an IMF member.
13. On January 6, 2023, Mr. Philips created a baggage declaration with a list of the bag's contents and items' prices. On February 9, 2023, WestJet offered to pay the

equivalent of 1,288 SDR. Mr. Philips did not accept that offer. He says he is entitled to more.

14. Mr. Philips relies on article 22(5) of the *Montreal Convention*. Article 22(5) says that the limit in article 22(2) does not apply if the loss resulted from the carrier's act or omission "done with intent to cause damage or recklessly and with knowledge that damage would probably result." Although WestJet did not raise it, I considered whether this provision applies when determining the "amount that would be payable" under the *Montreal Convention* as stated in APPR section 23(1)(c). I find that it likely does because APPR section 23(1)(c) refers to the *Montreal Convention* as a whole and not to article 22(2) specifically. I decided not to seek submissions on this issue because either way, my conclusion is that the 1,288 SDR limit applies.
15. Mr. Philips alleges that WestJet was negligent. The language in article 22(5) indicates that the limit applies unless the carrier intended to lose the bag or did something reckless, knowing the bag would probably be lost. In *Connaught Laboratories Ltd v. British Airways*, 2005 CanLII 16576 (ON CA), the court said the airline must have gone beyond "carelessness or negligence" and "acted recklessly and with knowledge that damage would probably result." So, I find the liability limit applies even if WestJet was negligent.
16. Next, Mr. Philips argues that WestJet has failed to show it did not act recklessly and with knowledge that damage would probably result. As noted, an applicant must normally prove all aspects of their claim. There are provisions in the *Montreal Convention* that explicitly require the carrier to prove things, but article 22(5) is not one of them. I note that in *Connaught*, the onus was explicitly on the plaintiff to establish recklessness and knowledge that harm would result. So, I find Mr. Philips must prove that WestJet intended to lose his bag or acted recklessly, knowing that his bag would be lost or would remain lost.
17. Mr. Philips makes several arguments about that. He refers to a WestJet employee's email stating that policies and staffing had changed, and conditions were the worst they had been in 12 years. He points to the undisputed fact that WestJet had

delayed his baggage on two recent flights. He points to WestJet's delay in giving him a baggage declaration. He says this all points to WestJet's knowledge that it was experiencing multiple and extensive baggage issues. Finally, he points out that WestJet provides no evidence it actually "looked" anywhere for his bag, as opposed to waiting for it to turn up in some arcane system. He says WestJet preferred to negotiate payment rather than keep looking.

18. On my review of the emails, I find on balance that WestJet followed its usual procedures in attempting to locate Mr. Philips' lost bag, so it was not reckless. To the extent Mr. Philips argues that WestJet knew its usual procedures were likely to result in his bag remaining lost, I find that speculative and without support in the evidence. I also find that it would require expert evidence to establish that WestJet's bag-handling and lost-baggage processes and procedures were reckless or more likely to result in lost bags compared to those of other airlines. So, I find WestJet's liability is limited to a maximum of 1,288 SDR.

Compensation

19. WestJet says Mr. Philips has not demonstrated that he incurred damages amounting to 1,288 SDR. Mr. Philips says WestJet already accepted the claimed value of the bag's contents. That is true. On February 9, 2023, WestJet emailed Mr. Philips and confirmed that because he had provided sufficient information to validate his claim, it would provide full reimbursement, up to its maximum liability of 1,288 SDR. WestJet said this was \$2,321.04. Mr. Philips chose not to accept WestJet's offer, so I find he must prove that he is entitled to full reimbursement as claimed. However, WestJet does not say what aspect of his baggage declaration it no longer accepts. I find the unchallenged baggage claim is the best evidence of Mr. Philips' loss.
20. WestJet argues that I should deduct from Mr. Philips' compensation \$718 he received in a WestJet travel bank credit for a baggage delay on a previous flight (the outbound portion of the trip to Toronto). It does not explain why, except to say that this travel bank credit served as "partial payment for the loss incurred" by Mr. Philips when WestJet later lost his baggage. I infer it argues it should not have to

compensate Mr. Philips for lost clothing or shoes that were replacement items for which WestJet reimbursed Mr. Philips after the baggage delay. WestJet provided no authority for this proposition. There is nothing in the *Montreal Convention* or WestJet's tariff that says items purchased as a result of delayed baggage are not compensable when lost in the future. However, it is not necessary to reach a conclusion on that issue because I find that even excluding everything purchased after the previous baggage delays still leaves a value in excess of 1,288 SDR. So, Mr. Philips is entitled to 1,288 SDR.

21. Rule 120 of WestJet's tariff says the rate for converting SDR into Canadian dollars is the rate on the date a court ascertains the amount payable. I will use the most recent rate posted on IMF's online currency chart, which was for December 3, 2024. Therefore, 1,288 SDR is \$2,379.64.
22. Article 22(6) says interest and litigation expenses are in addition to the prescribed limits. The *Court Order Interest Act* applies to the CRT. Mr. Philips is entitled to pre-judgment interest on the \$2,379.64 damages from December 10, 2022, which is 21 days after the flight and when both the *Montreal Convention* and APPR deem the baggage lost. This is \$226.70.
23. 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. Mr. Philips was partially successful, but only recovered essentially what WestJet offered to pay him on February 9, 2023 when he submitted his claim to WestJet. So, in that sense, he was unsuccessful, and I find he should pay his own CRT fees. Neither party claims dispute-related expenses.

ORDERS

24. Within 14 days of the date of this order, I order WestJet to pay Mr. Philips a total of \$2,606.34 broken down as \$2,379.64 in damages and \$226.70 in pre-judgment interest under the *Court Order Interest Act*.

25. Mr. Philips is entitled to post-judgment interest, as applicable.
26. 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 a court order.

Micah Carmody, Tribunal Member