Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Reshaur v. WestJet Airlines Ltd.*, 2024 BCCRT 1278

B E T W E E N :

PAUL DAVID RESHAUR

APPLICANT

A N D :

WESTJET AIRLINES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr, Vice Chair

INTRODUCTION

1. Paul David Reshaur was scheduled to fly on a WestJet flight from Puerto Vallarta, Mexico, to Winnipeg, Manitoba, with a stopover in Calgary. He missed his connecting flight due to a series of delays. In the Dispute Notice, he lists various claims that total $10,192.72. They are:

a. $1,000 in compensation for the delayed flight under the *Airline Passenger Protection Regulations* (APPR).

b. $192.72 for expenses from the delay, broken down as $25 for an evening meal, $15.21 for dog food, and $152.51 for a hotel.

c. $4,000 in damages related to an alleged delay in unloading his dog, Moe, in Calgary.

d. $5,000 in general and aggravated damages for the way WestJet handled his and other passengers' APPR claims.

2. WestJet argues that the Civil Resolution Tribunal (CRT) must refuse to resolve this dispute because it is outside the CRT's jurisdiction (meaning legal authority) and over its $5,000 small claims monetary limit. In the alternative, WestJet denies liability for any of the claimed compensation.

3. Mr. Reshaur is self-represented. An employee represents WestJet.

PROCEDURE

4. These are the CRT's formal written reasons. Section 39 of the *Civil Resolution Tribunal* (CRTA) says the CRT has discretion to decide the hearing's format, including by writing, telephone, videoconferencing, email, or a combination of these. Most CRT disputes are resolved solely on written materials. Neither party requested an oral hearing and nothing in this dispute ultimately turned on credibility. I find that I am properly able to assess and weigh the documentary evidence and submissions before me.

5. CRTA section 42 says the CRT may accept as evidence any 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. While I have

read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

6. CRTA section 2 says 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.

7. Where permitted by CRTA section 118, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

JURISDICTION

8. The CRT has jurisdiction over small claims brought under CRTA section 118. Relevant to this dispute, CRTA 118(1)(a) gives the CRT "jurisdiction to resolve a claim for relief in the nature of … debt or damages", up to $5,000.

9. The CRT has resolved many claims between passengers and airlines under the APPR. The APPR came into force in 2019 under the *Canada Transportation Act* (CTA). Among other things, the APPR creates a standardized compensation scheme for passengers inconvenienced by delayed or cancelled flights where the delay or cancellation is within the airline's control and not required for safety purposes, or for passengers who are denied boarding. When I refer to "APPR claims" in this section about the CRT's jurisdiction, I am only referring to these parts of the APPR because they are the only ones that provide for standardized compensation.

10. Usually, in making decisions in APPR claims, the CRT has not specifically articulated its jurisdictional basis for doing so. No airline ever challenged the CRT's jurisdiction to decide APPR claims on the basis that they are not captured by CRTA section 118. In one early APPR decision, a tribunal member found that an APPR claim is "on its face" a "claim for damages for breach of contract".[1] Based on that, I

[1] *Hulewicz v. Flair Airlines Ltd.*, 2021 BCCRT 287 at para. 13.

find it implicit in the CRT's published decisions that its members treated APPR claims as damages claims, often referring to the compensation in orders as damages.

11. On October 4, 2024, the Supreme Court of Canada (SCC) released the decision *International Air Transport Association v. Canada (Transportation Agency)* (IATA).[2] That case was, in part, about whether the APPR conflicted with the *Montreal Convention*, an international treaty that governs certain aspects of international carriage by air.[3] Among other things, the SCC had to determine whether a compensation claim under the APPR is an "action for damages". This is because Article 29 of the *Montreal Convention* precludes passengers from bringing an "action for damages" unless the right to bring that action is set out elsewhere in the *Montreal Convention*. The *Montreal Convention* does not provide for compensation due to inconvenience from flight delays, cancellations, or denied boarding. So, if the APPR's inconvenience compensation is damages, then those parts of the APPR would conflict with the *Montreal Convention*.

12. The SCC found that the APPR's compensation for inconvenience is not damages. The SCC described the APPR as a "consumer protection scheme" that provides for standardized rather than individualized compensation. The SCC reasoned that a fundamental quality of damages is that they compensate for a person's specific loss. Passengers do not need to prove any loss or harm to be entitled to the standard compensation in the APPR.

13. IATA was released after the CRT's Chair assigned this dispute to me. Given the SCC's reasoning and the CRT's past treatment of APPR claims as damages claims, I asked the parties for submissions about the CRT's jurisdiction over APPR claims. Both parties provided comprehensive and helpful submissions, for which I am grateful. Mr. Reshaur argues that the CRT has jurisdiction over APPR claims.

[2] 2024 SCC 30.
[3] Formally, the *Convention for the Unification of Certain Rules for International Carriage by Air*. The *Montreal Convention* is a part of Canadian law by virtue of the *Carriage by Air Act*.

WestJet argues the CRT does not. Under CRTA section 10, the CRT must refuse to resolve a claim that is outside its jurisdiction.

14. I will note here that in reply submissions, Mr. Reshaur referred to a default decision a different CRT vice chair made on November 8, 2024, involving an APPR claim against an airline other than WestJet. The vice chair decided to grant the default judgment. The CRT does not publish default decisions. So, contrary to Mr. Reshaur's submissions, it is not "surprising" that WestJet did not "acknowledge or address" that decision.

15. It is not my practice to review each CRT default decision, of which there are many every day. So, I was unaware of the vice chair's reasoning until Mr. Reshaur raised it in reply. I have now read the decision. I considered providing a copy to WestJet and asking for supplementary submissions, but ultimately decided it was unnecessary. While it is true, as Mr. Reshaur says, that the vice chair concluded that APPR claims are "reasonably interpreted as debt claims", her reasoning was very brief. So brief, in fact, that I find it raises nothing substantive that WestJet reasonably needs to respond to. Notably, given the nature of default proceedings, the vice chair did not have the benefit of submissions from the respondent airline. In short, I have placed no persuasive weight on her conclusion.

16. The parties essentially agree that APPR claims are not damages given the SCC's clear conclusion. I agree. I note that the APPR also includes compensation for out-of-pocket expenses from flight delays, cancellations, and denied boarding. Those claims are based on individual, provable losses, so I find that they are damages. With that, I turn to the parties' submissions about debt claims.

Are APPR claims debt claims?

17. The parties both refer to the same definition of debt:

> A specific sum of money due and payable under or by virtue of a contract. Its amount must either be already ascertained or capable of being

> ascertained as a mere matter of arithmetic. If the ascertainment of a sum of money, even though it be specified or named as a definite figure, requires investigation, beyond mere calculation, then the sum is not a "debt or liquidated demand", but constitutes "damages".[4]

18. In *Argo Ventures Inc. v. Choi*, the BC Supreme Court referred to several definitions of a debt, which are largely to the same effect. According to those definitions, a debt is "a sum due by certain and express agreement; a specified sum of money owing to some person from another, including not only the obligation of a debtor to pay but the right of a creditor to receive and enforce payment". A debt is "a sum payable in respect of a liquidated money demand, recoverable by action". A debt is "an obligation to pay a sum certain or a sum readily reducible to a certainty".[5]

19. WestJet effectively admits that standardized compensation payable under the APPR meets most aspects of the above definitions of a debt. I agree. Once liability is established, APPR claims can be easily calculated knowing only the size of the airline (large or small) and the length of the delay. WestJet's international tariff makes it even simpler, as it only includes the compensation amounts for large airlines.

20. WestJet argues that even if APPR compensation could conceptually create a debt, passengers still have no civil right of action at common law. WestJet argues that even though the APPR is included in its contracts with passengers, as required by CTA section 86.11(4), a passenger's right to compensation arises solely as a statutory obligation, not a contractual one. So, WestJet disputes that compensation under the APPR arises "under or by virtue of a contract". WestJet says that only the Canadian Transportation Agency (Agency) can enforce compliance with the APPR by ordering airlines to compensate passengers. As an aside, Mr. Reshaur argues that WestJet's references to the Agency as the decision-making authority for APPR claims is outdated. He points to 2023 amendments to the CTA that empower the

[4] *Drayton v. W.C.W. Western Canada Water Enterprises Inc.*, 1989 CanLII 5319 (BC SC), at paragraph 7.
[5] 2019 BCSC 86, at paragraphs 19 to 21.

Agency's Chair to designate Agency members and staff as "complaint resolution officers", whose decisions are not technically the Agency's decisions. While accurate, this distinction is not material to my analysis.

21. WestJet draws an analogy to claims under the *Employment Standards Act* (ESA). It relies on *Macaraeg v. E Care Contact Centers Ltd.*[6] In that decision, the BC Court of Appeal considered whether there is a common law right to sue to enforce statutory rights. That case was about unpaid overtime entitlements under the ESA. The court assessed the administrative scheme within the ESA to determine whether it provided an adequate means to enforce statutory rights. The court found that the Employment Standards Branch was a "complete and effective administrative structure" and so employees had no right to bring a civil action against employers for ESA-conferred rights.

22. WestJet correctly points out that CTA sections 85.02 to 85.16 set out a comprehensive administrative regime for resolving disputes between passengers and airlines. However, I agree with Mr. Reshaur that WestJet does not address why the incorporation of the APPR into its contract does not give rise to a contractual claim separate from its claim under the APPR itself. WestJet mentions the fact that the APPR is incorporated into its contract, but does not explain why this essentially has no legal effect.

23. I agree with Mr. Reshaur that in *Macaraeg*, the court addressed a claim for an ESA-conferred right where there was no parallel contractual right for the same entitlement. Other employment cases make clear that parties may incorporate ESA entitlements into their contract, and if they do, those rights can be enforced by civil action. In *U.B.C. v. The Association of Administrative Professional Staff on Behalf of Bill Wong*, the BC Court of Appeal confirmed that when parties incorporate ESA provisions, it is as if they had reproduced those provisions in their entirety in their contract. They become contractual terms like any other.[7] So, for example,

[6] 2008 BCCA 182.

[7] 2006 BCCA 491, at paras. 25 to 34.

employees whose contracts incorporate the notice periods from the ESA are entitled to sue for breach of contract if their employment is terminated without the required notice.[8] They would also be entitled to pursue those claims through the Employment Standards Branch, because there remains a parallel statutory basis for the same right.

24. Does the same reasoning apply to APPR claims? I considered the possible effect of ESA section 118, which essentially says that the ESA does not affect a person's right to sue. There is no comparable provision in the CTA or the APPR.

25. There is also no provision explicitly removing a person's right to sue in contract. It is a well-established principle of statutory interpretation that if the legislature intends to adversely affect a right, it must do so expressly. Put another way, there is a presumption that the legislature does not intend to abolish, limit, or otherwise interfere with existing rights. This includes common law rights and statutory rights, and includes the right to bring an action.[9] Together, I find that these principles mean that if the legislature wanted to oust a passenger's right to pursue a civil action for an APPR claim based on their contract with an airline, it needed to have done so explicitly. Since it did not do so, I find that passengers retain their right to bring actions for breach of contract, subject to the limitations in the *Montreal Convention*.

26. WestJet also argues that the CRT has implicitly acknowledged its limitations about APPR claims in disputes involving APPR section 13. That section is about an airline's obligation to provide information to passengers about delays, cancellations, and denials of boarding. The CRT has held that it has no jurisdiction to order compensation for breaching that provision. Specifically, in *McNabb v. Air Canada*, a tribunal member said that the Agency enforces compliance with APPR section 13, and so the CRT could not award damages for breaching it.[10] Other CRT decisions are not binding on me. While I agree with the tribunal member's conclusion that the CRT had no jurisdiction over the section 13 claim in that dispute, I do not agree with

[8] See, for example, *Arasteh v. Best Buy Canada Ltd.*, 2010 BCSC 58.
[9] 2014 BCSC 669, at paragraphs 41 to 43
[10] 2021 BCCRT 100.

her reasoning. The applicants in that decision did not claim damages for breaching section 13. Therefore, the only available remedy would be either declaratory relief (acknowledging the breach) or specific performance (requiring the airline to provide the required information). The CRT has no jurisdiction to make either type of order in those circumstances.[11] This is why the Agency could have enforced APPR section 13 and the CRT could not. In my view, the tribunal member should have refused to resolve the claim on that basis. If a passenger claimed damages because an airline breached APPR section 13, I find that it would be within the CRT's jurisdiction although it would likely be barred by Article 29 of the *Montreal Convention*.

27. In summary, I find that APPR claims are debt claims and the incorporation of the APPR into WestJet's contract of carriage gives rise to a civil right to bring an action. I therefore find that the CRT has jurisdiction to decide APPR claims as debt claims.

Did Mr. Reshaur claim too much for a CRT dispute?

28. WestJet argues that Mr. Reshaur listed claims that added up to more than $5,000 in the Dispute Notice but did not explicitly abandon the amount over $5,000. WestJet says this brings Mr. Reshaur's dispute outside the CRT's jurisdiction. However, the total "amount claimed" in the Dispute Notice is $5,000, as the CRT's online application process does not allow parties to enter a higher number. So, contrary to WestJet's submissions, I find that Mr. Reshaur did abandon his claim over $5,000. He confirmed this in his reply submissions.

29. I also find that the CRTA does not prevent applicants from alleging and leading evidence about losses above $5,000 as long as they limit their claim to $5,000. The CRT's monetary limit prevents it from ordering compensation over $5,000 in the event the applicant proves they are entitled to more than $5,000. So, I find that Mr.

[11] See CRTA section 118(1)(c) for the CRT's limited jurisdiction over specific performance, and *The Owners, Strata Plan VR320 v. Day*, 2023 BCSC 364 for a discussion of the CRT's limited jurisdiction over declaratory relief.

Reshaur's inclusion of amounts that add up to more than $5,000 does not displace the CRT's jurisdiction over his claim.[12]

Is the CRT the most appropriate forum?

30. WestJet also argues that I should refuse to resolve this dispute under CRTA section 11(1)(a)(i), which says that the CRT may refuse to resolve a dispute within its jurisdiction if it would be more appropriate for another legally binding forum. WestJet argues that the Agency is a more appropriate legal forum for all APPR disputes.

31. First, I agree with Mr. Reshaur that when multiple forums have jurisdiction over a claim, the initiating party's choice should be given some respect. This is especially true when a CRT respondent only raises this issue at the end of a proceeding, since a decision to refuse to resolve this dispute would force Mr. Reshaur to start a new legal process from the beginning. Notably, WestJet first raised this issue in response to my question about jurisdiction, not in its Dispute Response or its initial submissions.

32. WestJet's arguments are not about this dispute, but about APPR claims generally. I have no authority to make a general order about the CRT's approach to APPR claims. I can only consider whether to resolve this dispute.

33. WestJet essentially argues that some disputes might involve matters requiring specific expertise about the aviation industry that the CRT does not possess. I cannot say that will never be true, but it is not true in this dispute. WestJet does not point to any matters in this dispute that would require any technical or specialized expertise about the aviation industry to resolve, and I find there are none.

34. WestJet also argues that if the CRT routinely resolves APPR claims, there is a risk of inconsistent findings about the same flight between the CRT and the Agency's complaint resolution officers. I acknowledge that risk exists, although I find it would

[12] See *1244428 B.C. Ltd. dba Vanpro Disposal 2020 v. Enpin Wonton Restaurant Ltd.*, 2022 BCCRT 92, at paragraphs 9 and 10.

exist regardless of whether the CRT resolves APPR claims. WestJet points to CTA section 85.08, which requires complaint resolution officers to consider past decisions about a particular flight in a new claim about that same flight. However, contrary to WestJet's submission, past decisions are not binding. Complaint resolution officers can still make different decisions about the same flight. This is no different than a CRT dispute, where parties can point to past cases about the same flight for the tribunal member to consider, but the tribunal member would not be bound by those cases. Also, I find that it is within an airline's power to determine whether the same flight has given rise to APPR claims at both the CRT and the Agency. If that happens, the airline could request that the CRT refuse to resolve that claim. WestJet does not suggest that a passenger has filed a claim about Mr. Reshaur's flight.

35. Finally, WestJet argues that the Agency's process is faster than the CRT's, pointing to CTA section 85.05 and 85.06, which require mediation within 30 days of filing a complaint and a decision within 60 days of mediation failing. WestJet also points to delays in the CRT's process. Mr. Reshaur points out that there is no evidence that the Agency is meeting its statutory deadlines, and asks me to take notice of substantial delays and backlogs in that process. I find it unnecessary to do so. Even if the Agency's process is currently faster, I find that the prejudice of delays largely falls to the passenger seeking compensation, not the airline. In any event, it is obvious that forcing Mr. Reshaur to start over now would delay the resolution of his APPR claims.

36. Any airline is free to argue that the CRT should refuse to resolve a passenger's dispute because it believes a complaint resolution officer is better placed to resolve it. Ideally this should be done at an early stage. However, I find no reason not to resolve this dispute on its merits, and I do so below.

ISSUES

37. The issues in this dispute are:

a. Was the primary reason for the delay within WestJet's control and not required for safety purposes, and if so, how much does WestJet owe Mr. Reshaur?

b. Is Mr. Reshaur entitled to damages because WestJet delayed unloading Moe?

c. Is Mr. Reshaur entitled to any other damages?

EVIDENCE AND ANALYSIS

The Delay

38. Mr. Reshaur's flight was scheduled to leave Puerto Vallarta at 3:25pm on December 17, 2022, and to land in Calgary at 7:27pm. His connecting flight from Calgary to Winnipeg was due to leave at 9:05pm the same day, landing just after midnight Manitoba time.

39. The first flight arrived at the gate in Calgary at 8:59pm, 92 minutes late. WestJet says that this was after the boarding cutoff time for the next flight because the doors close 10 minutes before the flight departs. Even leaving aside what the boarding cutoff time was, I find it obvious that no one could make a 6-minute connection. This is especially so for an international flight, as Mr. Reshaur points out, he had to collect his bags and clear customs before connecting.

40. Mr. Reshaur insists he could have made this flight if WestJet had unloaded Moe promptly because the connecting flight left "much later" than scheduled, without saying how long. I do not agree with Mr. Reshaur that I should draw an adverse inference against WestJet for failing to provide evidence of the connecting flight's actual departure time. WestJet did not allege that the flight left on time, only that the plane's doors were closed. This could indicate that the plane was boarded on time, or close to on time, but experienced tarmac delays. In any event, given my conclusion below about Mr. Reshaur's APPR claim, nothing turns on this issue.

41. WestJet booked Mr. Reshaur on a flight to Winnipeg the next afternoon.

42. Mr. Reshaur claims $1,000 in compensation under APPR section 19(1)(a)(iii), which requires a large airline (like WestJet) to pay a passenger $1,000 if their arrival at their final destination is delayed by 9 hours or more, and the delay was within the airline's control and not required for safety purposes. Section 14 requires airlines to provide reasonable food and drink, and accommodations when the delay is overnight, free of charge.

43. WestJet alleges three delays that combined for the 92-minute overall delay in the Puerto Vallarta flight to Calgary: a 25-minute delay due to baggage loading delays that delayed the inbound flight to Puerto Vallarta, a 33-minute delay for unscheduled maintenance to fix a flight crew harness in Puerto Vallarta, and a 34-minute delay caused by congestion at Calgary airport upon arrival. As explained below, I do not accept that these times are accurate.

44. WestJet admits that the baggage delay was within its control. It says the harness was a safety issue and the airport congestion was outside its control. When there are multiple reasons for the delay, as there are here, the Agency has outlined a 3-step test, which I adopt:

> a. Identify the reasons for the flight disruption, and attribute corresponding delays to those reasons,
>
> b. Identify the primary reason for, or most significant contributing factor of, the flight disruption, and
>
> c. Categorize the flight disruption based on the category of the primary reason, or most significant contributing factor.[13]

45. In crafting this test, the Agency identified 2 non-exhaustive factors to consider when assessing what the primary reason or most significant contributing factor to a delay

[13] Decision No. 122-C-A-2021, at paragraph 75.

is: which one was longest, and whether multiple delays were causally related. Here, there is no suggestion that any of the delays were causally related. In other words, there is no evidence that there were knock-on effects from one delay to the next. I find that the 3 main delays were distinct delays. I find that there are no other relevant factors to consider. I find that the longest delay is the primary reason for Mr. Reshaur's overall delay. WestJet implicitly applied the same logic, as it says that the primary reason for the delay was the airport congestion, which it says was the longest. This is also the reason WestJet gave Mr. Reshaur when it initially denied his APPR claim.

46. How long was each delay? WestJet provided flight records that include the scheduled and actual times each flight landed, arrived at the gate, departed the gate, and took off. WestJet also provided a summary document showing "APPR Delays". These two sets of records do not align. WestJet's submissions reflect the delays set out in the APPR Delays document, not the more detailed flight records. WestJet did not explain the discrepancy or otherwise explain how it calculated the length of each delay. Where they are different, I rely on the flight records as I find they are more detailed and provide a full picture of the series of events that led to the flight being 92 minutes late.

47. As noted, the inbound flight was from Calgary to Puerto Vallarta. It was scheduled to arrive in Puerto Vallarta at 2:26pm. It arrived 44 minutes late at 3:10pm. The detailed records show a 31-minute delay due to baggage loading and unloading for this flight in Calgary, not a 25-minute delay. WestJet says that there was an additional 12 minutes for de-icing in Calgary and 2 minutes in the air because the flight was slower than scheduled. This adds up to 45 minutes, not 44 minutes, but I find this is likely because of rounding.

48. The flight records indicate that the flight left Puerto Vallarta 68 minutes late, indicating an additional delay of 24 minutes while on the ground. WestJet says it had to repair a flight attendant's harness, which is a safety issue. Mr. Reshaur disputes that WestJet has proven this, calling WestJet's record about it "a coded

document that is difficult to interpret". I disagree with this characterization. WestJet provided a "Maintenance Defect Report" that lists the defect as "bolt securing fwd f/a lap belt of a 4 point harness fell out". The report lists the resolution as "fwd f/a seat belt resecured". I find that the meaning of these entries is self-evident. I find that the delay in Puerto Vallarta was required for safety purposes. However, WestJet does not explain how the delay could be 31 minutes when there was only an additional 24-minute delay. I find that the safety-related delay in Puerto Vallarta was 24 minutes.

49. The flight gained 8 minutes in the air on the way back to Calgary. The flight touched down at 8:24pm. WestJet's records say that the scheduled time from touchdown to the gate was 10 minutes, but it took 35 minutes due to airport congestion. Mr. Reshaur disputes that this delay was outside of WestJet's control, but I agree with WestJet on this point. Mr. Reshaur says that his plane had to wait for another WestJet plane to unload, and that there were insufficient flaggers to guide his plane to the gate when it was open. I find that these both indicate issues with airport staffing and congestion. I find that the delay in Calgary was outside of WestJet's control. However, the records show this was a 25-minute delay, not a 34-minute delay.

50. There were therefore 3 delays that were close to the same length of time: 24 minutes, 25 minutes, and 31 minutes. Applying the test outlined above, I find that the longest delay was the primary or most significant cause of the overall delay. The 31-minute delay was due to baggage loading and unloading for the inbound flight, which was within WestJet's control and not required for safety reasons. I find that Mr. Reshaur is entitled to $1,000 in compensation for inconvenience. I find that Mr. Reshaur's $192.72 claim for food, dog food, and a hotel is reasonable, and WestJet does not argue otherwise. I order WestJet to pay him $1,192.72.

Moe

51. Mr. Reshaur alleges WestJet forgot to unload Moe from the cargo hold for over 2 hours. WestJet denies this, pointing to its records showing that the plane that

arrived in Calgary had left the gate for its next flight just under 2 hours after it had arrived. I agree with WestJet that if there was a delay in unloading Moe, it cannot have been over 2 hours. In reply, Mr. Reshaur insists it took over 2 hours for him to be reunited with Moe in the airport. He says that it is possible that Moe had been taken off the plane but then forgotten outside on the tarmac. There is no evidence to corroborate one way or another how long it was before Moe and Mr. Reshaur were reunited in the airport, and I find it unnecessary to make a finding. Even if there was a delay as alleged, Mr. Reshaur is not entitled to compensation.

52. The first argument Mr. Reshaur makes is based on Article 18 of the *Montreal Convention*, which makes airlines liable for damage to luggage or any goods, up to a maximum. He also relies on Article 19, which makes carriers liable for damage caused by baggage delays. Mr. Reshaur argues that Moe was cold and in distress by the time he was reunited with Mr. Reshaur. He says there has been lasting emotional harm to Moe. He says that he was, in turn, "emotionally shattered" to know that Moe had suffered. There is no suggestion Moe required any veterinary care or that Mr. Reshaur incurred any expenses to treat Moe for any injury. He alleges only a non-pecuniary loss, which is for intangible harm like pain and suffering.

53. Mr. Reshaur says that the *Montreal Convention* does not specifically say that harm to a pet and consequent emotional harm to its owner are not compensable. So, he says he should be compensated for WestJet's handling of Moe.

54. First, I am not aware of any legal context in which a pet owner can be compensated for the internal suffering of their pet. Without wishing to diminish the inner lives of animals, I find that this is not the sort of "damage" the *Montreal Convention* contemplates.

55. As for Mr. Reshaur's claim for his own suffering, I find it does not fit within the type of claims Articles 18 and 19 of the *Montreal Convention* permit. Numerous cases across Canada have concluded that Article 19 does not allow for damages for

intangible losses.[14] None of those cases is binding on me and none are specifically about pets, but I adopt that conclusion. I also see no reason to treat Article 18 any differently. I find that both provisions, in context, provide for compensation to make passengers whole when they have suffered actual monetary losses due to damaged or delayed baggage. For this reason, I dismiss Mr. Reshaur's claim for damages under Articles 18 and 19 of the *Montreal Convention*.

56. Given this conclusion, it is unnecessary for me to address WestJet's arguments about the specific terms about pets in its tariff.

Other Damages

57. Mr. Reshaur also claims $5,000 for "general and aggravated damages". In submissions, he says that this claim is not about any flight delays, but instead about WestJet's treatment of him and "thousands of passengers". He alleges that WestJet's policy is to deny APPR claims "as a business decision to flaunt the APPR". Although he uses the term "general damages", he relies on the legal test for punitive damages, and the stated purpose of this claim is to punish and deter WestJet. Given that the claimed damages are not framed as compensatory, I find that this, in substance, is a claim for punitive damages. He alleges that the *Montreal Convention* does not apply to this claim.

58. I disagree. Article 29 of the *Montreal Convention* says, in relevant part, that passengers may not bring "any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise" except as set out elsewhere in the *Montreal Convention*. Later, Article 29 says that "in any such action, punitive, exemplary, or any other non-compensatory damages shall not be recoverable". In other words, passengers are not exempt from the *Montreal Convention* if they bring claims against airlines that the *Montreal Convention* does not specifically mention. Instead, passengers can only bring a claim against an

[14] *Chau v. Delta Air Lines Inc.*, 2003 CanLII 41999 (ON SC), *Lukas v. United Airlines Inc. et al.*, 2009 MBCA 111, and *MM v. Air Canada*, 2018 BCCRT 930.

airline if the *Montreal Convention* specifically authorizes it. In short, I find that Article 29 is a full answer to Mr. Reshaur's claim for punitive damages, and I dismiss it.

59. Along similar lines, I find that Article 29 prevents Mr. Reshaur from claiming general or aggravated damages related to WestJet's handling of his APPR claim. He does not articulate a legal basis for this claim, other than saying it is not about the delay itself. I find that the only legal basis for this allegation is that WestJet owes Mr. Reshaur a duty for honest performance and the good faith exercise of its discretionary power.[15] These obligations are rooted in WestJet's contractual relationship with its passengers. So, it is a claim "in contract" and therefore captured by Article 29. For this reason, I dismiss Mr. Reshaur's general and aggravated damages claims.

60. Given my conclusion, I decline to make any of the orders Mr. Reshaur seeks for WestJet to disclose internal correspondence and statistics about its overall handling of APPR claims.

INTEREST AND FEES

61. The *Court Order Interest Act* applies to the CRT. Mr. Reshaur is entitled to pre-judgment interest on his expenses from December 21, 2022, the day he applied to WestJet for compensation, to the date of this decision. This equals $115.06.

62. Under CRTA section 49 and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Mr. Reshaur was partially successful, so I find he is entitled to reimbursement of half of his $175 in CRT fees, which is $87.50. WestJet did not pay any CRT fees and neither party claimed any dispute-related expenses.

[15] *C.M. Callow Inc. v. Zollinger*, 2020 SCC 45.

ORDERS

63. Within 30 days of this decision, I order WestJet to pay Mr. Reshaur a total of $1,395.28, broken down as follows:

    a. $1,000 in debt,

    b. $192.72 in damages,

    c. $115.06 in pre-judgment interest under the COIA, and

    d. $87.50 for CRT fees.

64. Mr. Reshaur is entitled to post-judgment interest, as applicable.

65. I dismiss Mr. Reshaur's remaining claims.

66. 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 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.

Eric Regehr, Vice Chair