



Civil Resolution Tribunal

Date Issued: December 20, 2024

File: SC-2023-007506

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pansegrau v. Air Canada*, 2024 BCCRT 1297

BETWEEN:

DAVID MENZIES PANSEGRAU

APPLICANT

AND:

AIR CANADA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. David Menzies Pansegrau booked a return trip with Air Canada from Kelowna, BC to Bogota, Colombia, via Toronto, Ontario. Air Canada cancelled the return flight from Toronto to Kelowna and rebooked Mr. Pansegrau on another flight the next

day. Mr. Pansegrau claims \$1,000 in compensation under the *Air Passenger Protection Regulations* (APPR). He also seeks \$234.51 for hotel and meal expenses. Mr. Pansegrau represents himself.

2. Air Canada says I must refuse to resolve this dispute because it is outside the jurisdiction of the Civil Resolution Tribunal (CRT). Alternatively, it says Mr. Pansegrau is not entitled to compensation because the flight was delayed by a situation outside of its control – namely, wildfires near Kelowna. An employee represents Air Canada.

JURISDICTION AND PROCEDURE

3. These are the CRT's formal written reasons. 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. CRTA section 39 says the CRT has discretion to decide the hearing's format, including by telephone or videoconference. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. The key facts are largely undisputed, and credibility is not central to this dispute. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary.
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. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
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.

The CRT's jurisdiction over APPR-based claims

7. The CRT has jurisdiction under CRTA section 118 to resolve claims “for relief in the nature of ... debt or damages”, up to \$5,000. Under CRTA section 10, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction.
8. The CRT has resolved many claims for compensation under the APPR, which is a regulation under the *Canada Transportation Act* (CTA). Among other things, the APPR establishes a standardized compensation scheme for passengers inconvenienced by delay, cancellation, denial of boarding, and lost or damaged baggage. The obligations that the APPR imposes on carriers form part of the terms and conditions set out in the carrier's tariff, which is the contract of carriage between a carrier like Air Canada and a passenger like Mr. Pansegrau.
9. On October 4, 2024, the Supreme Court of Canada decided *International Air Transport Association v. Canada (Transportation Agency)*, 2024 SCC 30 (IATA). In that decision, the question was whether the APPR's provisions that mandate minimum compensation to passengers on international flights conflicted with the *Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention)*. The *Montreal Convention* was implemented into Canadian law by amendments to the *Carriage by Air Act*. Article 29 of the *Montreal Convention* says any “action for damages” in the carriage of passengers, baggage and cargo is subject to the conditions and limits of liability set out in the *Montreal Convention*. The court found that the APPR's compensation provisions did not provide for an “action for damages” because they create a standardized compensation scheme rather than providing for individualized compensation. That is, passengers do not need to prove any specific loss or harm to be entitled to compensation under the APPR.

10. The court's reasoning indirectly raises questions about the CRT's jurisdiction over APPR claims. The CRT has, until recently, resolved these APPR compensation claims without articulating its jurisdictional basis in detail. Most CRT decisions to date have identified compensation awarded under the APPR as damages rather than debt. However, a contractual breach can lead to a claim in damages or debt, depending on the contract's wording (see *Borkovich v. Canadian Membership Warehouse Ltd.*, 1991 CanLII 1813 (BC SC)).
11. IATA was released after the parties made submissions in this dispute, but before the dispute was assigned to me. So, I asked the parties for submissions about the CRT's jurisdiction over Mr. Pansegrau's claims. Both parties provided comprehensive and helpful submissions that I address below.

APPR-based claims

12. Mr. Pansegrau argues that IATA does not call into question the CRT's jurisdiction to decide APPR-based claims. He says claims for APPR-based standardized compensation are essentially debt claims. He says other claims relying on APPR provisions, like his claim for expenses based in part on APPR section 14, are damages claims. Air Canada argues that the CRT has no jurisdiction to decide Mr. Pansegrau's claims as they are neither debt nor damages.
13. Although the parties refer to different cases discussing the meaning of the term "debt", I find there is no material distinction among them. A debt is an obligation to pay a specific sum of money under a contract. It must be already ascertained or capable of being ascertained by arithmetic rather than investigation (see *Busnex Business Exchange Ltd. v. Canadian Medical Legacy Corp.*, 1999 BCCA 78 at paragraph 8). In contrast, "damages" claims require evidence of harm or loss. Also, principles like mitigation (the need to take steps to minimize a loss) generally apply to damages claims but not debt claims (see *Borkovich*).
14. Air Canada argues that a debt must be absolute and unconditional. It says that under the APPR there are prerequisites that the passenger must satisfy before the

obligation to compensate arises, such as proving the delay and submitting a compensation request on time. I find this argument conflates liability with ascertainment of the debt amount. Once liability is established under the APPR, the amount of compensation payable is calculated based only on the size of the airline and the length of the delay. In other words, it is readily ascertained. So, I find that a claim for standardized compensation under the APPR is a debt claim based on breach of contract.

15. Air Canada argues that APPR-based claims are intended for the enforcement mechanisms of the Canadian Transportation Agency (Agency). Relatedly, Air Canada says that the APPR is silent on the creation of a private right of action. It says unlike other statutes such as the *Competition Act* or the *Canadian Environmental Protection Act* (CEPA), the APPR does not provide individuals with the ability to pursue claims for compensation or enforcement in court. There are sections in the *Competition Act* that explicitly preserve civil rights of action. Section 40 of the CEPA says any person who has suffered a loss as a result of conduct that contravenes the CEPA may bring a court action to recover damages. There is no comparable provision preserving or providing rights in the CTA or the APPR. However, there is also no provision in the CTA or the APPR that *removes* a person's right to sue for breach of contract. In order to adversely affect a citizen's rights, courts require the legislature to do so expressly (see *Morguard Properties Ltd. v. City of Winnipeg*, 1983 CanLII 33 (SCC)). That is not the case here.
16. The APPR provides for the incorporation of minimum standards into a private contract. Section 2 of the APPR says the carrier operating a flight is liable to passengers with respect to the APPR's obligations. The *Air Transportation Regulations* require carriers to incorporate the APPR into their international tariffs. In this way, the APPR obligations become part of the parties' contract. I agree with Mr. Pansegrau that the courts have distinguished between statutory obligations that are incorporated in a contract and those that are not (see, for example, *Cheetham v. Bank of Montreal*, 2023 BCSC 1319 and *U.B.C. v. The Association of Administrative and Professional Staff on Behalf of Bill Wong*, 2006 BCCA 491).

Those cases indicate that a person can sue where statutory minimums are expressly incorporated into the contract. That is what Mr. Pansegrau seeks to do, which is to hold Air Canada to the compensatory APPR obligations explicitly provided for in the tariff's rule 80. Efficiently resolving low dollar value breach of contract claims is consistent with the CRT's mandate.

17. In summary, I find that Mr. Pansegrau's claim for \$1,000 under the APPR is a debt claim based on a contractual breach. I find his claim for out-of-pocket expenses arising from the flight cancellation is a damages claim based on a contractual breach. I find that both claims fall within the CRT's small claims jurisdiction over debt or damages under CRTA section 118.

ISSUES

18. The issues in this dispute are:
 - a. Is Mr. Pansegrau entitled to \$1,000 compensation for inconvenience, or was his flight cancelled due to a situation outside of Air Canada's control?
 - b. Is Mr. Pansegrau entitled to reimbursement for hotel and meal expenses?

EVIDENCE AND ANALYSIS

19. As noted, Mr. Pansegrau purchased return tickets to travel with Air Canada from Kelowna, BC to Bogota, Colombia, via Toronto, ON. There were no issues with the outbound travel or the return to Toronto. However, Air Canada cancelled the last flight on Mr. Pansegrau's itinerary, AC1913 from Toronto to Kelowna, scheduled to depart at 7:20 pm EDT on August 16, 2023.
20. Air Canada emailed Mr. Pansegrau at 6:19 pm EDT stating the reason for the cancellation was "bad weather". Five minutes later, Air Canada emailed Mr. Pansegrau again, stating that he was booked onto flight AC2013 departing August 17 at 10 am.

21. Mr. Pansegrau arrived in Kelowna at 11:40 am on August 17, rather than 8:57 pm on August 16, 2023. So, he was delayed by around 15 hours.

Compensation for inconvenience

22. Section 10(1)(c) of the APPR addresses circumstances where there is a cancellation, delay or denial of boarding because of a situation outside the carrier's control. Those situations include "meteorological conditions or natural disasters that make the safe operation of the aircraft impossible."

23. Air Canada's position in this dispute is that it had to cancel Mr. Pansegrau's flight because of a combination of high winds and limited visibility due to wildfires in or near Kelowna, BC. Mr. Pansegrau argues that Air Canada made a commercial decision to cancel his flight in order to minimize compensation payable as a result of a delay affecting another flight.

24. Because Air Canada seeks relief from paying delayed flight compensation by invoking APPR section 10(1)(c), Air Canada must provide evidence that safely landing Mr. Pansegrau's flight in Kelowna was impossible (see *Geddes v. Air Canada*, 2021 NSSM 27 at paragraph 43 and *Welsh v. Flair Airlines Ltd.*, 2023 BCCRT 107 at paragraph 18).

25. Considering Air Canada's evidence as a whole, I agree with Mr. Pansegrau that it crucially fails to establish when Air Canada decided to cancel flight AC1913, and what information it relied on in making its decision.

26. Air Canada says it uses terminal aerodrome forecasts or TAFs to make real-time operational decisions. TAFs are specific to airports and include projected information such as wind speed and direction, visibility, and cloud ceiling.

27. The Kelowna airport has two runways running in opposite directions. Air Canada says that AC1913 could not land on neither of the Kelowna airport's runways.

28. Air Canada relies on a TAF issued at 00:40 UTC, August 17, and covering the period 1:00 to 13:00 UTC, August 17. This TAF was issued at 8:40 pm EDT, August

16, in Toronto, which is after flight AC1913 was scheduled to depart. As Mr. Pansegrau points out, Air Canada could not have had this TAF when it made its decision to cancel Mr. Pansegrau's flight, because it made that decision no later than 6:19 pm EDT, August 16, when told Mr. Pansegrau that it had cancelled his flight. So, I find Air Canada did not rely on the TAF issued at 00:40 UTC, August 17, to cancel Mr. Pansegrau's flight.

29. Air Canada provided one other TAF, issued at 12:40 UTC, August 17, or 12 hours later. It did not provide the TAF issued 12 hours earlier, and did not explain why it did not provide this obviously more relevant report. If a party fails to produce evidence to support their position without explanation, an adverse inference may be drawn. This means the CRT can assume that the evidence does not support the party's position. I find it appropriate to draw an adverse inference here. This means I find the earlier TAF did not forecast visibility or wind issues that made it unsafe to land in Kelowna.
30. Air Canada relies on documents other than the TAFs. It relies in part on a Systems Operations Control report and a Netline report, both dated August 16, 2023, that say the flight was cancelled due to unfavourable runway conditions caused by local wildfires. Air Canada does not explain these reports. They appear to be internal documents, so I find they are not objective evidence that Air Canada could not safely operate the flight. I therefore give them little weight.
31. Air Canada also relies in part on meteorological aerodrome reports (METARs) and notices to all air missions (NOTAMs). However, it does not explain these reports and they consist almost entirely of numbers, acronyms and codes that Air Canada does not explain. To be of assistance to the CRT, these reports must be decoded and explained in plain language. In any event, Air Canada does not explain how these reports influenced its decision.
32. Air Canada's argument also includes some factual statements without evidentiary support. It said the maximum tailwind allowed for the plane scheduled to fly Mr. Pansegrau's flight was a "strict 10 knots" and that a visual approach required a

minimum visibility of 9 statute miles. There was no objective evidence or expert evidence offered in support of these assertions, and I find them unproven.

33. Overall, Air Canada's evidence lacks an explanation of its decision to cancel Mr. Pansegrau's flight and the factors it was based on. I have done my best to understand Air Canada's decision on the evidence before me, but I cannot conclude that safe operation of Mr. Pansegrau's flight was impossible. Rather, I find the flight cancellation was for reasons within Air Canada's control under APPR section 12.
34. This means Mr. Pansegrau is entitled to compensation for inconvenience, as set out in the tariff's rule 80 and APPR section 19. There is no dispute that Air Canada is a "large carrier" for the purposes of APPR section 19(1), and that it delayed Mr. Pansegrau's arrival by more than nine hours. So, I find that Mr. Pansegrau is entitled to the claimed \$1,000

Accommodation and meal expenses

35. APPR section 14 sets out treatment standards that a carrier must provide when a passenger is delayed by two hours or more in circumstances within the carrier's control. This includes "food and drink in reasonable quantities" and, if the passenger will be required to wait overnight, "hotel or other comparable accommodation" as well as transportation to and from the accommodation. There is no dispute that Air Canada did not provide Mr. Pansegrau with food or accommodation in Toronto when it cancelled his flight.
36. Mr. Pansegrau relies on the *Montreal Convention*. Air Canada's international tariff is subject to the *Montreal Convention*. Article 19 of the *Montreal Convention* says that the carrier is liable for damage caused by, among other things, passenger delay, unless it proves that it took all reasonable measures to avoid that damage.
37. Air Canada did not provide any submissions or evidence about what measures it took to avoid Mr. Pansegrau having to remain in Toronto overnight. As I have found that the flight cancellation and resulting delay was within Air Canada's control and not required for safety purposes, it follows that I find Air Canada did not take all

reasonable measures to avoid the 15-hour delay and Mr. Pansegrau's overnight stay.

38. Air Canada's liability for the delay is limited under Article 22, but Mr. Pansegrau's claim is well below the limit. So, I find Mr. Pansegrau is entitled to reimbursement of his claimed \$222.17 for his 1-night hotel stay and \$12.34 for food and coffee, both of which I find reasonable and supported by receipts. The total is \$234.51.

CRT fees, expenses and interest

39. In total, Mr. Pansegrau is entitled to \$1,234.51. The *Court Order Interest Act* applies to the CRT. Mr. Pansegrau is entitled to pre-judgment interest on this amount from August 18, 2023, to the date of this decision. This equals \$83.74.
40. 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. Pansegrau was successful, so I find he is entitled to reimbursement of \$125 in paid CRT fees. He also claimed \$34.22 for a one-month subscription to FlightStats, which he says he used to provide timelines of aircraft and gate changes, delays, as well as aircraft type and registration numbers. I find that expense reasonable in the context of this dispute, and supported by a receipt, so I allow it. Air Canada did not claim dispute-related expenses.

ORDERS

41. Within 14 days of the date of this decision, I order Air Canada to pay Mr. Pansegrau a total of \$1,477.47, broken down as follows:
- c. \$1,000 in debt,
 - d. \$234.51 in damages,
 - e. \$83.74 in pre-judgment interest under the *Court Order Interest Act*, and
 - f. \$159.22, for \$125 in CRT fees and \$34.22 for dispute-related expenses.

42. Mr. Pansegrau is entitled to post-judgment interest, as applicable.

43. 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