



Civil Resolution Tribunal

Date Issued: May 23, 2025

File: SC-2023-012810

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bogar v. Flair Airlines Ltd.*, 2025 BCCRT 686

BETWEEN:

JOHN BOGAR and ELIZABETH JANE HAWKINS

APPLICANTS

AND:

FLAIR AIRLINES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about compensation for a delayed flight. The applicants, John Bogar and Elizabeth Jane Hawkins, say the respondent airline, Flair Airlines Ltd., delayed and then rescheduled their flight from Winnipeg to Vancouver. They claim \$2,159.46 for delay compensation under the *Air Passenger Protection Regulations* (APPR) and the cost of new flights.

2. Flair says the delay was required for safety purposes, due to unanticipated maintenance delays on a previous flight, so no APPR compensation is payable. It also says it is not required to pay for the rebooked flights.
3. Mr. Bogar represents the applicants. Flair is represented by its Manager of Regulatory and Customer Affairs.

JURISDICTION AND PROCEDURE

4. 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. In resolving disputes, the CRT must apply principles of law and fairness.
5. The CRT conducts most hearings by written submissions, but has discretion to decide the hearing's format, including by telephone or videoconference. No party requested an oral hearing, and I find I am able to make a decision on the written record before me. So, I decided to hear this dispute through written submissions.
6. Section 42 of the CRTA says that the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.
7. 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.

Named Parties

8. In the Dispute Notice, only Mr. Bogar was named as an applicant. However, the Dispute Notice and submissions clearly intended to include Ms. Hawkins as an applicant in the dispute. Flair's submissions address both Mr. Bogar's and Ms.

Hawkins' claims. So, in the interest of justice and fairness, and finding there is no procedural unfairness in doing so, I used my discretion under CRTA section 61 to amend the style of cause to add Ms. Hawkins as an applicant. I consider both applicants' claims below.

ISSUES

9. The issues in this dispute are:

- a. Are Mr. Bogar and Ms. Hawkins entitled to flight delay compensation under the APPR?
- b. Must Flair pay Mr. Bogar and Ms. Hawkins compensation for their rebooked flights?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicants must prove their claims on a balance of probabilities (meaning "more likely than not"). While I have read all of the parties' submitted evidence and arguments, I have only addressed those necessary to explain my decision. Flair did not provide any documentary evidence, despite the opportunity to do so.
11. Mr. Bogar booked himself and Ms. Hawkins on flight F8857 from Winnipeg to Vancouver, departing May 19, 2023 at 8:50pm. Notably, no party provided evidence about when that flight was scheduled to land in Vancouver. Given the time difference between the two cities and other evidence showing the flight from Vancouver to Winnipeg was approximately 3 hours and 10 minutes, I find the return flight was roughly the same. So, I find the applicants were scheduled to land in Vancouver at approximately 10pm on May 19, 2023.
12. At 10:54am on May 19, 2023, Flair notified Mr. Bogar that flight F8857 was delayed due to unanticipated maintenance on an earlier flight, and would now be departing May 20, 2023 at 5:55am. Flair said it would provide the applicants with food and

hotel vouchers. Mr. Bogar says they only received food vouchers, so they went to the airport to talk to someone at Flair. No one was there, but they were able to reach a representative on the phone. It does not appear that Flair ever provided Mr. Bogar hotel vouchers. However, Mr. Bogar ultimately booked new flights, so the applicants did not need to stay overnight in Winnipeg. Given this, and that the applicants do not specifically request a remedy for Flair's failure to provide hotel vouchers, I do not address this further.

13. Mr. Bogar says that on the phone call with Flair, its representative told him the applicants were actually rescheduled on a new flight departing May 23, 2023 at 3:35pm. Mr. Bogar did not agree to the new flight, and requested a refund, which was undisputedly provided.
14. Mr. Bogar then booked the applicants alternative flights on WestJet, leaving Winnipeg on May 19 at 6:10pm and landing in Vancouver the same day at 8:28pm. He paid \$579.73 each for two tickets, for a total of \$1,159.46.

APPR Compensation

15. The applicants claim \$500 each under APPR section 19(1)(b)(iii). This section requires a small carrier, like Flair, to compensate a passenger \$500 if the arrival of their flight at the original destination is delayed by 9 hours or more. This compensation is only payable if the delay is within the carrier's control and not for safety purposes.
16. However, I find section 19(1) does not apply to the applicants' situation. As Mr. Bogar undisputedly rejected Flair's alternate travel arrangements and requested a refund, section 19(2) applies. Section 19(2) says that where a delay is within a carrier's control and not for safety purposes and the passenger's ticket has been refunded, a small carrier must provide compensation of \$125 per passenger.

17. So, if the delay was within Flair's control and not for safety purposes, it must pay the applicants \$125 each. Despite alleging the delay was for safety reasons, Flair did not provide any supporting documentary evidence explaining the delay, and I do not accept its bare assertion. So, I find it has not proved the delay was for safety purposes, and it already admits the delay was within its control. I find Mr. Bogar and Ms. Hawkins are each entitled to \$125 in delay compensation under the APPR.

Alternative Flight Expenses

18. As noted, Mr. Bogar claims \$1,159.46 for his and Ms. Hawkin's rebooked flights on a different airline. Under APPR section 17(1)(b), for delays of more than 3 hours within a small carrier's control, the carrier is obligated to provide a confirmed reservation for the next available flight that is operated by that carrier, or a carrier which the original carrier has a commercial agreement and is traveling a reasonable route.
19. Section 17(2) says if the alternate travel arrangements do not accommodate the passenger's travel needs, the carrier must refund the unused portion of the ticket.
20. Here, it is undisputed that Flair provided alternate travel arrangements, as discussed above. While Mr. Bogar argues it was not reasonable for him to have to wait 4 days, Flair says that was the next available flight given the long weekend, and that it does not have commercial agreements with any other carriers. While Flair did not provide any documentary evidence in support, I find Flair's explanation reasonable. So, I find it reasonably complied with its rebooking obligations under the APPR, and it was Mr. Bogar's choice to reject those travel arrangements. He was undisputedly provided a refund for the unused travel. There is no obligation under the APPR for Flair to also reimburse Mr. Bogar for the flights he chose to book on a different carrier, after requesting a refund from Flair. So, I dismiss this aspect of the claim.

Interest and Fees

21. The *Court Order Interest Act* applies to the CRT. The applicants are each entitled to pre-judgment interest on their respective \$125 awards from June 18, 2023, when Flair should have paid under the APPR. This equals \$11.37 each.
22. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As the applicants were generally successful in their claim for compensation under the APPR, I order Flair to reimburse Mr. Bogar \$125 in paid tribunal fees. No dispute-related expenses were claimed.

ORDERS

23. Within 14 days of the date of this decision, I order Flair to pay Mr. Bogar a total of \$261.37, broken down as follows:
 - a. \$125 in debt,
 - b. \$11.37 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in tribunal fees.
24. Within 14 days of the date of this decision, I order Flair to pay Ms. Hawkins a total of \$137.37, broken down as follows:
 - a. \$125 in debt, and
 - b. \$11.37 in pre-judgment interest under the *Court Order Interest Act*.
25. The applicants are also 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 an order of the Provincial Court of British Columbia.

Andrea Ritchie, Vice Chair