



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fairbotham v. WestJet Airlines Ltd.*, 2025 BCCRT 943

B E T W E E N :

DAVID JAMES FAIRBOTHAM and KYRA FAIRBOTHAM

APPLICANTS

A N D :

WESTJET AIRLINES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Peter Mennie

INTRODUCTION

1. This dispute is about compensation for a cancelled flight. The applicants, David James Fairbotham and Kyra Fairbotham, booked a flight with the respondent airline, WestJet Airlines Ltd. (WestJet). The Fairbothams say WestJet cancelled their flights without providing alternative travel arrangements or compensation. They claim \$2,000 for compensation for the cancelled flights, \$302.79 for their additional costs

to rebook with a different airline, \$227.09 for hotels, \$28.22 for taxis, and \$88 for food. The Fairbothams are self-represented.

2. WestJet says the Fairbothams requested and received a refund for their flights, so they are not entitled to any further compensation under the *Air Passenger Protection Regulations* (APPR) or WestJet's tariff. WestJet is represented by its in-house legal counsel.
3. For the reasons below, I order WestJet to pay the Fairbothams \$570.84.

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.
5. Section 39 of the CRTA says the CRT has discretion to decide the hearing's format. The parties agree generally on the background facts, so I find that I can fairly decide this dispute on the documentary evidence and written submissions before me. 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.
6. 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.
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.

WestJet's Name

8. In its Dispute Response, WestJet Airlines Ltd. says that the Fairbothams' flight was operated by WestJet, an Alberta Partnership. WestJet did not explain what this partnership was or provide any evidence about its correct name. In any event, WestJet was able to provide a full response to the Fairbothams' claims. Given the CRT's mandate that includes the flexible and speedy resolution of disputes, I decided this dispute without asking for submissions about WestJet's proper name.

Jurisdiction

9. The Fairbothams claim compensation for their flight's cancellation under the APPR. Past CRT decisions have concluded that the standardized compensation set out in the APPR is incorporated into WestJet's tariff, so it is a contractual debt claim (see *Reshaur v. WestJet Airlines Ltd.*, 2024 BCCRT 1278 and *Pansegrau v. Air Canada*, 2024 BCCRT 1297). This means the CRT has jurisdiction over this dispute under section 118(1)(a) of the CRTA. I agree with this reasoning and have considered the Fairbothams' APPR claims in this context.
10. The Fairbothams' submissions say WestJet did not comply with the APPR because it failed to inform them of the cancellation more than 12 hours before their departure, failed to provide alternate flights after the cancellation, and failed to pay their refund within 30 days.
11. A previous CRT decision found that the CRT has no jurisdiction over a failure to comply with the APPR (see *Watters v. American Airlines, Inc.*, 2024 BCCRT 272, at paragraphs 13 to 18). This is because sections 179 and 180 of the *Canada Transportation Act* (CTA) say that administrative penalties for failing to comply with the APPR are issued by an enforcement officer designated by the Canadian Transportation Agency. I agree with this decision and find that the CRT has no jurisdiction to administer penalties under the CTA.
12. The Fairbothams did not request a specific remedy for these alleged breaches of the APPR. I make no findings about these alleged breaches because the CRT does not have jurisdiction here. Nothing in this decision prevents the Fairbothams from

making a complaint to the Canadian Transportation Agency. My decision below only determines the Fairbothams' debt claims for their cancelled flight and their claim for compensation under the *Montreal Convention*.

ISSUES

13. The issues in this dispute are:

- a. Are the Fairbothams entitled to compensation for their cancelled flights?
- b. Are the Fairbothams entitled to their additional costs to rebook flights with a different airline, or their hotel, taxi, and food costs?

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, the Fairbothams, as 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.
15. The Fairbothams booked flights with WestJet departing on May 19, 2023 from Vancouver at 8 am and arriving in Lima at 23:05 on the same day. Their flights had a brief layover in Los Angeles. At around 10 pm on May 18, 2023, WestJet sent an email to the Fairbothams saying their flights had been cancelled.
16. WestJet says that it cancelled the Fairbothams' flights because of an impending strike by its pilots set to start on May 19, 2023. The parties agree that WestJet and its pilots reached an agreement around 3 am on May 19, 2023, and the strike was averted.
17. WestJet rebooked the Fairbothams' flights from Los Angeles to Lima at a later time, but did not provide any rebooked flights for Vancouver to Los Angeles. WestJet's email to the Fairbothams said they could accept their rebooked flights from Los

Angeles to Lima, contact WestJet to select another flight, or cancel their flights and request a refund.

18. The Fairbothams say they had no way to get to Los Angeles for the rebooked flight and reports on social media suggested that no one could get through to WestJet's call center to obtain alternate flights. So, the Fairbothams chose to request a refund and booked flights with another airline.
19. The Fairbothams' alternate flights cost \$302.79 more than their WestJet flights. The alternate flights also involved an overnight layover in Mexico City. The Fairbothams paid \$151.83 for a hotel in Mexico City, \$28.22 for taxis, and \$88 for food during this layover. I note that the Fairbothams did not provide receipts for their food costs, however, I accept that they paid cash and this was a reasonable amount to pay for food for two people during their overnight layover.

Are the Fairbothams entitled to compensation for their cancelled flights?

20. The APPR sets out the Fairbothams' entitlement to compensation for their cancelled flights. The provisions of the APPR are incorporated into WestJet's tariff, which is its contract with each passenger. WestJet agrees that it is a "large carrier" airline as defined in the APPR.
21. The main issue in this dispute is whether the flight cancellation was under WestJet's control. If so, the Fairbothams are entitled to compensation under section 19 of the APPR. If the flight cancellation was not within WestJet's control, section 10 of the APPR applies and does not provide compensation.
22. Section 10(1)(j) of the APPR says that a "labour disruption within the carrier" is a situation that is not within the airline's control. WestJet says the anticipated strike by its pilots was a labour disruption, so the flight cancellation was outside its control.
23. The Fairbothams say that the cancellation of their flights was within WestJet's control because WestJet engaged in nine months of labour negotiations but failed to settle its dispute with the pilots' union. I infer their argument is that WestJet should

have agreed to pay the pilots more during earlier negotiations to ensure there would be no travel disruptions. However, I have no evidence about the circumstances that led to the strike, the pilots' and WestJet's bargaining positions, or whether WestJet acted reasonably during the negotiations. So, I cannot find that the strike was within WestJet's control based on this bare allegation.

24. The Fairbothams also say that the strike was averted around 3 am, five hours before their flights were set to depart. They say WestJet should have had a crew on standby ready to fly in case of settlement. I do not accept this argument. WestJet's pilots issued a strike notice, and I find that WestJet reasonably expected that the strike would proceed on May 19, 2023. I also find that it is not realistic or required under the APPR for WestJet to keep crews on standby during labour disruptions which would presumably be a significant cost to WestJet.
25. The Fairbothams say that WestJet cancelled only 29% of scheduled flights on May 19, 2023, so the fact that their flight was cancelled suggests that it was WestJet's decision. I am unclear where the Fairbothams obtained this 29% figure, though WestJet does not specifically dispute it. In any event, I have no evidence about these other flights, their departure times, or why WestJet cancelled these flights. I find this allegation is unproven as well.
26. In *Boyd v. WestJet Airlines Ltd.*, 2024 BCCRT 640, the tribunal member decided that the pilots' strike notice was a "labour disruption" under the APPR. I agree with this decision. The plain and ordinary meaning of a "labour disruption" is a coordinated action by employees which affects WestJet's ability to transport its passengers. The pilots' strike notice and the anticipated work stoppage did affect WestJet's ability to transport its passengers. So, I find that the pilots' strike notice which led to the cancellation of the Fairbothams' flights was outside WestJet's control. It follows that sections 10 and 18 of the APPR apply and the Fairbothams are not entitled to any compensation.
27. I note that the Fairbothams say it no longer matters whether a situation was within a carrier's control because the federal government's 2023 *Budget Implementation Act*

changed the law and takes precedence over the APPR. I have reviewed the *Budget Implementation Act* and can find no support for this argument. This act attempted to clarify the process for claiming under the APPR, however, it did not require any substantive changes to the APPR itself. Section 86 of the CTA empowers the Canadian Transportation Agency to set regulations, and the APPR still applies to this dispute.

Are the Fairbothams entitled to their additional costs to rebook flights with a different airline, or their hotel, taxi, and food costs?

28. The *Montreal Convention* is an international treaty with the force of law in Canada under the federal *Carriage by Air Act*. It applies to all international air travel of baggage, cargo, and people.
29. The Fairbothams claim compensation under Article 19 of the *Montreal Convention* which says that a carrier is not liable for damages caused by delay if the carrier provides that it and its agents took all measures that could reasonably be required to avoid the damage or that it was impossible to take such measures.
30. WestJet says that the *Montreal Convention* does not apply to this dispute because Article 19 only provides compensation for a delayed flight. WestJet argues that the Fairbothams asked for a refund of WestJet's cancelled flights and booked with another airline, so there was no delay in this case.
31. Article 19 of the *Montreal Convention* does not mention flight cancellations, so the issue is whether Article 19 applies to this dispute.
32. Section 12 of the federal *Interpretation Act* says that every act should be given a fair, large, and liberal interpretation to ensure it meets its objectives. One of the objectives of the *Montreal Convention* is to protect the interests of passengers by creating presumptive liability for certain claims (see *International Air Transport Association v. Canada (Transportation Agency)*, 2024 SCC 30, at paragraph 8).

33. In this case, the Fairbothams' arrival at their destination was delayed because of WestJet's flight cancellation. I find that the term "delay" in Article 19 is broad enough to include this situation where the Fairbothams' cancelled flight led to a delayed arrival at their destination. To hold otherwise would leave a gap in the *Montreal Convention* which I find would be inconsistent with its objective of protecting passenger rights.
34. WestJet also relies on Rule 105(10) of its tariff which says that acceptance of a refund by the passenger will release WestJet from all further liability. WestJet neglects to mention that the release in Rule 105(10) begins with "Subject to the applicability of the APPR, the *Montreal Convention*, and the *Warsaw Convention*..." Exclusion clauses are strictly construed against the party seeking to invoke them (see *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.*, [1997] 3 S.C.R. 1210, at paragraph 28) Here, Rule 105(10) says the release is subject to the application of the *Montreal Convention*, so I find that Rule 105(10) does not prevent the Fairbothams from making a claim under the *Montreal Convention*.
35. WestJet also says its liability ends after a passenger requests a refund. It relies on *Stark v. WestJet Airlines Ltd.*, 2024 BCCRT 64, for this proposition. However, I find the circumstances in this case are distinguishable. In *Stark*, WestJet informed the passenger that it was attempting to find an alternate flight. Here, WestJet did not offer any alternate flights from Vancouver to Los Angeles and did not say whether an alternate flight was possible. I note, as well, that in *Stark* WestJet paid for Ms. Stark's hotel and food on the night of her cancelled flight, which is what the Fairbothams are claiming. Nothing in the *Montreal Convention* prevents the Fairbothams from claiming under Article 19 after receiving a refund and WestJet's tariff suggests that its liability continues after it pays a refund, so I find this is not a bar to the Fairbothams' claims.
36. As noted above, Article 19 of the *Montreal Convention* says that a carrier is not liable for damages caused by delay if the carrier provides that it and its agents took

all measures that could reasonably be required to avoid the damage or that it was impossible to take such measures.

37. Here, WestJet provided no evidence about what measures it took to avoid causing damage. So, I find that WestJet is responsible for the additional costs the Fairbothams incurred in getting to their final destination. These include \$302.79 for the additional costs for their alternate flights, \$151.83 for a hotel in Mexico City, \$28.22 for taxis, and \$88 for food for a total of \$570.84. I do not allow the Fairbothams' \$75.62 claim for their missed hotel night in Lima because I am already awarding compensation for a hotel on May 19, 2023.

FEES, EXPENSES, AND INTEREST

38. The *Court Order Interest Act* applies to the CRT. However, the Fairbothams specifically waived their right to pre-judgment interest, so I award none.
39. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Here, the parties had mixed success, so I order WestJet to pay the Fairbothams \$62.50 for half of their CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

40. Within 30 days of the date of this decision, I order WestJet to pay the Fairbothams a total of \$633.34, broken down as follows:
- a. \$570.84 as damages, and
 - b. \$62.50 in CRT fees.
41. The Fairbothams are entitled to post-judgment interest, as applicable.

42. I dismiss the Fairbothams' claims for compensation under the APPR for their flight delays.
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 an order of the Provincial Court of British Columbia.

Peter Mennie, Tribunal Member