



Civil Resolution Tribunal

Date Issued: August 19, 2025

File: SC-2023-013070

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *West v. WestJet Airlines Ltd.*, 2025 BCCRT 1156

B E T W E E N :

ROBERT WEST and JANICE WEST

APPLICANTS

A N D :

WESTJET AIRLINES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Deanna Rivers

INTRODUCTION

1. This is a dispute about compensation for a delayed flight. The applicants, Robert West and Janice West, booked a flight from Nanaimo to Costa Rica, through Calgary. The respondent airline, WestJet Airlines Ltd., delayed and then cancelled the first flight to Calgary. WestJet also cancelled the second flight to Costa Rica. The Wests' arrival in Costa Rica was delayed by 48 hours. They claim \$1,000 each

as compensation for the delay. They also claim \$28.51 for hotel expenses in Calgary and \$612 for prepaid hotel accommodation in Costa Rica. Mr. West represents both applicants.

2. WestJet agrees the Wests' arrival in Costa Rica was delayed by 48 hours. It says the primary reason for the delay was for safety purposes, so the Wests are not entitled to compensation under the *Air Passenger Protection Regulations* (APPR). WestJet agrees it owes the Wests \$28.51 for the Calgary hotel expense. It says damages for prepaid expenses are not covered by either the APPR or the *Convention for the Unification of Certain Rules for International Carriage by Air*, commonly known as the *Montreal Convention*. An authorized employee represents WestJet.
3. For the reasons below, I dismiss the Wests' claim for compensation for the delay, and allow their claims for the Calgary hotel expense and the prepaid hotel accommodation in Costa Rica.

JURISDICTION AND PROCEDURE

4. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. 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. These are the CRT's formal written reasons.
5. CRTA section 39 says the CRT has discretion to decide the hearing's format, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, 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 in the interests of justice.

6. CRTA section 42 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.

ISSUES

7. The issues in this dispute are:
 - a. Are the Wests entitled to \$2,000 under APPR section 19 for the flight delay?
 - b. Are the Wests entitled to \$28.51 for unpaid hotel expenses in Calgary?
 - c. Are the Wests entitled to \$612 for the cost of 2 nights hotel in Costa Rica?

EVIDENCE AND ANALYSIS

8. In a civil claim like this one, the Wests as applicants must prove their claims on a balance of probabilities. This means that the relevant evidence must show that it is more likely than not that the claim is proven. I have considered all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision. The Wests did not provide any final reply submissions, despite the opportunity to do so.
9. As I note above, the Wests booked flights with WestJet from Nanaimo to Costa Rica connecting through Calgary. The first flight was scheduled to depart on February 23, 2023, at 19:35 and arrive in Calgary at 22:20. The connecting flight to Costa Rica was to depart Calgary at 23:10 and arrive in Costa Rica at 06:58 on February 24, 2023.
10. The flight to Calgary was delayed and then cancelled. The flight to Costa Rica was also cancelled. The Wests flew to Calgary on February 24, 2023, and from Calgary to Costa Rica on February 25, 2023. The Wests arrived in Costa Rica at 07:00 on February 26, 2023, a total delay of 48 hours and 2 minutes.

Are the Wests entitled to \$2,000 under APPR section 19 for the flight delay?

11. I find the Wests are not entitled to compensation for the delay because the primary reason for the delay was for safety purposes.
12. APPR section 19(1)(a)(iii) says a large carrier, which includes WestJet, must compensate passengers for a delayed or cancelled flight if their ultimate arrival time is delayed more than 9 hours. However, section 19(1)(a)(iii) only applies if the delay or cancellation is within the carrier's control and is not required for safety purposes. The parties disagree which flight caused the delay.
13. The parties agree that the flight from Nanaimo was delayed and then cancelled due to a crew arriving late from a previous delayed flight. The flight log also notes minor ice issues, which are not relevant to my decision. The Wests say that the first delay was within WestJet's control, and the delayed flight caused them to miss their connecting flight to Costa Rica. I find the delay and cancellation of the flight to Calgary was within WestJet's control.
14. WestJet argues that the primary reason for the Wests' delay was the cancellation of the flight to Costa Rica. WestJet says that because the Wests would not have been able to fly to Costa Rica that night anyway, the second flight's safety issue was the primary delay.
15. The second flight's maintenance log says the pilot reported engine #2 would not start on the runway. The pilot made 3 attempts, and the maintenance crew made a further attempt after the plane returned to the gate. The flight was cancelled. Later maintenance notes said the fuel nozzle for engine #2 was replaced on March 1, 2023.
16. I do not need an expert opinion to find the plane engine not starting is a safety issue. So, I find the second flight's delay was within WestJet's control but required for safety purposes.

17. In Decision No. 122-C-A-2021, the Canadian Transportation Agency set out that where there are multiple reasons for a passenger's delay in arrival at their final destination, the primary reason for the delay is the most significant contributing factor to the overall delay.
18. First, I find the first and second flights' delays were not causally related. Although the Wests' flight to Calgary was cancelled, that is not the reason they missed the connecting flight. The connecting flight was cancelled for other reasons. The first flight's delay was not the primary reason the Wests arrived late in Costa Rica.
19. So, I find the second flight's cancellation was the most significant contributing factor for the delay. As that cancellation was for safety purposes, the Wests are not entitled to compensation for the delay under the APPR.
20. I dismiss their claim.

Are the Wests entitled to \$28.51 for unpaid hotel expenses in Calgary?

21. On February 24, 2023, the Wests stayed overnight in Calgary. The total hotel cost was \$178.51. WestJet reimbursed them for \$150. As WestJet agrees it owes the difference between these amounts, I order it to reimburse them \$28.51.

Are the Wests entitled to \$612 for the cost of 2 nights hotel in Costa Rica?

22. As I set out above, the parties agree that the Wests were to arrive in Costa Rica the morning of February 24, but actually arrived the morning of February 26, 2023. They claim \$306 each night for the 2 nights in the hotel that they prepaid but could not use due to their late arrival. This totals \$612. I allow their claim for the following reasons.
23. 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. As the Wests were travelling internationally, the *Montreal Convention* applies to their claim.

24. *Montreal Convention* Article 19 says WestJet is liable for damages due to the delay unless it proves it took all measures that could reasonable be required to avoid the damage or that it was impossible for it to take such measures.

Is loss of use of prepaid hotel “damages”

25. WestJet argues that because the Wests’ claim is for hotel costs paid prior to the delay of the flight, the costs were not incurred because of the delay. It says Article 19 does not contemplate prepaid expenses.

26. Article 19 does not have a definition or clear indication of what is meant by damage. It only says “will not be liable for damage occasioned by delay in the carriage by air of passengers ...”

27. In *Thibodeau v. Air Canada*, 2014 SCC 67, at paragraph 37, the Supreme Court of Canada confirmed that the *Montreal Convention* applies to any action for damages, however founded. At law, damages are intended to compensate a person for a loss suffered.

28. *Montreal Convention* Article 29 excludes punitive, exemplary, and any other non-compensatory damages. However, loss of use of a prepaid hotel is compensatory in nature, and so is not specifically excluded by Article 29.

29. WestJet referred to Canadian Transportation Authority decisions that say the CTA does not have the authority to award compensation for unused prepaid expenses. It also cited a small claims decision from another province. None of these are binding on me.

30. As noted in *Reshaur v. WestJet Airlines Ltd.*, 2024 BCCRT 1278, CRTA section 118 gives the CRT jurisdiction to resolve a claim for relief in damages up to \$5,000. So, I find that if a prepaid expense is a “damage” that is not excluded by Article 29, then the CRT has jurisdiction to make that order.

31. Recently, in *International Air Transport Association v. Canada (Transportation Agency)* 2024 SCC 30, at paragraph 43, the Supreme Court of Canada said that

Article 19 focuses on liability for “damage occasioned by delay.” This means that there must be a causal relationship between the delay and the damage the Wests claim. It does not limit damage to costs that are incurred after the delay. At paragraph 52 to 57, the Supreme Court noted that Article 19 governed “individual” damage, or damages “inherent in the reason for travelling.” It said the determination of damage required a case-by-case assessment of the extent of the damage caused, to provide compensation on an individual basis.

32. Further, in *Air Passenger Rights v. WestJet*, 2025 BCSC 155, the BC Supreme Court noted at paragraphs 84 and 85 that the law is not settled in British Columbia as to whether either the *Montreal Convention* or the APPR require that an air carrier reimburse a passenger for the expenses of missed entertainment or excursions occasioned by a delay of a flight. I note these damage claims are also prepaid expenses. The court said that the matter would likely be considered at the trial of the underlying action. Unfortunately, that action has not yet been heard and I do not have the benefit of that decision.
33. The Wests’ reason for travelling was for a vacation in Costa Rica. I accept that the delay caused the damage the Wests claim, as they could not use the first 2 days of their paid hotel.
34. I find that the Wests’ 2 days prepaid hotel costs are damages related to their reason for travelling.

Did WestJet take all reasonable measures to avoid the damage or was it impossible to take such measures?

35. As I set out above, Article 19 says that an airline like WestJet is not liable for damage due to delay if it can prove it took all measures that could reasonably be required to avoid the damage or that it was impossible to take such measures.
36. WestJet did not provide any submissions or evidence about what measures it took to avoid the Wests missing 2 nights at their hotel in Costa Rica, such as

maintenance logs for the aircraft prior to the flight, or the availability of other flights to Costa Rica.

37. So, I find WestJet is liable under Article 19 for the Wests' damages due to the delay.

Damages

38. The Wests provided confirmation of the Costa Rica hotel booking, RCI transaction records confirming payment, and credit card statements showing payments to RCI. I cannot determine exactly how they calculated \$306 each night, as their evidence shows greater amounts paid by them than they have claimed. However, WestJet does not dispute the amount claimed.

39. So, I order WestJet to pay the Wests \$612 in damages for the 2 nights' prepaid hotel costs in Costa Rica.

40. The *Court Order Interest Act* applies to the CRT. The Wests are entitled to pre-judgment interest on the \$28.51 for the Calgary hotel and \$612 for the Costa Rica hotel, totalling \$640.51, from February 24, 2023 to the date of this decision. This equals \$72.04.

41. 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. I find the Wests are entitled to reimbursement of \$125 in CRT fees. As WestJet was not successful, I dismiss its claim for reimbursement of CRT fees.

ORDERS

42. Within 30 days of this decision's date, I order WestJet to pay the Wests a total of \$847.55, broken down as follows:

- a. \$640.51 in damages,
- b. \$72.04 in pre-judgment interest under the *Court Order Interest Act*, and

c. \$125 for CRT fees.

43. The Wests are entitled to post-judgment interest, as applicable.

44. 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.

Deanna Rivers, Tribunal Member