



Civil Resolution Tribunal

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File: SC-2023-012107

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Maxwell v. WestJet Airlines Ltd.*, 2025 BCCRT 1146

B E T W E E N :

DEAN MAXWELL

APPLICANT

A N D :

WESTJET AIRLINES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Peter Nyhuus

INTRODUCTION

1. The applicant, Dean Maxwell, booked flights with the respondent airline, WestJet Airlines Ltd. Mr. Maxwell says WestJet cancelled his flight without providing compensation and refused to board him on a rescheduled flight. He claims \$3,900, broken down as \$1,000 as compensation under the *Air Passenger Protection*

Regulations (APPR) for a delay of more than 9 hours, \$2,400 for denied boarding, and \$500 in general damages for bad faith. Mr. Maxwell represents himself.

2. WestJet agrees that Mr. Maxwell reached his final destination more than 9 hours later than scheduled. However, it denies that Mr. Maxwell is entitled to APPR compensation as it cancelled his flight for safety purposes due to a malfunctioning flight management system. WestJet also denies that it booked Mr. Maxwell on the flight he says he was denied from boarding. An authorized employee represents WestJet.

JURISDICTION AND PROCEDURE

3. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). 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.
4. 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 can make a decision on the written record before me. So, I decided to hear this dispute through written submissions.
5. 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.
6. Where permitted by CRTA section 118, 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

7. In the Dispute Response, WestJet says Mr. Maxwell's flights were operated by "WestJet, an Alberta Partnership". I infer that WestJet argues that Mr. Maxwell either improperly named it or named the wrong business entity. However, WestJet did not explain what this partnership was, or provide any evidence about its correct name. Further, WestJet was able to provide a full response to Mr. Maxwell's claims and did not raise this issue again in its submissions. 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.

Document Production

8. In October 2024, Mr. Maxwell issued a Summons Notice to WestJet to provide evidence and produce information, including (1) the flight manifest, (2) explanation for not being rebooked on a later flight to Vancouver, (3) contact information and service details for employees and contractors involved in the boarding denial and compensation refusal, (4) aircraft maintenance logs, (5) pilot's reports, and (6) information about the electronic flight instrument system, including data, maintenance records, version information, validation report, backup system report, and records of previous errors.
9. WestJet provided some of this evidence and information, though not all. During the adjudication phase of this dispute, Mr. Maxwell requested that the CRT order WestJet to produce additional evidence, including aircraft maintenance records, denied boarding documentation, and internal communications. A CRT vice chair responded to Mr. Maxwell's request, noting that she did not have the parties' submissions or evidence. As a result, she found that the tribunal member assigned to make a final decision (namely, me) would be better positioned to determine whether the requested documents are relevant or necessary for the proper adjudication of this dispute. So, the vice chair declined to consider Mr. Maxwell's document request and notified him that he may include arguments about WestJet's alleged failure to produce relevant documents in his final reply submissions.

10. In his reply submissions, Mr. Maxwell submitted a motion for reconsideration under CRTA section 56. However, the legislature repealed this provision in 2015. So, Mr. Maxwell cannot use this provision to require the vice chair to reconsider her decision to refrain from making a decision about document production. Rather, under CRTA section 56.6, Mr. Maxwell may apply to the Supreme Court to judicially review this final decision if he disagrees with it.
11. I have reviewed the parties' evidence and submissions. I find the additional documents Mr. Maxwell requests are unnecessary for the proper adjudication of this dispute. As I discuss below, WestJet has the burden of proving that it cancelled Mr. Maxwell's flight for safety purposes. So, I find that Mr. Maxwell is not prevented from making his case without access to the records he requests. As I will explain, I find WestJet's evidence about its reasons for cancelling the flight sufficient to show that it cancelled the flight for safety reasons. Further, as I find that Mr. Maxwell was not denied boarding, I find the documentation related to the denied boarding is irrelevant.

ChatGPT Evidence

12. I note that Mr. Maxwell provided in evidence a ChatGPT response to a question about whether he would have made a connecting flight in time. I also presume that he used ChatGPT for his reply submissions because he cites a case that does not exist. I find it likely that the chatbot "hallucinated" this case. The BC Supreme Court and the CRT have discussed the risks of relying on generative artificial intelligence tools, as the output is often inaccurate. (See for example, *Zang v. Chen*, 2024 BCSC 285 and *Yang v. Gibbs (dba D & G Cedar Fencing)*, 2024 BCCRT 613.)
13. I find the information ChatGPT provided Mr. Maxwell is unreliable, so I give no weight to his ChatGPT evidence.

ISSUES

14. The issues in this dispute are:

- a. Is Mr. Maxwell entitled to compensation for his cancelled flight?
- b. Did WestJet deny Mr. Maxwell from boarding?
- c. Is Mr. Maxwell entitled to general damages for WestJet's alleged bad faith?

EVIDENCE AND ANALYSIS

15. In a civil proceeding like this one, Mr. Maxwell, as the applicant, must prove his claims on a balance of probabilities, meaning "more likely than not". However, there are exceptions to this principle, which I address below.
16. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to explain my decision.
17. The parties agree on the following facts. Mr. Maxwell booked WestJet flights from Comox to Palm Springs, California on October 24, 2023, connecting through Vancouver. Mr. Maxwell's first flight was scheduled to depart Comox at 6:30 am and arrive in Vancouver at 7:10 am. His second flight was scheduled to depart Vancouver at 9:15 am and arrive in Palm Springs at 12:08 pm.
18. Mr. Maxwell boarded the first flight at 6:10 am. However, about 20 minutes later, WestJet disembarked all passengers. At about 10:14 am, WestJet cancelled the flight. As I discuss below, the parties disagree about why WestJet cancelled Mr. Maxwell's first flight.
19. WestJet rebooked Mr. Maxwell on alternative flights to Palm Springs, with connections through Calgary then Seattle. WestJet provided Mr. Maxwell a hotel voucher for an overnight stay in Calgary. Mr. Maxwell accepted the new travel itinerary and arrived in Palm Springs 28 hours and 29 minutes later than his original itinerary.

Is Mr. Maxwell entitled to compensation for his cancelled flight?

20. The APPR applies to flights to, from, and within Canada, including connecting flights. So, I find the APPR applies to Mr. Maxwell's flights. I also accept WestJet's argument that Mr. Maxwell is bound by its international tariff, a copy of which is in evidence. I find the tariff essentially mirrors the APPR provisions about flight delays and cancellations. Because Mr. Maxwell's itinerary included an international flight, it is also subject to the *Convention for the Unification of Certain Rules for International Carriage by Air* under the *Carriage by Air Act*, commonly known as the *Montreal Convention*.
21. The APPR provides different obligations for "small carrier" and "large carrier" airlines. There is no dispute that WestJet is a "large carrier" as defined in the APPR. The obligations and available compensation also depend on whether the delay or cancellation was (1) outside the carrier's control, (2) within the carrier's control, or (3) within the carrier's control but required for safety purposes. The main issue in this dispute is which of these scenarios applied to Mr. Maxwell's cancelled flight.
22. The parties agree that the cancellation was within WestJet's control. However, WestJet argues that it was also required for safety purposes.
23. Mr. Maxwell claims he is entitled to \$1,000 under APPR section 19(1)(a)(iii) because the cancellation delayed his arrival at his destination by more than 9 hours. However, this section only applies if the cancellation is within the carrier's control and not required for safety purposes. If the delay is required for safety purposes, then the airline must only provide alternate travel arrangements, food and drink, and reasonable accommodation and transportation.
24. So, was the cancellation required for safety purposes? If it was, then Mr. Maxwell is not entitled to compensation under the APPR for the flight's cancellation.
25. Generally, in a civil proceeding like this one, Mr. Maxwell, as the applicant, must prove his claims on a balance of probabilities. However, in *Mohamed v. Air Canada*, 2023 BCCRT 661, a CRT vice chair reasoned that in a claim under the APPR, an

airline respondent has the onus of proving whether a delay was within its control, because it is in the best position to provide evidence explaining the delay of its own flights. This is consistent with Canadian Transportation Agency (CTA) decisions, including Decision No. 20-C-A-2023, which says that when a carrier claims that a disruption was within its control but required for safety purposes, it must establish this claim by providing evidence that supports its categorization of the disruption.

26. Although CTA and CRT decisions are not binding on me, I find the reasoning of these decisions persuasive, so I adopt and apply it here. I find WestJet must prove that it cancelled the flight due to safety-related maintenance, as it alleges.
27. WestJet says that at around 6:43 am, its flight crew reported that when it initiated the hydraulic pump with the engines operating, the electronic flight instrument system (EFIS) screens would go blank. It says that the EFIS automates a variety of in-flight tasks, such as navigation and position determination, and that its primary use is to ensure that the flight plan is accurate and followed. WestJet says the EFIS is critical to the flight management system (FMS) and that this issue required immediate and unscheduled maintenance to the FMS. It says it cancelled the flight to perform this unscheduled maintenance.
28. In support, WestJet provided maintenance records. I find the records show that the flight crew encountered this issue, tried to troubleshoot the problem, then decided to cancel the flight when they could not resolve it.
29. WestJet says that it is required by law, including the *Canadian Aviation Regulations*, to ensure that its flights are operated by aircraft with functioning safety and operational systems such as the FMS. While WestJet did not point me to a specific regulation to support this, I find it is self-evident that it is unsafe to fly with a malfunctioning safety or operational system.
30. From the maintenance records, I find it clear that the flight crew did not even consider flying while the EFIS issue persisted. APPR section 1(1) defines “required for safety purposes” as including safety decisions made within the pilot’s authority. I

find that the pilot made a safety decision to cancel the flight given the malfunctioning EFIS screens.

31. In the CTA decision I cited above, the CTA found a passenger will be entitled to compensation under the APPR if the maintenance issues leading to the flight disruption are foreseeable. The CTA found the maintenance problem in that dispute was foreseeable because the aircraft was parked on the ground in Regina in winter, with the aircraft heater turned off, which led to a frozen and ruptured lavatory pipe. While the flight was delayed due to safety, the CTA said the delay could have been prevented if the maintenance and ground crew had been “prudent and diligent”.
32. There is no evidence before me to suggest that the issues with the EFIS could similarly have been prevented through prudence and diligence. I acknowledge that WestJet only provided maintenance records from the day of the flight. However, given that WestJet’s flight crew boarded the flight and discovered the issue only moments before leaving, I find it unlikely that the issue was reasonably foreseeable or that it could have been reasonably prevented.
33. I find WestJet has proven that it cancelled the flight because it was required for safety purposes. So, I find that Mr. Maxwell is not entitled to compensation under APPR section 19(1) for the delay this cancellation caused him.

Did WestJet deny Mr. Maxwell from boarding a flight?

34. Mr. Maxwell claims \$2,400 for a denied boarding. He says that after WestJet cancelled his flight, it may have rebooked him on flight WS 491, which was scheduled to depart Comox at 10:20 am on the same day. He says he believes he was rebooked on this flight because WestJet provided him hotel and meal vouchers for Vancouver. He says that other passengers got onto flight WS 491, so this may be a “denied boarding” situation under APPR section 20(1)(c).
35. APPR section 1(3) says there is a denial of boarding when a passenger is not permitted to occupy a seat on board a flight because the number of seats that may be occupied on the flight is less than the number of passengers who have checked

in by the required time, hold a confirmed reservation and valid travel documentation, and are present at the boarding gate at the required boarding time.

36. APPR section 20(1) says that the carrier must provide \$2,400 if there is a denial of boarding that is within the carrier's control and the arrival of a passenger's flight at their destination is delayed by 9 hours or more.
37. WestJet denies that it rebooked Mr. Maxwell on flight WS 491. It says that flights coded WS 491 on October 24, 2023 were flights from Calgary or Vancouver to Comox, not from Comox. When flight WS 491 departed Calgary on the morning of October 24, Mr. Maxwell was still in Comox.
38. I note that Mr. Maxwell may have misnamed the flight he says he was denied from boarding. WestJet says that Mr. Maxwell received vouchers for Vancouver due to an error made by its internal booking system, which booked him on flight WS 3052 from Comox to Vancouver at 4:45 pm on October 25, 2023 (the next day). It provided a booking confirmation showing that Mr. Maxwell was booked on this flight. WestJet says that it cancelled this flight for Mr. Maxwell when it determined that the alternative itinerary, through Calgary and Seattle, was the fastest way to get Mr. Maxwell to his destination.
39. I find that WestJet did not rebook Mr. Maxwell on flight WS 491, so it did not deny him from boarding this flight. Rather, WestJet accidentally rebooked him on flight WS 3052. WestJet did not deny Mr. Maxwell from boarding this flight either, as he was no longer in Comox when that flight departed.
40. So, I dismiss Mr. Maxwell's claim for compensation for denial of boarding.

Is Mr. Maxwell entitled to general damages for WestJet's alleged bad faith?

41. Mr. Maxwell claims \$500 "in general damages for WestJet's bad faith." He argues that WestJet should be sanctioned for its disregard for the rule of law.
42. The *Montreal Convention*, Schedule VI, Article 29 says that punitive, exemplary, or any other non-compensatory damages are not recoverable. WestJet argues, and I

agree, that the damages he seeks are non-compensatory and punitive in nature. So, on this basis, I find his claim for general damages must fail.

43. I note that even if the *Montreal Convention* did not preclude this claim for general damages, I would have dismissed it. I find he has not proven that WestJet acted in bad faith when cancelling the flight, rebooking his travel, or responding to his APPR claim.
44. In summary, I find that Mr. Maxwell is not entitled to compensation under the APPR or to general damages. I dismiss his claims.
45. 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. Maxwell was unsuccessful, so I dismiss his claim for reimbursement of CRT fees. WestJet did not pay CRT fees. Neither party claimed dispute-related expenses.

ORDER

46. I dismiss Mr. Maxwell's claims.

Peter Nyhuus, Tribunal Member