



# Civil Resolution Tribunal

Date Issued: February 28, 2024

File: SC-2023-001290

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Quist v. WestJet Airlines Ltd.*, 2024 BCCRT 194

B E T W E E N :

KELLY QUIST

**APPLICANT**

A N D :

WESTJET AIRLINES LTD.

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about delayed baggage on an international flight. The applicant, Kelly Quist, travelled to Hawaii using the respondent airline, WestJet Airlines Ltd. (WestJet). He says WestJet spoiled his vacation by delivering his baggage late. He claims \$3,000.

2. WestJet denies the claim. However, it says that to the extent Mr. Quist proves liability, the claim should be only \$452.83. It says this is because amounts claimed beyond this amount are not reasonable, necessary, or otherwise compensable.
3. Mr. Quist represents himself. A lawyer, Marion Unrau, represents WestJet.
4. For the reasons that follow, I find Mr. Quist has partially proven his claim.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, 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.
7. 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 a court of law.
8. 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.

## **ISSUE**

9. The issue in this dispute is whether and to what extent WestJet should compensate Mr. Quist for delayed baggage.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, Mr. Quist as the applicant must prove his claims on a balance of probabilities. This means more likely than not. 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.
11. A reservation sheet shows that on December 29, 2022, Mr. Quist purchased airfare to travel from Kelowna, BC to Kahului, Hawaii on the afternoon of January 20, 2023. The ticket included a return trip from Kahului to Vancouver, BC shortly before midnight on January 24, 2023.
12. WestJet's documents show that Mr. Quist had 1 bag that became delayed. Mr. Quist complained about the delay on January 21, 2023. WestJet documents also show a courier delivered the bag to Mr. Quist on the afternoon of January 23, 2023.
13. It is undisputed that Mr. Quist asked WestJet to reimburse him for receipts totaling \$2,2532.46 USD, which I find is roughly equivalent to the claim amount of \$3,000. Mr. Quist made these purchases from January 21 to 24, 2023. I note January 24, 2023 is after Mr. Quist received his bag. I will discuss these receipts in greater detail below.
14. Mr. Quist also provided as evidence copies of emails between the parties from January to April 2023. I find these emails were settlement discussions. WestJet did not claim that settlement privilege applied or object to the emails, so I considered them. However, I put little significance on them, and they ultimately do not affect my decision.

***Is Mr. Quist entitled to compensation for delayed baggage?***

15. I will first outline the applicable law. The *Montreal Convention* is an international treaty with the force of law in Canada under the federal *Carriage by Air Act*. See *Thibodeau v. Air Canada*, 2014 SCC 67. It applies to all international air carriage of people, baggage, and cargo. The *Montreal Convention* limits the scope and type of claim a person can make against a carrier like WestJet.
16. Article 31 of the *Montreal Convention* provides a deadline of 21 days for Mr. Quist to complain in writing about the baggage delay. The deadline starts upon baggage delivery. There is no dispute that Mr. Quist complied with the deadline and the emails prove he did so in any event.
17. Article 19 says that an airline like WestJet is liable for damage due to baggage delay, unless 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. WestJet did not provide any substantive submissions or evidence on what measures it took. So, I find it liable under article 19.
18. Article 22 limits compensation for baggage delay to 1,288 special drawing rights (SDRs). WestJet's exchange documents show that this is equal to \$2,352.45 CAD as of November 21, 2023. So, I find this limit applies to Mr. Quist's claim.
19. Under article 19, reimbursement for expenses is limited to what is reasonably necessary. See, for example, the decisions of *Brown v. WestJet Airlines Ltd.*, 2023 BCCRT 456, *Maruf v. Air China Limited*, 2021 BCCRT 796, and *Kalynn v. Air Canada*, 2022 BCCRT 809. From my review, I also find that CRT decisions generally award somewhat modest amounts for delayed baggage. For example, in these 3 disputes, the CRT awarded amounts ranging from \$310.18 to \$700, largely for replacement clothing. CRT decisions are not binding. Each case depends upon its particular circumstances. However, I nonetheless find these cases useful as a measure of what may be appropriate.

20. I also note that a financial document shows Mr. Quist paid WestJet \$440.60 for the ticket. While I accept that Mr. Quist's claim can exceed this amount, I am also mindful that I should not award him a windfall.
21. So, keeping in mind the SDR limit discussed above, the main question is whether Mr. Quist's expenses were reasonably necessary in the circumstances.
22. Mr. Quist says that WestJet's representative told him to "buy whatever you need" and "it will all be reimbursed". I find this uncorroborated by any evidence. In any event, assuming the representative used this wording, I find they did not make an unlimited guarantee of reimbursement. This is because the representative said WestJet would only be liable for what "you need". I find this is similar to stating that WestJet would be liable for reasonably necessary expenses, which is the state of the law, as discussed above.
23. I turn to the evidence. Mr. Quist provided the following receipts: 1) a January 21, 2023 receipt from Wailea Golf Club totaling \$390.62 USD, 2) a January 23, 2023 receipt from Wailea Golf Club totaling \$347.29 USD, 3) a January 23, 2023 store receipt for \$212.16 USD, 4) a January 23, 2023 receipts from a Travis Matthew store totaling \$715.12 USD, 5) a second such receipts from the same date and store for \$415.4 USD, and 6) a January 24, 2023 receipt from the Kapalua Golf Plantation Course for \$171.87 USD.
24. The January 21, 2023 receipt shows Mr. Quist purchased golf shoes, gloves, and rented a golf club or clubs. I find these were reasonably necessary as it is undisputed his bag included such items, and he was on a golf trip. These items total \$190. I disagree that the tee time fee on the receipt is compensable. I find Mr. Quist would have incurred this fee in any event.
25. The January 23, 2023 receipt for \$347.29 USD shows further golf-related expenditures. I do not order reimbursement for this receipt because it is undisputed that WestJet emailed Mr. Quist that morning to advise he would receive the baggage that day. Mr. Quist does not deny receiving or reading the email that morning. I

acknowledge the courier delivered the baggage in the afternoon. I nonetheless find this insufficient to conclude the expenditures were reasonably necessary when he could wait for his baggage.

26. The remaining 4 receipts from January 23 and 24, 2023, show Mr. Quist purchased a total of 13 shirts, 6 pairs of shorts, 8 pairs of socks, 9 pairs of underwear, and a towel. I find this exceeds what is reasonably necessary. By this time, his trip was nearing its end. Mr. Quist knew his baggage was on the way or had already received it in the case of the January 24, 2023 receipts.
27. That said, I agree with WestJet's submission that it was still reasonably necessary for Mr. Quist to purchase an outfit plus necessities. I find these consist of a shirt for \$71.96 USD, a pair of shorts for \$71.96 USD, 2 pairs of socks for \$25.90 USD, and 3 pairs of boxers for \$68.00 USD.
28. Including the shoes, gloves, and club rental from January 21, 2023, the allowable expenses total \$427.82 USD. Mr. Quist also had to pay sales tax, which I find is 4% based on the receipts before me. So, I add \$17.11 to the sum, for a grand total of \$444.93 USD. WestJet submits an exchange rate of \$1.37 CAD to \$1 USD is appropriate. As Mr. Quist did not dispute this, I find the total is \$609.56. I order WestJet to pay this amount.
29. In submissions Mr. Quist also referred to other expenses. These were unsupported by any evidence. So, I do not allow any compensation for these expenses.
30. The *Court Order Interest Act* applies to the CRT. Mr. Quist is entitled to pre-judgment interest on damages of \$609.56 from January 23, 2023, the date of most of the purchases, to the date of this decision. This equals \$32.15.
31. 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. I see no reason in this case not to follow that general rule. I find Mr. Quist was partially successful. So, I find him entitled to partial

reimbursement of \$62.50 in CRT fees. The parties did not claim any specific dispute-related expenses.

## **ORDERS**

32. Within 30 days of the date of this order, I order WestJet to pay Mr. Quist a total of \$704.21, broken down as follows:

- a. \$609.56 as damages,
- b. \$32.15 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$62.50 in CRT fees.

33. Mr. Quist is entitled to post-judgment interest, as applicable.

34. 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.

---

David Jiang, Tribunal Member