

Transportation Notes: Air Carrier Avoids Liability for Refusal to Transport Disruptive Passenger

February 16, 2021

By Carlos Martins, Emma Romano

The British Columbia Civil Resolution Tribunal (**BCCRT**) recently ruled on a dispute involving an air carrier refusing to transport a disruptive passenger.

In *Serbinenko v. Air Canada*, the BCCRT found that the carrier, Air Canada, had presented sufficient evidence – a contemporaneous report, Passenger Name Record, and a witness statement from the lead flight attendant – to demonstrate that the passenger had been disruptive, and that Air Canada was therefore justified in refusing to transport the passenger.

The Facts

The Applicant was a passenger with a valid ticket and boarding pass for an Air Canada flight on December 13, 2019 from Las Vegas, Nevada to Vancouver, British Columbia.

The Respondent, Air Canada, refused to let the Applicant board the flight due to her allegedly “abusive or disorderly behaviour” when a dispute arose about the size and number of carry-on bags permitted, after which the Applicant was escorted away by security and prevented from flying with Air Canada for 24 hours.

The Applicant claimed she was entitled to \$1,831.93, representing the full cost of a replacement flight on a different airline and lost income because the later flight caused her to miss work.

The Issue

Air Canada’s Tariff (the contract between Air Canada and its passengers), states at rule 75(B)(2)(c) that Air Canada may refuse to transport a passenger when it reasonably decides that the passenger engaged in prohibited conduct. Rule 75(B)(1) sets out various types of prohibited conduct, including abusive, offensive, and otherwise disorderly conduct, as well as failing to observe the instructions of Air Canada and its employees.

The issue before the BCCRT was whether the Applicant passenger had engaged in prohibited conduct in breach of the Tariff, and if not, how much does Air Canada owed in damages for return air fare and lost income, if anything.

Position of Air Canada

Air Canada submitted as evidence a “Disruptive Passenger Report” prepared on the date of the incident. The report described how the Applicant became rude and demanded to speak to the aircraft’s captain after she was told that she exceeded her carry-on allowance and needed to gate check her remaining luggage. The report further stated that the Applicant grabbed her passport from gate staff

and tried to proceed down the jetway before she was stopped. According to the report, the passenger continued to cause a scene, so gate staff called security and denied her boarding. She was also barred from flying with Air Canada for 24 hours. Air Canada submitted a Passenger Name Record to substantiate this series of events.

Air Canada also submitted a witness statement from the lead flight attendant describing the incident with the Applicant passenger. The lead flight attendant had not personally witnessed the passenger's disruptive behaviour, so the BCCRT only accepted the statement for the proposition that the lead flight attendance considered the passenger's behaviour as described by gate staff to be a safety risk.

Position of the Passenger

The Applicant denied engaging in any inappropriate behaviour and accused Air Canada's gate staff of "discriminatory, racist behaviour". The Applicant stated that she was Caucasian and had an eastern European accent. She further stated that the gate staff belonged to a different visible minority group. The Applicant had advanced claims for moral damages and apologies for discrimination which she withdrew prior to the hearing.

The Applicant relied on her status as a well-known pilot to her to ground her argument that her behaviour was reasonable. She also stated that she had been able to gate-check one bag and that gate staff had been rude to her. She did not submit documentary evidence created around the time of the incident.

Decision

The BCCRT denied the Applicant's claims.

The BCCRT noted at the outset that applicants in a civil proceeding have the onus of proving their cases on a balance of probabilities (i.e., more likely than not). The tribunal was persuaded by the documentary evidence submitted by Air Canada and accepted the carrier's version of events.

The BCCRT found that under rule 75(B)(3) of Air Canada's Tariff, the carrier's liability was limited to the refund value of the unused portion of the ticket. However, the Applicant had not claimed a refund for the unused portion of her ticket.

The tribunal further found that the Applicant passenger was not entitled to recover replacement flight costs or lost income, up to the refund value of her ticket, that were related to the missed December 13, 2019 flight.

The BCCRT referred to Article 20 of the *Montreal Convention*, an international agreement governing international carriage by air to which Canada and the U.S. are state parties. The *Montreal Convention* is incorporated into Canadian law at Schedule VI of the *Carriage by Air Act*, RSC 1985, c C-26. Article 20 states in part:

"If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage..."

In this case, the BCCRT found that "Air Canada's refusal to transport [the Applicant] was entirely due to her own prohibited conduct". As such, Air Canada could rely on the exoneration provision in Article 20 of the *Montreal Convention*. The tribunal also found that the Applicant had not presented any documentary evidence to support her lost income claim.

Comment

This decision is instructive for air carriers faced with a disruptive passenger. It lays out the type of evidence a carrier should be prepared to present to avoid liability, such as contemporaneous reports and witness statements. This decision also serves as a warning to passengers that they have an obligation to be respectful while travelling.

[Serbinenko v. Air Canada, 2020 BCCRT 1330](#)

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

For more information or inquiries:



Carlos Martins

Toronto
416.619.6284

Email:
cmartins@weirfoulds.com

Carlos Martins is a skilled litigator with over 25 years' experience providing legal advice in diverse sectors. He is a member of the firm's Commercial Litigation Practice Group and specializes in aviation and defamation law.



Emma Romano

Toronto
416.619.6298

Email:
eromano@weirfoulds.com

Emma Romano is a partner in the Commercial Litigation and Technology & Intellectual Property groups at WeirFoulds LLP.

WeirFouldsLLP

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035