

CANADA / JUDGMENT

Air Canada v. Tannous

2025 FC 1872

COURT

Federal Court

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Air Canada v. Tannous Court (s) Database Federal Court Decisions Date 2025-11-25 Neutral citation 2025 FC 1872 File numbers T-3553-24 Decision Content Date: 20251125 Docket: T-3553-24 Citation: 2025 FC 1872 Ottawa, Ontario, November 25, 2025 PRESENT: The Honourable Mr. Justice Manson BETWEEN: AIR CANADA Applicant and ALAA BADIA TANNOUS Respondent JUDGMENT AND REASONS I. Introduction [1] This is an application for judicial review of a decision (the “Decision”) by a Complaint Resolution Officer (the “Officer”) designated under the Canada Transportation Act, SC 1996, c 10 (the “CTA”). The Decision ordered Air Canada to compensate two passengers (the “Passengers”) in the amount of CAD 2,079.72 for expenses arising from the delay of their checked bag (the “Delayed Bag”). Air Canada seeks judicial review of the Decision pursuant to subsections 18.1(3) and (4)(a), (c) and (d) of the Federal Courts Act, RSC, 1985, c F-7.

[2] For the reasons that follow, the application for judicial review is allowed. II. Background [3] The Passengers travelled on a domestic Air Canada flight from Toronto to Vancouver on May 25, 2022, with a planned return on May 28, 2022. The Delayed Bag did not arrive in Vancouver on May 25, 2022. Air Canada delivered the Delayed Bag to the Passengers’ hotel the following morning, May 26, 2022, at 9:15 a.m. local time.

[4] The Passengers submitted a CAD 3,561.26 claim to Air Canada. Air Canada refunded the Passengers CAD 250.00. The Passengers then submitted a complaint to the Canadian Transportation Agency (the “Agency”) and provided receipts totalling CAD 3,435.99 for interim purchases; they claimed CAD 3,561.26. Some receipts post-dated delivery of the Delayed Bag, including a luggage purchase of CAD 1,310.40 on May 28, 2022. Air Canada’s submissions to the Agency opposed further payment on the basis that the Passengers’ purchases were excessive, included luxury items, and in part post-dated the Delayed Bag’s delivery. III. The Decision [5] The record before the Officer included: (a) the Passengers’ complaint; (b) the Passengers’ receipts of purchase totalling CAD 3,435.99; (c) Air Canada’s ticket history; (d) Air Canada’s historical passenger name record; (e) Air Canada’s world tracer report; (f) Air Canada’s compensation report; (g) the Tariff; and (h) Air Canada’s answer to complaint.

- [6] The Officer found that: (a) Air Canada's tariff (the "Tariff") applied and incorporated the Convention for the Unification of Certain Rules for International Carriage by Air (the "Montreal Convention") baggage-delay limit of 1,288 Special Drawing Rights ("SDR") per passenger; (b) the Passengers established a baggage delay and timely complaint; (c) on a balance of probabilities, given the outbound nature of the trip and the absence of luggage, the purchases were necessary; (d) the expenses on the Passengers' submitted receipts exceeded the cap; and (e) because no special declaration of higher value was made, the Passengers' recovery was limited to the cap, which the Officer converted to CAD 2,329.72, then subtracted the CAD 250.00 already paid, for a net award of CAD 2,079.72.
- [7] The Officer made the Decision on November 15, 2024, ordering Air Canada to pay the Passengers CAD 2,079.72 no later than December 15, 2024. IV. Issues [8] The issues are: Whether this Court has jurisdiction to review the Decision; The applicable standard of review; and Whether the Decision is reasonable. V. Standard of Review [9] The Applicant submits, and I accept, that the standard of reasonableness applies to judicial review of the Decision. The Officer is a statutory decision maker created under the CTA, acting within authority assigned by statute (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]).
- [10] Reasonableness review asks whether the Decision as a whole bears the hallmarks of reasonableness, namely justification, transparency and intelligibility, and whether the Decision is justified in relation to the legal and factual constraints that bear on it (Vavilov at para 99). The burden lies on Air Canada to show unreasonableness, and any shortcomings or flaws relied on by Air Canada must be sufficiently central or significant to render the decision unreasonable (Vavilov at para 100). VI. Analysis A. Jurisdiction [11] While it appears that no previous cases address this issue in this Court, the Agency website acknowledges that "Either party may challenge a CRO's decision by filing a judicial review application with the Federal Court of Canada". While not legally binding, the website at least provides some indication of the Agency's position.
- [12] The Agency is a regulator and quasi-judicial tribunal under the CTA that sets rules on the rights and responsibilities of transportation providers and users, issues licences, permits and exemptions, imposes administrative monetary penalties, and resolves transportation-related commercial and consumer disputes (*International Air Transport Association v Canadian Transportation Agency*, 2022 FCA 211 [International Air Transport Association] at para 7). The CTA is empowered to take enforcement action through designated enforcement officers (*International Air Transport Association* at para 7). Sections 85.02-85.12 of the CTA address the establishment, duties, and powers of a Complaint Resolution Officer ("CRO"). Under subsections 85.02(2)-(3) of the CTA, proceedings before a CRO are not proceedings before the Agency, and CROs have the powers, duties and functions of a CRO and not of the Agency. Under subsection 85.07(1) of the CTA, where a carrier fails to apply a term or condition set out in its tariff, a CRO may order the carrier to apply the tariff and compensate a complainant for any expenses they incurred as a result of the carrier's failure. Under

subsections 85.06(2) and 85.07(3) of the CTA, a CRO's order is not an order or decision of the Agency though it may be filed with and enforced as if an Agency order.

- [13] Read together, these provisions show that a CRO exercises a statutory decision-making power distinct from the Agency's adjudicative jurisdiction. The fact that an order can be filed with the Agency for enforcement does not retroactively convert it into an Agency decision for the purpose of judicial review. Accordingly, section 28(1)(k) of the Federal Courts Act, which allocates jurisdiction over Agency decisions to the Federal Court of Appeal, does not apply.
- [14] The Applicant submits that the Officer is an "other tribunal" within the meaning of section 2(1) of the Federal Courts Act, such that this Court has jurisdiction under section 18(1) and review proceeds under section 18.1. Under section 2(1) of the Federal Courts Act, a CRO is a "body, person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament", namely the powers conferred by sections 85.04-85.12 of the CTA, to receive and decide air travel complaints and to order compensation or dismiss complaints. In the absence of a specific provision allocating review of CRO orders to the Federal Court of Appeal, this Court has jurisdiction under sections 18 and 18.1 of the Federal Courts Act to conduct judicial review of the Decision. B. Reasonableness of the Decision (1) Legal Framework Bearing on the Decision [15] The Passengers' itinerary was purely domestic, and therefore, under Rules 105(J)(1), (K)(7) and (K)(9), the Tariff requires proof of amount of loss, a causal link arising from or connected in any way with any act or omission by Air Canada, and permits Air Canada to disallow claims that contain misrepresentations as to the nature or amount of loss or "claims when the passenger fails to provide proof of loss in the form of receipts of purchase unless other sufficient proof of loss is provided". Rule 105(J)(1) of the Tariff sets the limit of liability for baggage for domestic travel at 1,288 SDR.
- [16] The Officer's reasons state that the Tariff applies, that the Tariff "incorporates" the Montreal Convention, and used the Montreal Convention's SDR cap for liability based on checked baggage delay. Air Canada argues that the Officer failed to interpret and apply the Montreal Convention. Air Canada argues that, while the Air Passenger Protection Regulations, SOR/2019-150 (the "APPR") forms part of the Tariff, the Tariff does not incorporate the Montreal Convention, and then submits that the Montreal Convention, in the case of delayed checked baggage: (a) requires that passengers prove intention or recklessness on the part of the carrier; (b) requires proof of loss and limits that are not fixed or automatically recoverable; and (c) leaves it to national courts to determine the requisite standard of proof regarding the contents of missing checked baggage and corresponding expense claims for the cost of replacing such contents.
- [17] Section 23(2) of the APPR, which would have linked domestic baggage delay to the Montreal Convention, was held ultra vires the CTA under section 86.11 by the Federal Court of Appeal, and that holding was not appealed (*International Air Transport Association* at para 194; *International Air Transport Association v Canada* (Transportation Agency), 2024 SCC 30 at

para 19). Therefore, the Tariff, while providing that Air Canada's obligations under the APPR form part of the Tariff, does not incorporate the Montreal Convention through the application of section 23(2) of the APPR.

- [18] Whether that cap flowed by the Tariff incorporating the Montreal Convention or solely from Rule 105(J)(1) of the Tariff does not change the governing constraint: a liability cap of 1,288 SDR for delayed delivery of baggage for a purely domestic itinerary. To the extent there is an imprecision in the Officer describing the Montreal Convention as "incorporated" by the Tariff, any such misstatement by the Officer is immaterial and does not affect the liability cap applied. An administrative decision is not overturned during reasonableness review for a minor reasoning misstep; any shortcomings must be sufficiently central or significant to render the decision unreasonable (Vavilov at para 100).
- (2) Application to the Record and the Officer's Reasons [19] While the Officer's reasons for the Decision are brief, brevity alone does not render the Decision unreasonable: the question is whether the Decision is reasonable in light of the record and constraints. The Officer found that because the Passengers were on an outbound trip without their luggage, their purchases were necessary. The Officer found that the receipts exceeded the cap, then awarded the capped amount converted to CAD 2,329.72, subtracting the CAD 250.00 Air Canada already paid the Passengers, for a net award of CAD 2,079.72.
- [20] The Officer's reasons do not address nor show any common sense on why post-delivery purchases were causally linked to the delay, including the inclusion of the May 28, 2022 luggage purchase of CAD 1,310.40. The Tariff requires a sufficient causal link and proof of loss. The record shows post-delivery purchases totalling CAD 1,744.01. The pre-delivery receipts total CAD 1,691.98. The post-delivery purchases account for a material portion of the receipts the Passengers submitted with their complaint. If the Officer had reasonably excluded all post-delivery purchases, totalling CAD 1,744.01, the compensable total would be CAD 1,691.98, a figure below the 1,288 SDR cap, as converted to CAD 2,329.72 by the Officer.
- [21] Omissions are not stand-alone grounds for judicial intervention: the key question is whether the omitted aspect of the analysis causes the reviewing court to lose confidence in the outcome reached by the decision maker (Vavilov at para 122). However, the unaddressed causal link for a material portion of the claim, with respect to claims for purchases made subsequent to delivery of the Delayed Bag, makes the Decision unreasonable.
- [22] The Officer also adopted a conversion value for 1,288 SDR using a stated Bank of Canada rate from January 17, 2020, for a May 2022 itinerary without explanation. While I am inclined to view the use of 2020 as a typo in the Officer's reasons, it further detracts from any careful, reasonable approach to the claims by the Officer.

- [23] While Air Canada appears to invite broader pronouncements that the Officer should have particularized “essential” items, excluded items that Air Canada classifies “luxury”, and obtained a list of the Delayed Bag’s original contents, given the Court’s finding that the post-delivery purchases are unreasonable, it is now incumbent on a different CRO to provide a more reasoned, logical decision in respect of the entire claim.
- [24] Air Canada further submits that the Decision is unreasonable because the Officer did not find that much or all of the Passengers’ claim was vexatious or made in bad faith. The record does not support such a finding.
- [25] The matter is referred to a different CRO for reconsideration. VII. Conclusion [26] The application for judicial review is granted. The Decision is set aside, and the matter is remitted to a different CRO for reconsideration in accordance with these reasons.
- [27] No costs were sought and none are awarded. JUDGMENT in T-3553-24 THIS COURT’S JUDGMENT is that: The application is granted and the matter is remitted to a different officer for reconsideration in accordance with these reasons. No costs are awarded. "Michael D. Manson" Judge FEDERAL COURT SOLICITORS OF RECORD DOCKET: T-3553-24 STYLE OF CAUSE: AIR CANADA v ALAA BADIA TANNOUS PLACE OF HEARING: Toronto, Ontario DATE OF HEARING: November 5, 2025 JUDGMENT AND REASONS: MANSON J. DATED: NOVember 25, 2025 APPEARANCES: Clay Hunter For The Applicant Alaa Badia Tannous For The Respondent (ON HIS OWN BEHALF) SOLICITORS OF RECORD: Paterson McDougall LLP Barristers and Solicitors Toronto, Ontario For The Applicant

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