

BEFORE THE DEPARTMENT OF TRANSPORTATION
OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS
WASHINGTON, D.C.

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)
v.) Docket DOT-OST-2020-____
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WestJet)
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COMPLAINT OF

Comments with respect to this document should be addressed to:

E-mail: campersb@yahoo.ca

Dated: August 25, 2020

BEFORE THE DEPARTMENT OF TRANSPORTATION
OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS
WASHINGTON, D.C.

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v.) Docket DOT-OST-2020-____
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WestJet)
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COMPLAINT OF _____

1. This complaint arises out of WestJet’s non-compliance with the Department’s rules regarding consumers’ right to be refunded for flights to or from the United States (“U.S. Flights”) cancelled by airlines, even for reasons outside the carriers’ control, as described in the Department’s “Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel”¹ (“Enforcement Notice”).
2. This complaint also arises out of WestJet’s application of its refund policies, which constitutes an unfair or deceptive practice within the meaning of 49 U.S.C. § 41712². According to 14 CFR § 399.80(1)(l), it is the policy of the Department to regard as an unfair or deceptive practice or unfair method of competition the practices enumerated

¹ Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel (April 3, 2020) at https://www.transportation.gov/airconsumer/enforcement_notice_refunds_apr_3_2020.

See also 14 CFR § 259.5(b)(5), and Enhancing Airline Passenger Protections, 76 Fed. Reg. 23110-01, at 23129 (Apr. 25, 2011).

² Under 49 USC § 41712, the Department is authorized to investigate and decide whether a U.S. air carrier, foreign air carrier, or ticket agent engaged in an unfair or deceptive practice in air transportation or the sale of air transportation. The Department is also authorized to issue orders to stop an unfair or deceptive practice after notice and opportunity for a hearing.

in paragraphs (a) through (n) of this section by a ticket agent of any size and the practice enumerated in paragraph(s) by a ticket agent that sells air transportation online and is not considered a small business under the Small Business

Administration's size standards set forth in 13 CFR 121.201:

(I) Failing or refusing to make proper refunds promptly when service cannot be performed as contracted or representing that such refunds are obtainable only at some other point, thus depriving persons of the immediate use of the money to arrange other transportation, or forcing them to suffer unnecessary inconveniences and delays or requiring them to accept transportation at higher cost, or under less desirable circumstances, or on less desirable aircraft than that represented at the time of sale.

FACTS

A. Flight cancelled by WestJet

3. On November 19, 2019, I purchased a ticket for a roundtrip flight on WestJet from Toronto (YYZ) to Orlando (MCO) departing on April 24, 2020 (Attachment 1).
4. On March 30, 2020, I learned that my flight was cancelled by WestJet (Attachment 2).
5. On March 30, 2020, I contacted WestJet to request a refund for the cancelled flight, but my request was denied. I was offered a Voucher/Credit (Attachment 3). I did not accept the voucher/credit.
6. I had booked the flight on behalf of 2 person(s). The name(s) of the individual(s) are the following:

B. WestJet's refund policy for cancelled flights

7. WestJet's current policy is that customers who purchased nonrefundable flight tickets are not entitled to receive full refunds for flights cancelled or changed by the carrier

due to reasons outside its control, including cancellations attributed to the COVID-19 pandemic. WestJet only offers flight vouchers or credits in such situations and claims in its United States English website that “in accordance with government regulations”, that such bookings are ineligible for a refund .

C. WestJet’s obligations

8. WestJet is an airline that operates flights from and to the United States and is therefore subject to the Department’s jurisdiction for such flights and bound by the rules enunciated in the Enforcement Notice, which apply to U.S. and foreign airlines operating flights from, to and within the United States.
9. In its Enforcement Notice, and based on existing federal regulation, the Department reminds airlines about their obligation to offer prompt refunds for flights significantly delayed or cancelled by the carriers, even if the reason of such flight disruptions are outside the carrier’s control, and regardless of the nonrefundability or cancellation penalty provisions of the ticket purchased by the affected consumers.
10. In page 2 of its Enforcement Notice, the Department lists the actions non-complying airlines must take to avoid enforcement action, as follows:
 - a. the carrier contacts, in a timely manner, the passengers provided vouchers for flights that the carrier cancelled or significantly delayed to notify those passengers that they have the option of a refund;
 - b. the carrier updates its refund policies and contract of carriage provisions to make clear that it provides refunds to passengers if the carrier cancels a flight or makes a significant schedule change;

- c. the carrier reviews with its personnel, including reservationists, ticket counter agents, refund personnel, and other customer service professionals, the circumstances under which refunds should be made.

11. On May 12, 2020, the Department issued a notice³ in the form of answers to frequently asked questions regarding airline ticket refunds. In the answer to question 4 of the notice, the Department reiterates that airlines may not retroactively apply changes to their refund policies and must honor the policies in place at the time of ticket purchase.

D. WestJet's non-compliance and violations

12. WestJet's current policy is that customers who purchased WestJet flights that included a United States segment that was cancelled by WestJet (UN, UC, or NO), due to WestJet's temporary route suspensions, they will be offering the option for a refund to the original form of payment or will be credited as WestJet dollars, valid for 24 months only if a flight was booked on or after March 3, 2020 (Attachment 4). WestJet acknowledges that these ticket holders are entitled to a refund but wants to delay the refund to an arbitrary date. For ticket holders who purchased a WestJet Vacation package before March 3, 2020 are not entitled to receive full refunds for flights cancelled or changed by the carrier due to reasons outside its control, including cancellations attributed to the COVID-19 pandemic. WestJet only offers flight vouchers or credits in such situations and claims in its United States English website that "in accordance with government regulations", that such bookings are ineligible for a refund. adheres to their company policy that the full value of the cancelled flight

³ U.S. Department of Transportation, Office of Aviation Enforcement and Proceedings, Frequently Asked Questions Regarding Airline Ticket Refunds Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel (See answer to question 4: "May airlines and ticket agents retroactively apply new refund policies?") https://www.transportation.gov/airconsumer/FAQ_refunds_may_12_2020.

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will only be credited to a Travel Bank, valid for 24 months from the date of issue and WestJet Vacation packages will be credited as WestJet dollars, valid for 24 months (Attachment 5), but only if the WestJet Vacation is booked prior to March 3, 2020.

13. WestJet's policies indicated that some consumers can receive refunds for schedule changes and cancellations attributed to the COVID-19 pandemic if they have booked after March 3, 2020. WestJet's refund policies for cancellations and schedule changes for consumers who have booked prior to March 3, 2020 are negatively affecting consumers by no longer permitting refunds for bookings made prior to March 3, 2020. The new policy is applied by WestJet based on the date of the cancellation or schedule change, and regardless of the policy in place at the time the passenger purchased the ticket.

14. The aforementioned no-refund policy is applied by WestJet regardless of the policies and terms in place at the time consumers purchased flight tickets, which stipulate that WestJet will issue refunds for cancelled flights. WestJet's policy constitutes an unfair or deceptive practice within the meaning of 49 U.S.C. § 41712.

15. According to 14 CFR § 399.80(1)(l), it is the policy of the Department to regard as an unfair or deceptive practice or unfair method of competition the practices enumerated in paragraphs (a) through (n) of this section by a ticket agent of any size and the practice enumerated in paragraph(s) by a ticket agent that sells air transportation online and is not considered a small business under the Small Business

Administration's size standards set forth in 13 CFR 121.201:

(l) Failing or refusing to make proper refunds promptly when service cannot be performed as contracted or representing that such refunds are obtainable only at some other point, thus depriving persons of the immediate use of the

money to arrange other transportation, or forcing them to suffer unnecessary inconveniences and delays or requiring them to accept transportation at higher cost, or under less desirable circumstances, or on less desirable aircraft than that represented at the time of sale.

16. Many airlines are complying with their obligations to refund passengers, especially after the issuance of the Enforcement Notice on April 3rd. These airlines will be in an unfairly disadvantageous situation if other airlines, such as WestJet are allowed to continue practices that violate the same obligations without incurring any penalty.

REQUESTED RESOLUTION

17. I am seeking the airline provide me with an Refund. In addition, I ask that the Department of Transportation to do the following:

- (1) Exercise its authority under 49 USC 41712 to open an investigation of WestJet for its non-compliance with the Department's Enforcement Notice and the regulations on which the notice is based;
- (2) Order WestJet to comply with its obligation to offer prompt full refunds to original form of payment for U.S. flights that are significantly delayed or cancelled by the carrier, regardless of the reason of such flight disturbances and regardless of the nonrefundability or the cancellation penalty of the tickets purchased by affected customers.
- (3) Order WestJet to:
 - a. contact, in a timely manner, the passengers provided vouchers for U.S. Flights significantly delayed or cancelled by the carrier to notify those passengers that they have the option of a refund;

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- b. update its refund policies, contract of carriage and tariff provisions to make clear that it provides prompt refunds to passengers if the carrier cancels a U.S. Flight or makes a significant schedule change, regardless of the reason of such flight disruptions and regardless of the nonrefundability or the cancellation penalty provisions of the tickets purchased by the affected customers;
 - c. review with its personnel, including reservationists, ticket counter agents, refund personnel, and other customer service professionals, the circumstances under which refunds should be made.
- (4) Impose appropriate civil penalties on WestJet.

Respectfully submitted.

Attachment 1

Copy of flight itinerary/ticket receipt



eTicket Receipt

Prepared For

RESERVATION CODE	
ISSUE DATE	19Nov19
TICKET NUMBER	
ISSUING AIRLINE	WESTJET
ISSUING AGENT	WestJet/SDX

Itinerary Details

TRAVEL DATE	AIRLINE	DEPARTURE	ARRIVAL	OTHER NOTES
24Apr20	WESTJET WS 1226	TORONTO ON, CANADA Time 07:30 Terminal TERMINAL 3	ORLANDO INTL, FL Time 10:21	Cabin ECONOMY Seat Number 07E - (CONFIRMED) Baggage Allowance NIL Booking Status OK TO FLY Fare Basis LTUD0EZG Not Valid Before 24APR20 Not Valid After 24APR20
01May20	WESTJET WS 1229	ORLANDO INTL, FL Time 13:20	TORONTO ON, CANADA Time 16:06 Terminal TERMINAL 3	Cabin ECONOMY Seat Number 07E - (CONFIRMED) Baggage Allowance NIL Booking Status OK TO FLY Fare Basis XT7D0EZS Not Valid Before 01MAY20 Not Valid After 01MAY20

Allowances

Baggage Allowance

YYZ to MCO - 0 Pieces WESTJET

Prices of additional baggage pieces:

- 30.00 CAD up to 50 pounds/23 kilograms and up to 62 linear inches/158 linear centimeters
- 50.00 CAD up to 50 pounds/23 kilograms and up to 62 linear inches/158 linear centimeters

MCO to YYZ - 0 Pieces WESTJET

Prices of additional baggage pieces:

- 30.00 CAD up to 50 pounds/23 kilograms and up to 62 linear inches/158 linear centimeters
- 50.00 CAD up to 50 pounds/23 kilograms and up to 62 linear inches/158 linear centimeters

ADDITIONAL ALLOWANCES AND/OR DISCOUNTS MAY APPLY DEPENDING ON FLYER-SPECIFIC FACTORS
/E.G. FREQUENT FLYER STATUS/MILITARY/ CREDIT CARD FORM OF PAYMENT/EARLY PURCHASE OVER
INTERNET,ETC

Carry On Allowances

YYZ to MCO , MCO to YYZ - 1 Piece (WS - WESTJET)

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Carry On Charges

YYZ to MCO , MCO to YYZ - (WS - WESTJET) - Carry-on fees unknown - contact carrier

Payment/Fare Details

Form of Payment	CREDIT CARD - MASTERCARD : XXXXXXXXXXXXX
Fare Calculation Line	YTO WS ORL96.10WS YTO223.74NUC319.84END ROE1.331882 XFMCO4.5
Fare	CAD 425.99
Taxes/Fees/Carrier-Imposed Charges	CAD 12.10 CA4 (AIR TRAVELLERS SECURITY CHARGE)
	CAD 21.90 XG8 (GOODS AND SERVICES TAX (GST))
	CAD 25.00 SQ (AIRPORT IMPROVEMENT FEE (AIF))
	CAD 3.25 RC2 (HARMONIZED SALES TAX (HST))
	CAD 49.20 US2 (TRANSPORTATION TAX (INTERNATIONAL))
	CAD 7.79 YC (CUSTOMS USER FEE)
	CAD 9.26 XY2 (IMMIGRATION USER FEE)
	CAD 5.24 XA (APHIS USER FEE)
	CAD 7.41 AY (SEPTEMBER 11TH SECURITY FEE)
	CAD 5.95 XF (PASSENGER FACILITY CHARGE)
Total Fare	CAD 573.09

Other Charges

SEAT ASSIGNMENT # 8381505022500 (YYZ-MCO / QTY 1, MCO-YYZ / QTY 1)	CAD 94.00
Taxes	CAD 4.70
Form of Payment	CREDIT CARD - MASTERCARD : XXXXXXXXXXXXX
Total	CAD 98.70
Total Fare and Other Charges	CAD 671.79

Positive identification required for airport check in

Notice:

OST # 1202807956TQ0001 GST # 866112535

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Attachment 2

Confirmation/notice that a flight in your reservation has been cancelled by the airline.

8/25/2020

Yahoo Mail - Important changes to your upcoming WestJet flight / Changements importants concernant votre vol de WestJet

Important changes to your upcoming WestJet flight / Changements importants concernant votre vol de WestJet

From: WestJet (flightchange@travelinfo.westjet.com)

To: CAMPERSB@YAHOO.CA

Date: Monday, March 30, 2020, 09:15 p.m. EDT

There have been changes to your itinerary - please review and action as required.
To ensure you receive emails from WestJet, please add us to your contacts.

WESTJET 

[Version française](#)

Hello

Due to adjustments to our flight schedule, we're sorry to advise you that it has been necessary to change one or more of your WestJet flights and we are unable to provide an alternative flight option.

For your reference, the reservation code is: .

We are not processing refunds to original form of payment at this time. The full value of your flight has been refunded to a WestJet travel bank (for WestJet bookings) or WestJet Dollars account (for WestJet Vacations bookings), which is valid for 24 months from date of issue. If you prefer a refund to original form of payment, we will provide information about when that can be requested at a later date.

We sincerely apologize for any inconvenience these changes may cause you. Thank you for your understanding.

WESTJET 

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8/25/2020

Yahoo Mail - Important changes to your upcoming WestJet flight / Changements importants concernant votre vol de WestJet

Privacy policy

You have received this notification because you have booked a flight with WestJet. Replies to this email will not be received.

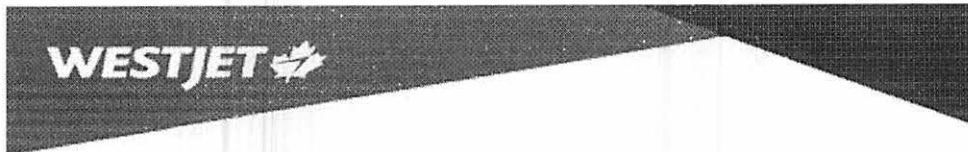
This electronic message and any attached documents are intended only for the named addressee(s). This communication from WestJet may contain information that is privileged, confidential or otherwise protected from disclosure and it must not be disclosed, copied, forwarded or distributed without authorization. If you have received this message in error, please notify the sender immediately and delete the original message.

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WestJet, 22 Aerial Place NE, Calgary, AB T2E 3J1, Canada

Des changements ont été apportés à votre itinéraire. Veuillez l'examiner et prendre les mesures nécessaires.

Afin de vous assurer de recevoir les courriels de WestJet, veuillez nous ajouter à vos contacts.



English version

Bonjour

En raison de changements apportés à notre horaire de vols, nous avons le regret de vous informer que nous avons dû modifier un ou plusieurs de vos vols WestJet et que nous ne pouvons pas vous offrir d'autres options de vols pour le moment.

À titre de référence, le code de réservation est :

Nous n'effectuons pas de remboursements au mode de paiement initial en ce moment. La valeur totale a été remboursée sous forme d'un crédit versé dans une banque de voyage WestJet (pour les réservations de vols WestJet) ou sous forme de dollars WestJet (pour les réservations de Vacances WestJet). Les crédits de la banque de voyage WestJet et les dollars WestJet seront valides pendant 24 mois à compter de la date d'émission. Si vous préférez un remboursement au mode de paiement initial, nous vous communiquerons les renseignements nécessaires pour en faire la demande plus tard.

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Yahoo Mail - Important changes to your upcoming WestJet flight / Changements importants concernant votre vol de WestJet

Nous sommes sincèrement désolés de tout inconfort que ces changements pourraient vous causer. Nous vous remercions de votre compréhension.



Politique de confidentialité

Vous avez reçu cet avis parce que vous avez réservé un vol avec WestJet. WestJet ne recevra pas les réponses à ce courriel.

Ce message électronique et tout document joint sont destinés exclusivement aux destinataires mentionnés. Cette communication de WestJet peut contenir des renseignements privilégiés, confidentiels ou, par ailleurs, protégés contre toute divulgation. De plus, il est interdit de la divulguer, de la copier, de l'acheminer ou de la distribuer sans autorisation. Si vous recevez ce message par erreur, veuillez en aviser l'expéditeur immédiatement et supprimer le message d'origine.

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Attachment 3

Proof of communication that the Airline denied your request for a refund.

8/25/2020

Yahoo Mail - Re: APPR Contact Form

Re: APPR Contact Form

From: APPR (appr@westjet.com)

To: campersb@yahoo.ca

Date: Thursday, July 23, 2020, 03:49 p.m. EDT

Thank you for contacting WestJet.

To ensure you receive emails from WestJet, please add us to your contacts.

Merci de contacter WestJet.

Afin de vous assurer de recevoir les courriels de WestJet, veuillez nous ajouter à vos contacts.



Hello

Thank you for your patience during the recent interruption to your travel plans.

WestJet is an industry leader in on-time performance, and we aim to have all our flights arrive on schedule. We apologize that your flight on April 24, 2020 was impacted.

Based on the details of your itinerary, we are unable to approve your claim for compensation as your flight was impacted due to an operational issue and outside of WestJet's control.

8/25/2020

Yahoo Mail - Re: APPR Contact Form

For more information about your passenger rights, please visit www.WestJet.com/guestrights, review the updated terms and conditions of carriage or read the full tariff. You may also file a complaint with the Canadian Transportation Agency.

Thank you for choosing WestJet. We hope to have the opportunity to welcome you on board again soon.

Regards,

Ana | Guest Support



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WestJet, 22 Aerial Place NE, Calgary, AB T2E 3J1, Canada

Additional Attachments

Certificate of Service

I hereby certify that I have, this 25 day of August 2020 a copy of the foregoing Complaint to be served by electronic mail on the following persons:

Kimberly Graber, Esq.

kimberly.graber@dot.gov

Blane Workie, Esq.

blane.workie@dot.gov

Robert Gorman, Esq.

robert.gorman@dot.gov

Don Hainbach, Esq.

dhainbach@ggh-airlaw.com