

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

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Craig Pike, )  
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v. ) Docket DOT-OST-2020-\_\_\_\_  
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WestJet )  
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**COMPLAINT OF CRAIG PIKE**

Comments with respect to this document should be addressed to:

Craig Pike  
E-mail: craig.pike@hotmail.com

Dated: November 23, 2020

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**COMPLAINT OF CRAIG PIKE**

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”<sup>1</sup> (“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. § 41712<sup>2</sup>. According to 14 CFR § 399.80(1)(1), it is the policy of the Department to regard as an

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<sup>1</sup> 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](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).

<sup>2</sup> 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.

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:

(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 July 19, 2019, I purchased a ticket for a roundtrip flight on WestJet from St. John's (YYT) with a layover(s) in Halifax (YHZ), Toronto (YYZ) to Las Vegas (LAS) departing on April 9, 2020 with a layover(s) in Toronto (YYZ), Halifax (YHZ) (Attachment 1).
4. On , I learned that my flight was cancelled by WestJet (Attachment 2).
5. On March 17, 2020, I contacted WestJet to request a refund for the cancelled flight, but my request was denied. I was offered a Partial Refund and Voucher/Credit (Attachment 3). I accepted a refund of \$147.80. I accepted a voucher/credit of \$2,120.48.
6. I had booked the flight on behalf of 2 person(s). The name(s) of the individual(s) are the following: Janine White.

**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 notice<sup>3</sup> 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

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<sup>3</sup> 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](https://www.transportation.gov/airconsumer/FAQ_refunds_may_12_2020).

- 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 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)(1), 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 3<sup>rd</sup>. 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;
- 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,

A handwritten signature in black ink that reads "C. A. Pike". The letters are written in a cursive, slightly slanted style.

Craig Pike



**Attachment 2**

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

None

**Attachment 4**

Captured on July 5, 2020 from [http://docs.airpassengerrights.ca/Airlines/WestJet/2020-06-03--WestJet--refund\\_policy--US\\_and\\_UK.pdf](http://docs.airpassengerrights.ca/Airlines/WestJet/2020-06-03--WestJet--refund_policy--US_and_UK.pdf)



## Refund policy

Due to the ever-changing COVID-19 situation, we are now able to offer the option for a refund to original form of payment for guests who had a journey that included a United States **or** United Kingdom flight segment that was cancelled by WestJet (UN, UC or NO) due to our temporary route suspensions.

You and your client have the option of retaining the full ticket value up to 24 months for a future flight or refunding to original form of payment. If your client prefers a refund to original form of payment, please follow the process below.

Note: If your client chose to voluntarily cancel their booking, they are not eligible for a refund to original form of payment unless they purchased a PremiumFlex (W) or BusinessFlex (J) fare.

If your client purchased a refundable J or W class of service, these fares can also be refunded to original form of payment. If your client has a wholly domestic, European, Caribbean/Mexico journey and prefers a refund to original form of payment, we will provide further information at a later date.

**IMPORTANT: Please review in detail the criteria for which you can submit a request for refund. Requests for refunds received outside these guidelines will be rejected.**

<b>BSP REFUND PROCESS</b> .....	<b>2</b>
TERMS AND CONDITIONS FOR UNITED STATES OR UNITED KINGDOM JOURNEYS.....	2
TERMS AND CONDITIONS FOR PREMIUMFLEX (W CLASS OF SERVICE) OR BUSINESSFLEX (J CLASS OF SERVICE).....	2
BSP PROCESS.....	2
<b>ARC REFUND PROCESS</b> .....	<b>3</b>
TERMS AND CONDITIONS FOR UNITED STATES OR UNITED KINGDOM JOURNEYS.....	3
TERMS AND CONDITIONS FOR PREMIUMFLEX (W CLASS OF SERVICE) OR BUSINESSFLEX (J CLASS OF SERVICE).....	3
ARC AGENCY .....	3
<b>FREQUENTLY ASKED QUESTIONS</b> .....	<b>4</b>

## BSP refund process

For United States or United Kingdom refund requests, please follow the submission calendar below.

**IMPORTANT:** If your submission is received outside of these ranges, it will be rejected and you will need to resubmit at the appropriate time.

Flight date	PNR in UN, UC or NO status	Date you can begin submitting your request	Estimated date refund will be completed
March 1-31, 2020	Yes	June 1, 2020	4-6 weeks
April 1-15, 2020	Yes	June 16, 2020	4-6 weeks
April 16-30, 2020	Yes	July 1, 2020	4-6 weeks
May 1-15, 2020	Yes	July 16, 2020	4-6 weeks
May 16-31, 2020	Yes	August 1, 2020	4-6 weeks
June 1-15, 2020	Yes	August 16, 2020	4-6 weeks
June 16-30, 2020	Yes	September 1, 2020	4-6 weeks

### Terms and conditions for United States or United Kingdom journeys

- Ticket must contain at least one United States or United Kingdom origin or destination city.
- The flight segment(s) must have been cancelled by WestJet (UN, UC or NO) as a result of COVID-19.
- Applies to all fares and class of service.
- Calendar submission dates must be followed, or the request will be rejected.
- Submissions with incorrect values or detail will be rejected and must be resubmitted.

### Terms and conditions for PremiumFlex (W class of service) or BusinessFlex (J class of service)

- Applies for all origin/destinations and can be submitted at any time.
- Refund request can be submitted even if the ticket was not impacted by COVID-19.
- In the case of tickets with combined fares, only the J and W fares/coupons are eligible for refunds as per standard fare rules. If the ticket includes a United States or United Kingdom origin or destination, the full ticket can be requested for refund.

### BSP process

- Submit the refund application in BSPlink.
- WestJet will review the request and either approve the refund to original form of payment or reject the refund request. If the request is approved:
  - The payment card will be refunded.
  - Cash will be refunded via BSP settlement.
  - Commission will be recalled in all cases.

### BSP process

- Submit the refund application in BSPlink.
- WestJet will review the request and either approve the refund to original form of payment or reject the refund request. If the request is approved:
  - The payment card will be refunded.
  - Cash will be refunded via BSP settlement.
  - Commission will be recalled in all cases.
- All requests will be reviewed for eligibility and processed in four to six weeks.

*Note: Requests received outside of these conditions will not be actioned.*



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### ARC refund process

#### Terms and conditions for United States or United Kingdom journeys

- At this time, we are actively working through the options for ARC refunds for guests who had a journey with a United States or United Kingdom origin or destination city.
- Please **do not** email requests for refunds until we can provide a solution.
- We will provide an update as soon as possible on where to submit these requests.

#### Terms and conditions for PremiumFlex (W class of service) or BusinessFlex (J class of service)

Process for PremiumFlex (W) or BusinessFlex (J) refunds			
Channel	Payment type	Action	Contact details
ARC Agency	Payment cards	Email WestJet to process refund	<a href="mailto:Agencysalesupport@westjet.com">Agencysalesupport@westjet.com</a>
	Cash	Email WestJet to process ACM	<a href="mailto:TAPaymentservices@westjet.com">TAPaymentservices@westjet.com</a>
BSP Agency	Payment cards and cash	Submit refund application in BSPlink	BSPlink refund application
WestJet Agent	Payment cards	Contact WestJet for processing	Travel Support Team 1-877-664-3205

NOTE: This is a temporary process in place as a result of COVID-19.

### ARC Agency

For PremiumFlex (W class of service) or BusinessFlex (J class of service):

- For tickets with combined fares, only J and W fares/coupons are eligible for refunds as per standard fare rules.
- Please email your request to WestJet and include the following subject line and details:
  - Subject line: J/W REFUND REQUEST
  - Details to include: Ticket number(s), guest name, IATA number, agency phone number.
  - DO NOT INCLUDE: Payment card numbers. We will contact you for this as required.
- For payment cards:
  - If the ticket was paid with a payment card such as Visa or Mastercard, please send your refund request to [agencyssalessupport@westjet.com](mailto:agencyssalessupport@westjet.com).
  - If applicable, the refund will be processed to the original payment card.
- For cash payments:
  - If the ticket was originally settled via ARC with cash, cheque, etc., please send your refund request to [TAPaymentservices@westjet.com](mailto:TAPaymentservices@westjet.com).
  - If applicable, the refund will be in the form of an Agency Credit Memo (ACM).
- All requests will be reviewed for eligibility and processed in four to six weeks.
- WestJet will reply once your request has been reviewed and advise of any action taken.

*Note: Other class of service or fare types received outside of these conditions will not be actioned.*



### Frequently asked questions

**Q: Why can't I submit a refund request for tickets issued via ARC that contain a United States or United Kingdom origin or destination?**

A: We are actively working on solutions for ARC-issued tickets. Your refund request can be submitted at a future date and we will advise as soon as this is available. We appreciate your patience as we work through these options.

**Q: What happens if my client purchased a pre-reserved seat?**

A: If you have issued a pre-reserved seat EMD from you GDS, we are still working through options for how to refund. If you purchased a pre-reserved seat from westjet.com or via the Travel Support Team, please call to have your United States or United Kingdom seat fee refunded.

**Q: Why am I not able to refund my client's ticket in the GDS?**

A: Due to refund restrictions, the ability to self-refund is restricted. Please follow the refund process as outlined above.

**Q: If my client booked a BusinessFlex or PremiumFlex fare combined with a non-refundable fare, how will the refund be processed?**

A: If your client has a ticket that combines a refundable J or W class service and another non-refundable class of service, only the J or W coupons will be refunded to original form of payment. The remaining coupons will remain in open status for future exchanges. If the ticket includes a United States or United Kingdom origin or destination, the full ticket can be requested for refund.

**Q: Will there be a penalty fee for refunding?**

A: For tickets that have been impacted by COVID-19 and include a United States or United Kingdom origin or destination, the full ticket can be requested for a full refund without a penalty. For refundable J and W fares, the penalty will be charged based on the fare rules. If a penalty fee is applicable, it will be deducted from the full amount of the fare/tax refund. If no penalty fee is applicable, the full amount of the fare/taxes will be refunded.

**Q: Will the refund include taxes?**

A: If the taxes are refundable as per standard tax rules, they will be included with the refund.



**Attachment 5**

Captured on July 5, 2020 from <https://www.westjet.com/en-ca/travel-info/advisories#coronavirus>

## There's no fee to change or cancel your flight.

Change/cancel flights online

Flexible change/cancel policy

Call times are high: please call only if your travel is within 72 hours.

If you are unable to cancel your flight online, please use [this form](#).

The full value of your cancelled flight will be credited to a [Travel Bank](#), valid for 24 months from the date of issue. WestJet Vacation packages will be credited as [WestJet dollars](#), valid for 24 months.

To request cancellation of a WestJet Vacations package, please [contact us](#) directly.

If you booked through a Travel Agent (online or directly), Corporate Travel arranger, or another airline, please contact them directly.

## Additional Attachments

Captured on November 12, 2020 Westjet Change or Cancellation Policy for Flights Booked Before March 2, 2020. From <https://www.westjet.com/en-ca/travel-info/change-cancel>

### Change/cancel policies for travel affected by COVID-19

[Show all](#)

Change/cancel policy for flights booked Mar 3 – Dec 31 

Change/cancel policy for flights booked before Mar 3, 2020 

For flights booked before March 3, 2020 for travel any time:

- \$0 one-time fee waiver for changes or cancellations
- Change or cancellation must be requested at least 2 hours prior to departure
- Value of cancelled flights will be returned as a credit to your [Travel Bank](#), valid for 24 months from the date your flight was cancelled
- If you change your flight, the difference in fare applies. If the new fare is less, the difference will be returned as a [Travel Bank](#) credit
- For changes or cancellations within 2 hours of travel, standard [change and cancel fee rules](#) apply

[Change or cancel your flights online.](#)

If you have already checked in for your flight within 24 hours of departure, please use the uncheck feature in our [online check-in](#) and then [manage your trip](#)

If you booked through a Travel Agent (online or directly), Corporate Travel arranger, or another airline, please contact them directly.



**Certificate of Service**

I hereby certify that I have, this 23 day of November 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

A handwritten signature in black ink that reads "C. A. Pike". The letters are written in a casual, slightly slanted cursive style.

Craig Pike