

Federal Court of Appeal



Cour d'appel fédérale

Date: 20241205

Docket: A-142-23

Citation: 2024 FCA 211

**CORAM: BOIVIN J.A.
ROUSSEL J.A.
GOYETTE J.A.**

BETWEEN:

**AIR CANADA also carrying on business as
AIR CANADA ROUGE and as AIR CANADA
CARGO (AIR CANADA)**

Appellant

and

**CANADIAN TRANSPORTATION AGENCY
AND CHRISTOPHE SCORDO**

Respondents

Heard at Toronto, Ontario, on December 5, 2024.
Judgment delivered from the Bench at Toronto, Ontario, on December 5, 2024.

REASONS FOR JUDGMENT OF THE COURT BY:

ROUSSEL J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on December 5, 2024).

ROUSSEL J.A.

[1] Air Canada appeals under section 41 of the *Canada Transportation Act*, S.C. 1996, c. 10 a decision of the Canadian Transportation Agency (Decision No. 36-C-A-2018) dated May 11, 2018. In the decision at issue, the Agency awarded Mr. Scordo compensation for the loss of his

checked baggage under Article 22(2) of the *Convention for the Unification of Certain Rules for International Carriage by Air*, 2242 UNTS 309 (*Montreal Convention*). Mr. Scordo's checked baggage was supposed to arrive on July 5, 2017 following a flight from abroad. It was delivered to Mr. Scordo on July 30, 2017.

[2] The Agency found that even though Air Canada eventually located Mr. Scordo's baggage and returned it to him, a claim for lost baggage existed under Article 17(3) of the *Montreal Convention* since the baggage was returned to Mr. Scordo more than 21 days after the expected arrival date. It also found that Air Canada was responsible under Article 17(2) of the *Montreal Convention* for the loss of Mr. Scordo's baggage. As a result, it concluded that Air Canada had failed to apply the terms and conditions of carriage set out in its Tariff with regard to the liability of carriers respecting baggage, as required by subsection 110(4) of the *Air Transportation Regulations*, S.O.R./88-58, as amended.

[3] The determinative issue in this appeal is whether the Agency correctly interpreted the *Montreal Convention* in awarding damages to Mr. Scordo for lost baggage despite the fact that the luggage was returned to him prior to the filing of his application, with no alleged damage or loss to the baggage or its content.

[4] As a statutory appeal raising a question of law, the standard of review is correctness (*Air Canada v. Robinson*, 2021 FCA 204 at para. 31).

[5] In our view, the Agency erred in considering Mr. Scordo's claim under Articles 17(2) and 17(3) of the *Montreal Convention*.

[6] The *Montreal Convention* is an international treaty that has force of law in Canada by virtue of subsection 2(2.1) of the *Carriage by Air Act*, R.S.C. 1985, c. C-26. It applies to all international carriage by aircraft of persons, baggage and cargo and sets out a number of rules governing the liability of air carriers. It also sets the monetary limits of the carrier's liability (*Thibodeau v. Air Canada*, 2014 SCC 67).

[7] Article 17(2) of the *Montreal Convention* establishes the carrier's liability for the loss of checked baggage while in the charge of the carrier. Although Article 17(3) entitled Mr. Scordo to claim his checked baggage as lost since it had not arrived at its destination at the expiration of 21 days after the expected arrival date, the presumption of loss was rebutted when Air Canada found the checked baggage and delivered it to him well before Mr. Scordo filed his application for compensation.

[8] After the return of Mr. Scordo's luggage, the Agency could no longer treat the claim as one of lost luggage under Article 17 of the *Montreal Convention*. Instead, Mr. Scordo's claim was one of delay occasioned in the carriage of baggage, as set out in Article 19 of the *Montreal Convention*. The Agency's interpretation of Article 17(3) fails to recognize the distinction drawn by the *Montreal Convention* between lost baggage and baggage that is delayed. Moreover, it has the effect of overcompensating Mr. Scordo for a loss that did not occur since the items in his

luggage did not need replacement. Air Canada did reimburse Mr. Scordo for the interim expenses he incurred because of the delay in receiving his checked baggage.

[9] We note that Mr. Scordo and the Agency did not participate in the appeal. With respect to the Agency, perhaps its decision was motivated by the fact that the interpretation and application of Article 17(3) in the underlying decision was rejected in subsequent decisions of the Agency (Decision No. 98-C-A-2020, October 20, 2020, at paras. 29-30; Decision No. 98-C-A-2021, September 14, 2021, at paras. 41-42).

[10] Given the foregoing, the appeal will be allowed. The decision of the Agency will be overturned and set aside, without costs. It is therefore unnecessary to deal with Air Canada's remaining arguments given the outcome of the appeal.

"Sylvie E. Roussel"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-142-23

STYLE OF CAUSE: AIR CANADA also carrying on
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(AIR CANADA) v. CANADIAN
TRANSPORTATION AGENCY
AND CHRISTOPHE SCORDO

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 5, 2024

**REASONS FOR JUDGMENT OF THE COURT
BY:** BOIVIN J.A.
ROUSSEL J.A.
GOYETTE J.A.

DELIVERED FROM THE BENCH BY: ROUSSEL J.A.

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