COURT OF APPEAL

ON APPEAL FROM the order of the Honourable Madam Justice Sharma of the Supreme Court of British Columbia pronounced on the 30th day of October 2025

BETWEEN:

AIR PASSENGER RIGHTS

APPELLANT
(Petitioner)

AND:

WESTJET AIRLINES LTD.

RESPONDENT
(Respondent)

AND:

CIVIL RESOLUTION TRIBUNAL and
ATTORNEY GENERAL OF BRITISH COLUMBIA

RESPONDENTS

RESPONDENT'S SUBMISSIONS ON INTERPRETATION OF THE *APPR*

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A. First alleged Error: Reversal of Burden of Proof

1. WestJet accepts that when a carrier claims a flight disruption was outside its control, it must provide evidence to support its categorization of the disruption – (see para. 95 of WestJet's factum). However, even if the CRT did improperly place the burden on the Boyds to prove their claim, this had no effect on the result.

2. At paras. 14-18, the Tribunal member conducted a statutory interpretation analysis and concluded that labour disruption should not be interpreted so narrowly as to only include a strike or lockout. Nowhere in those paragraphs does she state that the Boyds had failed to prove their claim on a balance of probabilities or any similar language which would suggest the result turned on the burden having been placed on them. This was not surprising, given that the claim as presented by the Boyds turned on a question of statutory interpretation – whether "labour disruption" only commenced at the time of a strike or lockout, or whether WestJet's winding down of its operations (and, in particular, cancelling a flight that would have been in the air at the time the pilots were in a legal strike position) constituted cancellation due to a labour disruption. The Boyds did not allege a colourable purpose for the flight cancellation.

B. Second alleged Error: Use of the Words "Labour Dispute"

3. APR asserts that the Tribunal member erred because she (twice) used the words labour "dispute" rather than "disruption". However, it has again not shown any impact on the result. The Tribunal member did not consider the meaning of "dispute" – in fact, in the two paragraphs that contain the substance of her analysis, she uses the correct word: "disruption". There is nothing to suggest her conclusion resulted from confusion as to which of these words was used in s. 10.

C. APR's argument for a "*De Novo* Analysis"

4. WestJet accepts that the standard of review of a question of statutory interpretation by the Tribunal is correctness. While APR does not phrase its submissions at paras. 22-39 as identifying errors on the part of the Tribunal, but, rather,

as a "*de novo* analysis" made necessary by the two above errors, it appears to allege additional errors without so stating. WestJet will respond to these as such.

(a) Failure to address the *Canada Transportation Act*

5. WestJet agrees that, as a general principle, regard should be had to the enabling legislation when interpreting regulations. Again, APR has failed to identify how the Tribunal's failure to consider s. 86.11(1) of the *Canada Transportation Act* impacted its decision. This part (paras. 24-25) of APR's submission raises a different issue – whether, on the interpretation of "outside control" in *Lareau*, the period after a strike notice but before a strike occurs can be a "labour disruption". This is addressed below.

(b) Reasoning in *Lareau*

6. WestJet disagrees that the interpretation given to "outside control" by the court in *Lareau* is relevant to this case, given that the Agency has in s. 10 deemed a "labour disruption" within the carrier to be outside its control. It is therefore neither necessary nor appropriate to consider whether the circumstances also meet a judicially-created test of being outside control; the only question is whether there is a "labour disruption" on the facts of the particular case. This is particularly so given that the interpretation of s. 10 was not at issue in *Lareau*; rather, the court's comments regarding "outside control" were a counterpoint to its discussion of the meaning of "within control but required for safety purposes", which was the central issue in that case. The common law standard for "outside control" should be limited to situations that are not enumerated in s. 10, which is not an exhaustive list of situations outside a carrier's control.

7. In response to para. 28 of APR's submission, WestJet did not "choose to run on a '*schedule reduction during the negotiation*' as bargaining leverage" (emphasis added by APR). Its evidence was that the Boyds' flight was cancelled because of "the schedule reduction during the negotiation" taking place during the notice period. It is unclear on what evidence APR bases its suggestion of bargaining leverage.

8. In response to para. 29, WestJet did not acknowledge "that returning planes and crew back to base is a matter of monetary costs". It said the opposite at para. 88 of its factum: that "it is clearly not only a matter of cost", and that other issues arose with

respect to, for example, pilots' employment status after they were in a legal strike position but still required to be engaged in their employment duties (e.g., flying a plane, or being on a layover in Rome). It was not within WestJet's "control or influence" as an employer to require them to be engaged in those duties after a strike began, and to avoid this necessarily required WestJet to wind down its operations before the deadline (see para. 89 of WestJet's factum). APR's example at para. 30 of anticipated bad weather is not analogous.

9. APR also submits (at para. 26) that a "labour disruption" is a situation or event that "***deprives*** an aircraft of its flight crew" (emphasis in original). The court's statement in *Lareau* on which this quote is based was part of a paragraph in which it gives examples of situations that would fall within the various enumerated circumstances in s. 10, including unsafe meteorological conditions and safety-related manufacturing defects. The entirety of the statement providing examples of "labour disruptions" was:

> [86] … A labour disruption that deprives an aircraft of its flight crew or an airport of its air-traffic controllers disrupts the operation of the carrier until it is resolved by the agreement of all parties to the dispute, the order of a labour board, or legislative means…

10. The meaning of "labour disruption" was not at issue in *Lareau*. A strike is clearly not intended to be the only situation that could constitute a labour disruption.

(c) The RIAS

11. WestJet addresses the RIAS at paras. 81-82 of its factum. In response to para. 39 of APR's submission, it is true that the concerns around influencing bargaining were the airlines'; however, the Agency's comment in response and its decision to amend the draft regulations to include a disruption "within the carrier" in s. 10(j) clearly shows that it acceded to these concerns (see para. 14 of WestJet's factum). In addition, these concerns are engaged before a strike occurs, because of the need to wind down operations. If WestJet were required to pay compensation to all passengers in the situation of the Boyds, the *APPR* would be influencing collective bargaining, which the Agency sought to avoid in drafting the regulations as it did.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at the City of Vancouver, Province of British Columbia, this 10th day of April, 2026.

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WestJet Airlines Ltd.