

RELEVANT TARIFF EXTRACTS

WestJet's International Passenger Rules and Fares Tariff No. WS-1, Airline Tariff Publishing Company, Agent, NTA(A) No. 518

Rule 75

CARRIER CANCELLATION, CHANGE, AND REFUND TERMS (See Rules 60, 100, 105 and 110 for additional Information)

(A) The provisions of this Rule are not intended to make the Carrier responsible in all cases for the acts of nature, or for the acts of third parties that are not deemed servants and/or agents of the Carrier per applicable law or international conventions and all the rights here described are subject to the following exception:

The Carrier shall not be liable for damage occasioned by overbooking or cancellation if it, and its employees and agents, took all measures that could reasonably be reasonably be required to avoid the damage or if it was impossible for the Carrier, and its employees or agents, to take such measures.

(B) Subject to the exception stated in (A), if a flight is overbooked or cancelled, with the result that a ticketed passenger is not transported on a flight for which he held confirmed space, the Carrier will define a remedy or remedies to mitigate the impact of the overbooking or cancellation upon the passenger. In defining the remedy or remedies appropriate in a particular case, the Carrier will consider the transportation needs of the passenger and any damages the passenger may have suffered by reason of the overbooking or cancellation. In cases where the passenger is offered alternative remedies, the choice among the alternatives shall rest with the passenger. In particular, the Carrier will offer one or more of the following remedies:

- (1) Transportation, without further charge and within a reasonable time, to the passenger's intended destination on a transportation service which service will be identified by the Carrier;
- (2) Transportation, without further charge and within a reasonable time, to the passenger's point of origin on a transportation service which service will be identified by the Carrier;
- (3) A monetary payment in an amount to be defined by the Carrier which shall in no case be less than the value of the unused portion of the passenger's ticket;
- (4) A credit, to be defined by the Carrier, towards the purchase of future transportation on a service operated by the Carrier.

(C) In identifying the transportation service to be offered to the passenger, the Carrier will not limit itself to considering its own services or the services of carriers with which it has interline agreements.

(D) In defining the alternative remedies to be offered, the Carrier will consider, to the extent they are known to the Carrier, the circumstances of the passenger affected by the overbooking or cancellation, including any expenses which the passenger, acting reasonably, may have incurred

as a result of the overbooking or cancellation as, for example, costs incurred for accommodation, meals or additional transportation.

(E) In defining the alternative remedies to be offered, the Carrier will make a good faith effort to fairly recognize, and appropriately mitigate, the impact of the overbooking or cancellation upon the passenger.

(F) The rights of a passenger against the Carrier in the event of overbooking or cancellation are, in most cases of international carriage, governed by an international convention known as the Montreal Convention, 1999. Article 19 of that convention provides that an air carrier is liable for damage caused by delay in the carriage of passengers and goods unless it proves that it did everything it could be reasonable expected to do to avoid the damage. There are some exceptional cases of international carriage in which the rights of passengers are not governed by an international convention. In such cases only a court of competent jurisdiction can determine which system of laws must be consulted to determine what those rights are.

(G) For the purpose of this Rule, a passenger whose journey is interrupted by a flight cancellation or overbooking, and to whom the Carrier is not able to present a reasonable transportation option which takes into account all known circumstances, may surrender the unused portion of his/her ticket. In such a case the value of that unused portion shall be calculated as follows:

(1) When no portion of the trip has been made, when due to a cancellation or denied boarding within the Carrier's control, if the passenger chooses to no longer travel and return to the point of origin, the amount of refund will be the fare and charges paid.

(2) When a portion of the trip has been made, the refund will be calculated as follows: Either an amount equal to the one-way fare less the same rate of discount, if any, that was applied in calculating the original one-way fare, or on round-trip tickets, one half of the round-trip fare and charges applicable to the unused transportation from the point of termination to the destination or stopover point named on the ticket.

Existing Tariff Rule 110

DENIED BOARDING COMPENSATION

[...]

(B) The Carrier shall not be liable to any passenger in respect of such overbooking, whether or not resulting from an Event of Force Majeure; provided that, the Carrier will, at the carrier's discretion, provide any passengers affected by such denied boarding with:

(1) A credit, valid for one year from the cancellation date, towards the provision of a fare relating to a future flight or flights if booked as a round trip and the originating sector is cancelled, which credit shall be equal to the original fare(s) which was/were cancelled; or

(2) To otherwise refund to such passenger, an amount which shall not be greater than the fare paid by the passenger in respect of that flight or flights if booked as a round trip and the originating sector is cancelled.

[...]

(E) AMOUNT OF DENIED BOARDING COMPENSATION

Passengers who are eligible for denied boarding compensation for flights departing from the US must be offered a payment equal to 200% the sum of the fare values of their ticket coupons, with a \$650 USD maximum if WestJet is able to place you on another flight or flights that are planned to each your final destination or first stopover less than four hours of the scheduled arrival of your original flight. However, if WestJet cannot arrange “alternate transportation (see below) the passenger must be offered a payment equal to 400% the sum of the fare values of their ticket coupons, with a \$1,300 USD maximum. For flights to/from Canada (except flights from USA), as WestJet does not commercially oversell its aircraft, no denied boarding compensation will be provided. “Alternate transportation” is air transportation (by an airline licensed by the D.O.T.) or transportation used by the passenger which, at the time the arrangement is made, is planned to arrive at the passenger’s next scheduled stopover (of 4 hours or longer) (for international flights) after the passenger’s originally scheduled arrival time.

[...]

(G) PASSENGER’S OPTIONS

Acceptance of the compensation (by endorsing the cheque or draft within 30 days) relieves WestJet from any further liability to the passenger caused by the failure to honour the confirmed reservation. However, the passenger may decline the payment and seek to recover damages in a court of law or in some other manner.

Proposed Tariff Rule 110

DENIED BOARDING COMPENSATION

[...]

(B) The Carrier will, at the carrier’s discretion, provide any passengers affected by denied boarding with:

- (1) A credit, valid for one year from the cancellation date, towards the provision of a fare relating to a future flight or flights if booked as a round trip and the originating sector is cancelled, which credit shall be equal to the original fare(s) which was/were cancelled; or
- (2) To otherwise refund to such passenger, an amount which shall not be greater than the fare paid by the passenger in respect of that flight or flights if booked as a round trip and the originating sector is cancelled.

[...]

(E) AMOUNT OF DENIED BOARDING COMPENSATION

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[...]

(G) PASSENGER’S OPTIONS

The passenger may decline the payment and seek to recover damages in a court of law or in some other manner.

RELEVANT STATUTORY EXTRACTS

Air Transportation Regulations, SOR/88-58, as amended

111(1) All tolls and terms and conditions of carriage, including free and reduced rate transportation, that are established by an air carrier shall be just and reasonable and shall, under substantially similar circumstances and conditions and with respect to all traffic of the same description, be applied equally to all that traffic.

122. Every tariff shall contain

[...]

(c) the terms and conditions of carriage, clearly stating the air carrier’s policy in respect of at least the following matters, namely,

[...]