



Civil Resolution Tribunal

Date Issued: May 31, 2018

File: SC-2017-004411

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Khanna v. Air Canada*, 2018 BCCRT 220

B E T W E E N :

Kabir Khanna

APPLICANT

A N D :

Air Canada

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant Kabir Khanna says he had to buy replacement clothing items while the respondent Air Canada delayed the return of his baggage for a week on his return home from an international trip. The applicant also says 2 items were stolen from his baggage while it was in the respondent Air Canada's possession.

2. The applicant seeks a total of \$2,556.29 in compensation, for the replacement items he bought and for the 2 items missing from his baggage. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.
5. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. Under the Act and tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issues in this dispute are whether the respondent must compensate the applicant for a) items he bought due to his baggage being delayed, and b) for items missing from his baggage, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. The respondent acknowledges that the applicant's bag was delayed when the applicant flew home from an international trip. The bag was never lost and I accept the respondent told the applicant his bag would be returned to him. It is undisputed that the respondent delivered the applicant's bag to him on January 9, 2017, 1 week after the applicant had arrived home on January 2, 2017.
10. On January 20, 2017, the applicant filed a compensation claim with Air Canada for 2 items he said were missing from his bag: a Coach jacket and a pair of Geox Guildford boots. In support, at that time the applicant provided the respondent with screenshots of different Madison boots and a different Gucci jacket. The applicant's supporting evidence for the claimed missing items is discussed further below.
11. In this dispute, the applicant also claims for various clothing items he ordered online between January 2 and 9, 2017, before his bag was returned to him. For ease of reference, I will refer to these items as the 'delay purchases', the invoices for which totaled about \$1,800. The applicant did not file a claim with Air Canada for the delay purchases. Air Canada ultimately rejected the applicant's claim, for both the delay purchases and for the claimed 2 missing items.
12. I turn now to the parties' arguments and my analysis.
13. As the applicant's trip was international, he is subject to what is commonly known as the 'Montreal Convention'. The Montreal Convention is part of Canadian law, under the federal *Carriage by Air Act*. As noted in my earlier decision in *Kuehn v. Eurowings GmbH*, 2017 BCCRT 144, the Montreal Convention limits the scope and type of damages the applicant can recover from the respondent.

14. As set out in article 31 of the Montreal Convention, in the case of baggage delay, the applicant had to complain to the respondent, in writing, within 21 days of receipt of the baggage. Here, that means by January 30, 2017. Otherwise, under article 29 of the Montreal Convention, the applicant has no right of action against the respondent. The respondent's limitation of liability is described in its "General Conditions of Carriage".
15. Here, the applicant failed to file a written complaint by January 30, 2017 about the delay purchases, which are the damages he alleges were caused by delay of his bag being returned to him. As a result, the applicant's claim for the delay purchases must fail, given article 31 of the Montreal Convention. The applicant's argument that it would have been "impossible" to wait on hold to make a call about each item he purchased does not assist him. In any event, I do not accept that the applicant could not have made a written complaint about the delay purchases before January 30, 2017. I also agree the delay purchases were excessive in the circumstances: the applicant was not on vacation without his bag but was instead at home, and, the respondent told the applicant his bag would be returned to him. Regardless, the Montreal Convention is binding. The applicant failed to provide the required written notice of his claim for the delay purchases. I dismiss the applicant's claim with respect to the delay purchases.
16. What about the alleged missing boots and jacket? The respondent submits the applicant has failed to provide sufficient proof of these items, saying the screenshots of "like" items is inadequate. The respondent says it would expect a credit card statement, a receipt, and/or photos. The Geox boots and Coach jacket claimed are expensive. In support, the applicant submits a Gucci jacket eBay listing with a price of \$1,095 USD and a \$347.50 CAD receipt for "Madison leather waterproof wingtip" boots the applicant bought on January 14, 2017. It is unclear if the applicant bought the Gucci jacket.
17. It may be that Coach and Gucci are both generally high-end brands. However, I am not prepared to accept that a Coach jacket and Gucci jacket are necessarily

close in value. I say the same about the boots. Despite the respondent raising the issue in its submissions, the applicant has provided no explanation for why he did not provide any invoice or credit card statements for the claimed Coach jacket and boots, or any photos of the alleged missing items. Given the alleged value of these items, I would expect to see supporting evidence of their actual value, or at least an explanation for why that evidence is not available. The applicant did not explain when he bought them. The applicant provided a screenshot showing Geox boots, but that had no price information. The applicant has not explained why he provided the price and description of other brands, rather than those he says were lost.

18. Overall, for the jacket and boots, I find the applicant has failed to provide sufficient proof of loss under the respondent's international tariff and the parties' contract of carriage, particularly given the absence of the sort of evidence I would expect to see for the significant amounts claimed. I find the applicant has failed to prove his claim for the claimed jacket and boots. Therefore, I dismiss the applicant's claim for those 2 items.
19. In accordance with the tribunal's rules, as the applicant was unsuccessful in this dispute I find he is not entitled to reimbursement of the claimed \$125 in tribunal fees.

ORDER

20. I order that the applicant's dispute is dismissed.

Shelley Lopez, Vice Chair