



Civil Resolution Tribunal

Date Issued: June 4, 2018

File: SC-2017-003748

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pandya v. Onkar Travel Inc.*, 2018 BCCRT 229

B E T W E E N :

Sonal Pandya

APPLICANT

A N D :

Onkar Travel Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION AND JURISDICTION

1. This final decision of the Civil Resolution Tribunal (tribunal) has been made without the participation of the respondent, due to the respondent's non-compliance with the tribunal's directions as required, as discussed below.
2. Both parties are self-represented.

3. Section 36 of the *Civil Resolution Tribunal Act* (Act) applies if a party to a dispute fails to comply with the Act or its regulations. It also applies if a party fails to comply with tribunal rules in relation to the case management phase of the dispute, including specified time limits, or an order of the tribunal made during the case management phase. After giving notice to the non-compliant party, the case manager (facilitator) may refer the dispute to the tribunal for resolution and the tribunal may:
 - a. hear the dispute in accordance with any applicable rules.
 - b. make an order dismissing a claim in the dispute made by the non-compliant party, or
 - c. refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
4. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the 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.
5. Under 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.
6. For the reasons that follow, I have allowed the applicant's claim.

ISSUES

7. The first issue in this dispute is whether I should proceed to hear the applicant's claim without the respondent's further participation, given the respondent's non-compliance.

8. The second issue is whether the respondent must reimburse the applicant \$4,944 for airline tickets.

EVIDENCE & ANALYSIS

Non-compliance

9. My May 28, 2018 summary decision to hear the dispute without the respondent's participation due to the respondent's non-compliance was previously communicated to the parties by email through the tribunal case manager. The details supporting that decision are set out below.
10. The respondent is the non-compliant party in this dispute and has failed to participate in the case management phase, as required by sections 25 and 32 of the Act and tribunal rules 94 to 96, despite multiple attempts by the case manager to contact him with a request for a reply.
11. The respondent filed its Dispute Response on September 15, 2017. The tribunal's facilitation process began on December 13, 2017, and the respondent participated in that process until January 29, 2018. A tribunal administrator subsequently made the following attempts to contact the respondent, with no response:
 - a. March 13, 2018 – tribunal administrator sent an introductory email stating that the parties should send all future correspondence to her.
 - b. March 14, 2018 – tribunal administrator sent an email requesting that evidence be provided by March 29, 2018.
 - c. April 4, 2018 – tribunal administrator emailed a reminder that evidence was due on March 29, 2018, and that the respondent must either confirm it had no evidence to submit or request an extension.
 - d. April 15, 2018 – tribunal administrator emailed a final warning stating that the respondent must provide evidence or confirm that it had none by April 23,

2018. The email warned that if the respondent did not comply, the dispute could be decided without the respondent's participation.

- e. April 27, 2018 – the tribunal administrator emailed the Tribunal Decision Plan to the respondent, directing it to provide its response to each of the applicant's claims by May 7, 2018. The email warned that if the respondent did not provide a response, the tribunal member might decide the dispute using only the information already submitted.
 - f. May 8, 2018 – the tribunal administrator sent an email stating that this would be its only chance to provide a response. She also left a voicemail, giving the respondent two days to respond.
 - g. May 14, 2018 – a final warning was emailed, allowing until May 18, 2018 to respond, or else the dispute might be decided without the respondent's participation.
 - h. April 26, 2018 – case manager emailed the respondent, stating that it was a final warning and if he failed to reply by May 1, 2018, she would proceed with a "noncompliance approach".
12. The tribunal administrator then referred the matter of the respondent's non-compliance with the tribunal's rules to me for a decision as to whether I should hear the dispute without the respondent's participation.

Should the tribunal hear the applicant's dispute without the respondent's participation?

13. As referenced above, the respondent filed a Dispute Response. The respondent has provided no explanation about why it later failed to communicate with the tribunal as required. I find the tribunal administrator made a reasonable number of attempts to contact the respondent. Parties are told at the beginning of a tribunal proceeding that they must actively participate in the dispute resolution process. Given that the respondent was able to communicate with the tribunal by email in

December 2017 and January 2018, I find it is more likely than not that the respondent was aware of the administrator's attempts to contact him.

14. The tribunal's rules are silent on how it should address non-compliance issues. I find that in exercising its discretion, the tribunal must consider the following factors:
 - a. whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute;
 - b. the stage in the facilitation process at which the non-compliance occurs;
 - c. the nature and extent of the non-compliance;
 - d. the relative prejudice to the parties of the tribunal's order addressing the non-compliance; and
 - e. the effect of the non-compliance on the tribunal's resources and mandate.
15. First, this claim does not affect persons other than the parties involved in this dispute.
16. Second, the non-compliance here occurred early in the facilitation process, and no the respondent has effectively abandoned the process without providing particulars or evidence to support the position set out in its Dispute Response.
17. Third, given the administrator's attempts at contact and the respondent's failure to respond despite warnings of the consequences, I find the nature and extent of the non-compliance is significant.
18. Fourth, I see no prejudice to the applicant in hearing the dispute without the respondent's participation. The prejudice to the respondent of proceeding to hear the dispute is outweighed by the circumstances of its non-compliance. If I refused to proceed to hear the dispute, the applicant would be left without a remedy, which would be unfair to her.

19. Finally, the tribunal's resources are valuable. Its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party refuses to participate. I find that it would be wasteful for the tribunal to continue applying its resources on this dispute, such as by making further attempts to seek participation from the respondent.
20. In weighing all of the factors, I find the applicant's claim should be heard. In deciding to hear the applicant's dispute I have put significant weight on the following factors:
 - a. the extent of the non-compliance is significant;
 - b. the applicant is not prejudiced; and
 - c. the need to conserve the tribunal's resources.

Airline Tickets

21. Having decided to hear the dispute without the respondent's participation, I turn to the merits of the dispute.
22. The applicant purchased three return trip airline tickets from Vancouver to Entebbe, Uganda from the respondent travel agency, for herself and her family members. The applicant and her family members are permanent residents of Canada, rather than citizens. The applicant says the travel agent checked their immigration status and took copies of their permanent resident cards, and told them they could travel via Europe without visas.
23. The return trip tickets the agent booked from Uganda to Vancouver had two layovers, in Brussels and Frankfurt.
24. The applicant says that after she arrived in Uganda, she learned that since they were not Canadian citizens, and did not have the correct visas to stop in Europe, they were not able to use the return portion of the tickets. She says she called the respondent travel agency and asked them to re-route the tickets, but they did not.

25. The applicant says she had to purchase new tickets in order to return to Canada. She provided a credit card statement showing that on June 20, 2016, she purchased 3 tickets from another airline for a total of \$4,942.23 in Canadian dollars. She was also charged a credit card “over limit fee” of \$29 on June 22, 2016.
26. In its Dispute Response, the respondent said that they are only booking agents, the tickets state that the passenger must take care of their visa and passport, and they are not responsible for any extra costs. However, the respondent did not provide any evidence to support this assertion, such as a copy of the ticket language at issue.
27. Also, where a respondent has failed to comply with the tribunal's directions as required, as in this case, an adverse inference may be drawn against that respondent. This means that if the person or organization refuses to participate, it is generally assumed that the other party's position is correct. This is similar to when a respondent fails to provide any response at all to the dispute and is in default and the respondent's liability is assumed.
28. For these reasons, I accept the applicant’s evidence and submissions, and find that the respondent must reimburse her \$4,942.23 for the second set of airline tickets. I also find that the respondent must reimburse the applicant for the \$29 credit card over limit fee, as the statement shows she would not have incurred it if she had not had to charge the airline tickets.
29. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. As the applicant was successful in this dispute, I order that the respondent pay the applicant \$125 as reimbursement for tribunal fees. There were no dispute-related expenses claimed.
30. The applicant is also entitled to pre-judgment and post-judgment interest under the *Court Order Interest Act (COIA)*, as set out below in my order.

ORDERS

31. I order that within 30 days of this decision, the respondent must pay the applicant a total of \$5,174.69, broken down as:
 - a. \$4,942.23 for the airline tickets,
 - b. \$29 for the credit card over limit fee,
 - c. \$78.46 in pre-judgment interest under the COIA, and
 - d. \$125 in tribunal fees.
32. The applicant is also entitled to post-judgment interest under the COIA.
33. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
34. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Kate Campbell, Tribunal Member