



Civil Resolution Tribunal

Date Issued: August 22, 2018

File: SC-2017-004744

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Brodeur v. VIA Rail Canada Inc.*, 2018 BCCRT 464

BETWEEN:

MARCEL BRODEUR

APPLICANT

AND:

VIA Rail Canada Inc

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Helene Walford

INTRODUCTION

1. This is a dispute about the applicant's transportation on the respondent's train. The applicant, Marcel Brodeur, says that he purchased a ticket (the "Ticket") for travel on the respondent, VIA Rail Canada Inc's train (the Train") from Vancouver,

British Columbia to Edmonton, Alberta. The applicant says that the respondent unnecessarily denied him re-entry onto the Train after it stopped in Kamloops (the “Kamloops Station”). The applicant says that as a result he missed the Train and lost his personal belongings that were still on the Train.

2. The applicant says that the respondent should reimburse him \$3,000 for replacement of his personal belongings and provide him with compensation of \$2,000 for pain and suffering. The applicant also wants the respondent to contact the other passengers on the Train and offer a reward for the return of his personal belongings.
3. The applicant is self-represented. The respondent is represented by its representative, Paul Richings.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.

7. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Does the respondent owe the applicant \$3,000 to have his personal belongings replaced?
 - b. Is the applicant entitled to \$2,000 for pain and suffering?
 - c. Should the tribunal order the respondent to contact the passengers that were on the Train and offer a reward for the return of the applicant's personal belongings?
 - d. Is the applicant entitled to his tribunal fees of \$125?

EVIDENCE AND ANALYSIS

9. I have only commented on the evidence to the extent necessary to give context to these reasons. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities.
10. It is undisputed that the applicant boarded the Train on May 17, 2017. It is also undisputed that the Train made a routine stop in Kamloops for about 20 minutes, and the passengers were allowed to disembark to stretch their legs. The applicant says that he was having a conversation when the announcement indicated it was time to board the Train. The applicant says that the conductor told him he could

not board the Train in the location he was, as that was for prestige cars, and that he would need to walk forward to the other passenger cars.

11. The applicant says that he began walking forward but the Train started moving and despite trying to climb on the Train to gain access to the door he was unable to board the Train. The applicant says that the Train left him there. The applicant says he then hitchhiked to Jasper hoping to re-board the Train but by the time he arrived in Jasper the Train was already gone.
12. The applicant filed a detailed statement about the circumstances as well as pictures of the platform at the Kamloops Station. The applicant also filed a picture showing the clothing that he was wearing which he says blended in with the cement platform, possibly making it difficult for the respondent's employees to see him when they did a quick platform scan before departing the Kamloops Station.
13. The applicant also filed a picture of his knapsack and various emails between him and the respondent about this matter. In his emails, the applicant says that he is missing his day bag, which included his MacBook Pro laptop computer, external hard drive, two new pairs of eyeglasses, prescription medicine, yoga books, certification, pictures, and his boarding pass for the Train (the "Boarding Pass").
14. The applicant claims \$2,000 for pain and suffering to compensate him for hitchhiking to Jasper in order to try and re-board the Train. The applicant says that hitchhiking is very dangerous but he felt, under the circumstances, that he had no other feasible way of getting to Jasper in time to try and catch up to the Train and re-board it in Jasper.
15. The respondent says that the applicant checked in with an unknown number of unchecked bags (the "Unchecked Bags") and there is no evidence indicating the number of Unchecked Bags that the applicant brought on the Train.
16. The respondent says that at the Kamloops Station its employees followed routine procedures and announced that passengers may step off the Train but that the Train would be leaving shortly. The respondent says that shortly before 7:20 am,

its employees made several announcements about the imminent departure of the Train.

17. The respondent says that if the Train's departure was not imminent, then the employee responsible for managing the tail end of the train would have told the applicant to walk up to the economy car where his seat was located, but if departure was imminent he would have been able to re-board the Train by the prestige car. The respondent says that if the applicant stepped off the Train at the Kamloops Station it was his responsibility to re-board the Train prior to departure.
18. The respondent says that prior to the Train's departure, its employees conducted visual sweeps of the platform to ensure no passengers were on or near the platform. I accept the respondent's evidence that its employees did not see the applicant. The respondent says that the applicant was not denied re-entry onto the Train.
19. The respondent says that it subsequently located one of the Unchecked Bags on the Train and delivered it to the Via Rail station closest to where the applicant was residing at the time. The respondent says that its employees conducted a thorough search but were unable to locate any other Unchecked Bags belonging to the applicant.
20. The respondent says that even if one of the applicant's Unchecked Bags was lost, the conditions of the contract located on the bottom of the ticket state that passengers are responsible at all times for carry-on baggage and that the respondent assumed a limited liability for loss or damage to checked baggage (the "Ticket Conditions"). The respondent says that by purchasing the Ticket, the applicant accepted the Ticket Conditions.
21. The respondent says that its liability policy (the "Liability Policy") states that the respondent accepts limited liability for checked bags, and no liability for any missing, lost or damaged unchecked baggage. The respondent filed an itinerary receipt (the "Itinerary Receipt") and says that the Liability Policy was included on

the Itinerary Receipt and the Boarding Pass issued to the applicant when he purchased the Ticket.

22. The respondent says that the applicant was aware or ought to have been aware of the Ticket Conditions and the Liability Policy at the time he purchased the Ticket. The respondent says that as the applicant did not check the Unchecked Bags he accepted all risk for any missing, lost or damaged unchecked baggage.
23. The respondent says that the applicant's request to have its employees contact the passengers that were on the Train and offer a reward for the applicant's personal belongings is not feasible. The respondent says that the applicant's claim for \$3,000 to replace his belongings is unsubstantiated. The respondent says that the applicant's claim for pain and suffering of \$2,000 is also unsubstantiated.
24. The applicant has not provided any documents or information to substantiate his claim of \$3,000 for the missing items. For example, the applicant did not provide proof of purchase of the MacBook Pro laptop computer, external hard drive, two pairs of eyeglasses, prescription medication, or yoga books.
25. In any event, given that the Itinerary Receipt and the Boarding Pass both clearly state that passengers are responsible at all times for their carry-on baggage, I find that the applicant knew or ought to have known that he was responsible for his carry-on baggage at all times.
26. The Ticket Conditions and Liability Policy were clear and if the applicant wanted the protection of the Liability Policy, he should have checked the Unchecked Bags with the respondent prior to departure from Vancouver. I find that as the applicant did not check the Unchecked Bags, he accepted the risk for any missing, lost or damaged unchecked baggage.
27. Ordering a party to do something is called 'specific performance'. Specific performance is generally only ordered if monetary compensation will not suffice or is not appropriate. I find that the respondent took reasonable steps to try and locate the applicant's personal belongings, and did in fact locate one bag and

returned it to the applicant. As I find that the appellant assumed the risk for any missing, lost or damaged unchecked baggage, the respondent is not required to contact the passengers that were on the Train and offer a reward for the applicant's personal belongings.

28. On a balance of probabilities, the applicant has not proven that he missed reboarding the Train in Kamloops due to the respondent's actions. While the applicant says that the respondent's employee refused to allow him to reboard on the prestige car I accept that the respondent's employees followed normal procedures, including making several announcements about the imminent departure of the Train.
29. However, even if the applicant missed the Train due to the respondent's actions, I also find that there is no basis to award monetary damages for pain and suffering. I accept that it must have been stressful and inconvenient for the applicant to miss reboarding the Train in Kamloops and to hitchhike to Jasper in an attempt to meet and reboard the Train. However, there is no medical evidence before me indicating that the applicant sustained physical or psychological harm, or that his stress and inconvenience related to the respondent's actions amounted to pain and suffering.
30. The applicant was unsuccessful. Under section 49 of the Act, and tribunal rules, I find the applicant is not entitled to reimbursement of any tribunal fees.

ORDER

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

Helene Walford