



# Civil Resolution Tribunal

Date Issued: December 4, 2018

File: SC-2018-000080

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sohpaul v. Air Canada*, 2018 BCCRT 801

BETWEEN:

Milkiat Sohpaal

**APPLICANT**

AND:

Air Canada

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Kate Campbell

### INTRODUCTION

1. This is a dispute over lost luggage. The applicant, Milkiat Sohpaal, says the respondent, Air Canada, lost his bag during an international trip in October 2016. He says the bag was returned to him on January 16, 2017, but he later discovered

that some belongings were missing from the bag. The applicant seeks \$4,520 for the missing items.

2. The respondent denies the applicant's claim, and says it is not liable.
3. The applicant is self-represented. The respondent is represented by an employee.

## **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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.
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: 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**

8. The issue in this dispute is whether the respondent must pay the applicant \$4,520 for items missing from his luggage.

## **EVIDENCE AND ANALYSIS**

9. 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.
10. The documents in evidence show that on October 4 and 5, 2016, the applicant flew on an Air Canada flight from Vancouver to China, then flew on Asiana Airlines flights from China to South Korea, and from South Korea to India. The applicant travelled with 2 other people, with a total of 6 checked bags between them.
11. The applicant says 1 bag did not arrive in China, and also did not arrive in India during his 5 week stay there. The applicant filed a complaint with the respondent about the missing bag upon his return to Canada, around November 10, 2016. The respondent eventually located the bag and delivered it to the applicant by courier on January 16, 2017. This is not disputed.
12. The applicant says that when he received the bag, it was in “mutilated condition”, and was wrapped in plastic. He says he did not open the bag until February 8, 2017, when he needed some medication that was in the bag. He says that when he opened the bag, he was surprised to see that the inside of it was completely torn, and most of his valuable items were missing.

13. On February 25, 2017, the applicant wrote to the respondent's baggage claim department. He set out an itemized list of missing items, which he valued at \$4,520, and asked for compensation for that amount.
14. The respondent denied compensation. It says it is not liable for the applicant's claimed loss because he failed to report the missing items within the applicable time limit.
15. 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 *Kuehn v. Eurowings GmbH*, 2017 BCCRT 144 and *Khanna v. Air Canada*, 2018 BCCRT 220, the Montreal Convention limits the scope and type of damages an applicant can recover from an airline for baggage loss.
16. As set out in article 31 of the Montreal Convention, where baggage has been delayed, a person must file a written complaint to the airline within 21 days of receiving of the baggage. 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".
17. Here, since the applicant received the baggage on January 16, 2017, he had to file a written complaint by February 11, 2017. The evidence shows that he did not contact the respondent after receiving his bag until February 25, 2017. He therefore missed the deadline set out in the Montreal Convention. This deadline is mandatory, and I do not have discretion to overlook or extend it, even though I accept the applicant's argument that he is elderly and has personal challenges.
18. Also, even if I found the applicant had met the deadline for filing his written complaint, I would not order the full \$4,520 claimed. This is because the burden of proof lies with the applicant, and he provided no evidence to support the claimed value of the goods.

19. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I dismiss his claim for reimbursement of tribunal fees. The respondent did not pay any fees and there were no dispute-related expenses claimed by either party.

## **ORDER**

20. I dismiss the applicant's claim and this dispute.

---

Kate Campbell, Tribunal Member