



# Civil Resolution Tribunal

Date Issued: December 4, 2018

File: SC-2017-005311

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sheppard v. Air Canada*, 2018 BCCRT 805

**B E T W E E N :**

Margaret. Sheppard

**APPLICANT**

**A N D :**

Air Canada

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell

## INTRODUCTION

1. The respondent, Air Canada, says the applicant, Margaret. Sheppard<sup>1</sup> and her niece were legitimately denied boarding on a flight because they missed the deadline for check-in.
2. The applicant says she and her niece were unable to check in by the deadline because there was no one at the respondent's check-in desk at the airport. She seeks \$827.48 as compensation for ticket change fees and costs associated with the delay, plus \$1,000 for her time spent on the dispute.
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. Some of the evidence in this dispute amounts to a "she said, she said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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

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<sup>1</sup> The applicant's name, including punctuation, is reproduced as written in the Dispute Notice.

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. 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 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 issue in this dispute is whether the respondent must pay the applicant compensation for the missed fight, and if so how much.

## **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 submits that the applicant has no entitlement to claim compensation on behalf of her niece, JM. The applicant says she does, because she paid for their trip. I agree with the respondent on this point. While the applicant may have paid for JM's ticket, this does not give her standing to claim compensation on behalf of JM. She has not provided evidence that JM is a minor, or that she is JM's legal guardian. JM is not named as a party in this dispute. For these reasons, I find the applicant is not entitled to any compensation on behalf of JM.

10. As the disputed flight was travelling to and from destinations in Canada, it is subject to Air Canada's Domestic Tariff (tariff), which sets out rules applicable to the transportation of passengers and baggage. Rule 70 of the tariff says passengers are recommended to check in at least 90 minutes prior to the scheduled flight departure time, and must check in 45 minutes prior to scheduled departure time. The tariff says that if a passenger fails to meet the check-in deadline, Air Canada may cancel their reservation, and is not liable for any resulting loss or expense beyond a general refund.
11. These rules, which are published on Air Canada's website and cited on flight itineraries, form part of the ticket contract between the parties.
12. The applicant says there is no self-service check-in kiosk at the Whitehorse airport, and the respondent did not dispute that assertion. The key factual issue in this dispute is whether the applicant arrived at the check-in counter before 8:20 pm (45 minutes before the flight's scheduled departure time of 9:05 pm on August 5, 2017). Based on the evidence before me, I find the applicant has not met the burden of proving this fact, and is therefore not entitled to compensation.
13. The respondent's customer service and sales agent, UA, provided a written statement dated August 11, 2018. UA said that she was working the check-in counter on August 5, 2017. She said that at 45 minutes prior to departure, the flight goes into "flight closed" mode and she can no longer check in passengers. She said the applicant arrived at the ticket counter 5 minutes after the cut off time of 8:20 pm, which she documented on the reservation record. The reservation record provided in evidence shows the entry "showed up 5 mins after cut off", next to UA's initials.
14. UA said that when working the check-in counter, she does not leave it until after the cutoff time. She said that after the cutoff time, she went into the office, from which she can see anyone at the counter. UA said that if the applicant had been at the counter before the 8:20 cutoff time, she would have seen her.

15. In her submissions to the tribunal, the applicant says she dropped off her rental car keys at the airport around 8:10 pm, looked at the Air Canada check in counter less than 20 meters away, and saw no one there. She says that at 8:12 pm, she asked about the location of the Air Canada agent at the gift kiosk next to the car rental desk. She says she waited at the check-in counter from 8:17 to 8:25 pm, and when the ticket agent came out from the office at 8:25, she said the flight was already closed and they would have to buy new tickets for a flight the following day.
16. I am not persuaded by this chronological account by the applicant. First, she does not indicate how she knew the correct time. If she was using a watch, for example, the time might have been incorrect. I note that the burden is on the applicant to prove she was at the check-in counter by 8:20 pm.
17. Second, the applicant's submissions are inconsistent with her earlier written statements to the respondent, as set out in an online complaint form on August 6, 2017. In that complaint, the applicant wrote as follows:

We were at AC check in desk just 45 minutes before our flight however the agent was not. By the time she came out of the office behind the desk she declared the flight to be closed and was unwilling to let us make the flight.

18. I place significant weight on this statement, as it was written by the applicant only 1 day after the events question. The applicant said they were at the check in desk "just 45 minutes before our flight." This does not meet the requirements of the tariff, which says passengers must check in 45 minutes prior to the scheduled departure time. As previously stated, in order to comply with the tariff the applicant had to arrive at the check in counter before 8:20 pm, not at 8:20 pm.
19. Also, the applicant did not provide any evidence, such as a statement from JM, to corroborate her submission that she arrived at the check-in counter before 8:20 pm. While the applicant has suggested that the respondent should access video surveillance evidence, I note that the applicant bears the burden of proving her

claims. I find she has not done so, and so I conclude that she is not entitled to any compensation for the missed flight. I dismiss her claims.

20. 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 her claim for reimbursement of tribunal fees and dispute-related expenses. The respondent did not pay any fees and did not claim dispute-related expenses.

## **ORDER**

21. I dismiss the applicant's claims and this dispute.

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Kate Campbell, Tribunal Member