



Civil Resolution Tribunal

Date Issued: March 5, 2019

File: SC-2018-009503

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Thunderbolt v. AMERICAN AIRLINES, INC.*, 2019 BCCRT 273

B E T W E E N :

Miracle Angel Thunderbolt

APPLICANT

A N D :

AMERICAN AIRLINES, INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This is a final decision of the Civil Resolution Tribunal (tribunal), but it is not a decision on the merits of the applicant's claim. The issue is whether the applicant, Miracle Angel Thunderbolt, is out of time to bring their claim for lost luggage against the respondent, American Airlines, Inc.

2. The applicant is self-represented. The respondent is represented by an employee.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal 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.
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 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

7. The issues in this dispute are:

- a. Does the limitation period in the Montreal Convention or the *Limitation Act* apply to the applicant's claim?
- b. If the *Limitation Act* applies, does the applicant's disability postpone discovery of the claim?

EVIDENCE AND ANALYSIS

8. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
9. The applicant claims that on a flight between Los Angeles and Manchester, United Kingdom, via Chicago, the respondent lost their luggage. The applicant does not say the exact date of travel but says that it was in April 2016.
10. The tribunal issued a Dispute Notice on December 31, 2018.
11. The respondent says that the applicable limitation period is set out in what is known as the Montreal Convention, which is part of Canadian law under the federal *Carriage by Air Act*. The Montreal Convention limits the scope and type of claim that a person can make for disputes about international air travel, including lost or damaged luggage.
12. The respondent relies on article 35 of the Montreal Convention, which says that the right to claim damages is extinguished if the claiming party does not bring an action within a period of 2 years from the date the person arrives at their destination.
13. The applicant says that British Columbia's *Limitation Act* applies, because it is a local law. Even though the *Limitation Act* also provides for a 2 year limitation period, section 19 says that the limitation period does not start running while a person is under disability. The applicant says that they have a disability that postpones the application of a limitation period. This is important because the Montreal Convention does not have any similar rule to postpone the limitation period.

14. While it does not appear that this issue has arisen in British Columbia, the Nova Scotia Supreme Court considered the same issue in *Lemieux v. Halifax International Airport Authority*, 2011 NSSC 396. In that dispute, the plaintiff fell and injured herself at the Halifax Airport. She brought her claim over 5 years later. She argued that Nova Scotia's *Limitation of Actions Act* applied because she sought to take advantage of provisions that would postpone the limitation period. The airport relied on the Montreal Convention.
15. The Nova Scotia Supreme Court reviewed the Montreal Convention and international cases considering the limitation period. The Court noted that the English Court of Appeal and the Federal Court of Appeal in the United States had both found that the limitation period in the Montreal Convention superseded local law.
16. The Court found that the purpose of the Montreal Convention is to harmonize the law around international air travel. The Court found that it would be contrary to that purpose to allow different jurisdictions to set different limitation periods. The Court concluded that article 35 of the Montreal Convention ousts the jurisdiction of domestic courts to apply their own limitation period and dismissed the plaintiff's claim.
17. While the Nova Scotia Supreme Court is not binding on me, I agree with its reasoning. I find that the *Limitation Act* does not apply to the applicant's claims. I find that the applicant failed to bring their case within the 2 year limitation period set out in article 35 of the Montreal Convention.
18. Because of this finding, I do not need to consider the applicant's arguments about section 19 of the *Limitation Act*.
19. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general

rule. The applicant was unsuccessful, and the respondent has not incurred any fees, so I decline to make such an order.

ORDERS

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

Eric Regehr, Tribunal Member