



Civil Resolution Tribunal

Date Issued: March 13, 2019

File: SC-2018-006991

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Behzadian v. Air Canada*, 2019 BCCRT 307

B E T W E E N :

Masoud Behzadian

APPLICANT

A N D :

Air Canada

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about compensation for damages the applicant, Masoud Behzadian, says he suffered as a result of various problems with a flight booking he made through the respondent, Air Canada.

2. The respondent denies liability for any of the applicant's claims and among other things relies on the provisions in the *Montreal Convention*, as discussed below.
3. The applicant is self-represented. The respondent is represented by an employee. For the reasons that follow, I find the applicant's claims must be dismissed.

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 118 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.
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.

ISSUE

8. The issue in this dispute is to what extent, if any, the respondent owes the applicant \$3,000 for various alleged errors relating to a flight arranged through the respondent.

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 referenced the evidence and submissions as necessary to give context to my decision.
10. It is undisputed that the applicant was a scheduled passenger on an Air Canada flight from Vancouver to London, England on May 11, 2017. It is also undisputed that the applicant also had a scheduled British Airways (BA) flight from London England to Tehran, Iran on May 12, 2017. As discussed below, it was this BA flight the applicant and his wife missed and had to spend a night in Heathrow airport.
11. The applicant alleges a number of issues with the respondent's system of managing flights and their services. The applicant says the \$3,000 should be paid to compensate him for the following (without any break-down given):
 - a. The change fee paid to BA to book on the next flight (this appears to have been \$217.54 CDN),
 - b. The inconvenience the applicant and his wife endured at Heathrow airport waiting for their rebooked flight 24 hours after their original one,
 - c. Wasted vacation time that could have been spent at their destination rather than at Heathrow airport,
 - d. Wasted time spent trying to book a flight using the respondent's "goodwill" e-coupon worth \$300, and

- e. “Opportunity loss” of booking the 2nd itinerary with a different airline at a lower fare while wasting time trying to use the e-coupon that did not work. The applicant says he ended up buying the same itinerary at a higher fare since the lower fare ticket was no longer available after several days of back and forth with the respondent.
12. First, the applicant says when he arrived at London Heathrow airport, he was unable to access the respondent’s Maple Leaf lounge, despite the applicant having Elite 50K / Star Alliance Gold status.
13. The respondent says the applicant was not entitled to use the lounge in London as the outbound flight the applicant was booked on from London to Tehran was a BA flight, rather than an Air Canada flight. Based on the respondent’s documentation about lounge access, I find the applicant has not proved the respondent breached any agreement to provide lounge access as demanded by the applicant. I dismiss this aspect of the applicant’s dispute, quite apart from the application of the *Montreal Convention* discussed below.
14. Second, the applicant says the boarding passes the respondent issued to him and his wife at check-in in Vancouver showed a “boarding time” of 8:50 p.m. However, the evidence shows 8:50 was in fact BA’s “gate closed” time and the applicant and his wife missed their connecting flight to Tehran because due to added security issues they did not arrive at the gate until 8:52 p.m.
15. Most significantly, the *Montreal Convention* has the force of law in Canada, under the federal *Carriage by Air Act* (see *Wettlaufer v. Air Transat A.T. Inc.*, 2013 BCSC 1245). The *Montreal Convention* limits the scope and type of claim that a person can make for disputes about international air travel, including delays in making flight connections.
16. As the applicant’s trip was an international one he is bound by the terms of the *Montreal Convention*, in addition to the terms and conditions of his airline passenger ticket (Tariff).

17. First, the case law makes it clear that article 29 of the Montreal Convention does not permit compensation for purely mental injury, such as emotional stress or inconvenience, in the absence of a physical injury (see *Thibodeau c. Air Canada*, 2014 SCC 67). Here, the applicant was not physically injured and an undefined portion of his \$3,000 claim is for the inconvenience of not using the Maple Leaf lounge and having to spend a night in Heathrow airport. In the Manitoba Court of Appeal decision in *Lukacs v. United Airlines Inc. et al*, 2009 MBCA 111, the court expressly rejected the notion that the Montreal Convention permitted claims for “missed opportunity” or other general damages claims. I agree. Further, while the applicant appears to allege he lost income due to the flight problems, he provided no proof. The “wasted time”, “missed opportunity”, and “inconvenience” aspects of the applicant’s claim are therefore dismissed.
18. This leaves the claim for the BA change fee. The evidence shows the applicant paid \$217.54 to reschedule his flight to the same BA flight the following day.
19. First, article 19 of the *Montreal Convention* states a carrier is not liable for damages caused by delay if the carrier provides that it and its agents took all measures that could reasonably be required to avoid the damage or that it was impossible to take such measures. Article 20 of the Montreal Convention states any negligence by the person claiming compensation means the carrier’s liability is reduced accordingly.
20. The respondent says it has an electronic data interchange (EDI) agreement with BA, through which BA sends the respondent their flight boarding times electronically and the respondent prints this time on boarding passes. The respondent says any error on the boarding pass rests with BA and is not the respondent’s fault. I find the applicant has not proven otherwise, and has provided no evidence that he tried to get information from BA as to what it provided the respondent. I acknowledge the applicant’s reply submission that surmises the respondent has erroneously set up their EDI to match BA’s “gate closure” time with “boarding time” and as such the respondent created the error. I find this is speculative. Further, while the applicant says he left ample time to reach BA’s gate, he acknowledges there were additional

security screenings that resulted in his arriving later than intended, at 8:52 p.m. These circumstances are not the respondent's fault.

21. Further, based on the evidence before me, BA publishes its requirements for boarding its flights. BA states passengers must be at the gate no later than 20 minutes before the flight departs. As noted above, while I acknowledge the respondent issued the boarding pass for the BA flight, it was not an Air Canada flight.
22. I also agree with the respondent that under article 20 of the *Montreal Convention* the applicant bears responsibility for not confirming his boarding time for the BA flight on arrival at the London Heathrow airport. Boarding times and gates can routinely change, of which the applicant would be aware as a seasoned traveler.
23. Next, in August 2017 the respondent gave the applicant the \$300 e-coupon as a "goodwill travel discount" towards a future flight with the respondent, which the applicant says he reluctantly accepted as a resolution. However, the applicant says that when he tried to use the e-coupon, it did not work and he wasted his own time trying to sort it out, only to ultimately learn that the e-coupon only worked with certain more expensive fares. The applicant says he ended up booking flights with another airline altogether.
24. I agree with the respondent that the applicant has failed to provide proof of any economic loss, as required by the *Montreal Convention*, in respect of the applicant's time spent dealing with the e-coupon. Further, I find the e-coupon was a gratuitous gesture, as the respondent was not liable to pay the applicant for BA's flight change fee.
25. On balance, I find the applicant's claims must be dismissed. As the applicant was unsuccessful, in accordance with the Act and the tribunal's rules I find he is not entitled to reimbursement of tribunal fees.

ORDER

26. I order the applicant's claims and this dispute dismissed.

Shelley Lopez, Vice Chair