Civil Resolution Tribunal

Date Issued: April 24, 2019

File: SC-2018-007406

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sikora v. Air Canada,* 2019 BCCRT 496

B E T W E E N :

Dustin Sikora

APPLICANT

A N D :

Air Canada

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a 9.25-hour flight delay during an April 2017 international flight. The applicant, Dustin Sikora, claims $2,422.86 in compensation.

2. The respondent denies liability on various grounds, most significantly that the requested compensation is not available under its tariff and the *Montreal Convention*.

3. The applicant is self-represented. The respondent is represented by Marie-Helene Desgroseilliers, an employee. For the reasons that follow, I dismiss the applicant's claims.

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. 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.

ISSUE

8. The issue is to what extent, if any, the applicant is entitled to compensation arising from a 9.25-hour flight delay.

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. The applicant was booked on Air Canada flight AC 8229, which was delayed due in part to mechanical failure. The applicant says the replacement plane's path of travel was well known to the respondent in advance and was not honestly communicated to him and other passengers. The applicant also says 5 further "delay estimates" were dishonestly communicated throughout the 9.25-hour delay.

11. The applicant says the $26 in meal vouchers and a 13-month discount of 15% on a future Air Canada flight was insufficient compensation. These 'refunds' were in accordance with the respondent's tariff, rule 100.

12. The applicant claims: a) $350 to cover the applicant's wife's sick day, b) $45.50 for incidentals purchased in the terminal during the delay, c) $527.36, the cost of a return airfare, and d) $1,500 as compensation for "consequential business losses" during the 9.25-hour delay.

13. 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.

14. 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).

15. Generally, the applicant alleges the respondent was dishonest in explaining the delay and in estimating the ultimate departure time. While the respondent had to revise its estimates, I find the applicant has not provided any proof of intentional misrepresentation or that the respondent was negligent in the information it provided. I accept the respondent's explanations in its witness statements as to why the plane was delayed and that the respondent's crew addressed the problems as reasonably quickly as possible.

16. Contrary to the applicant's submission, article 22 of the *Montreal Convention* does not entitle him to compensation as claimed.

17. In particular, 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. The applicant is correct that diversion for re-fueling and mechanical problems are the respondent's responsibility. However, contrary to his apparent argument, that does not necessarily mean the respondent failed to take all reasonable measures.

18. Generally speaking, the delay flowed from mechanical issues, air traffic control issues, and weather concerns. I have considered the respondent's detailed witness statements, from its maintenance operations control manager and chief dispatcher, and find the respondent took all reasonable measures to avoid the delay.

19. The applicant also says the respondent failed to abide by its own rule 80, and that the respondent communicated delays over 5 times throughout the day "with little to no supporting information". The applicant submits that none of the time estimates

provided “could be truthful estimations” based on the evidence and statements provided by the respondent.

20. I agree with the respondent that schedules are not guaranteed under the *Montreal Convention*, which is binding legislation, or the respondent’s rule 80. Schedules are subject to change without notice. Rule 80 does not say the respondent will provide information “forthwith”, as alleged by the applicant, but instead says that it will make reasonable efforts to inform passengers of delays and “to the extent possible” the reason for the delay. I find the applicant has not proved the respondent failed to comply with rule 80. I also find the applicant has not proved the respondent provided intentionally dishonest time estimates. Even if the respondent’s estimates were inaccurate, nothing turns on it given my conclusions below about the applicant’s requested remedies.

21. I turn then to the applicant’s requested remedies.

22. I will address the applicant’s $350 claim first, for his wife’s sick day. Quite apart from the provisions of the Montreal Convention and the respondent’s Tariff, the applicant’s wife is not a party to this dispute. There was no evidence provided to support she was required to take an unpaid sick day. I dismiss this claim.

23. Next, I address the applicant’s $45.50 claim for incidentals, which the applicant said related to clothing needed due to excessive air conditioning and an extra day’s parking. Article 22 of the *Montreal Convention* allows compensation for necessary incidentals, up to a limit paid under what is known as “special drawing rights” or SDR. However, the applicant provided no receipts for what was bought, and so I find the claimed damages are not proved. For this reason, I dismiss this claim.

24. Next, I address the applicant’s claim for $527.36, being the cost of “a return airfare”. This was not an expense the applicant had to pay. This appears to be his quantification of what he considers is reasonable compensation for his having to endure the delay. 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). There was no physical injury here.

25. Finally, I will address the applicant's claim for $1,500 in compensation for "consequential business losses over the 9-hour delay". However, in his "letter to Air Canada" in evidence, he describes the $1,500 as being compensation for the delay in-flight "that could have been spent with family, in business meetings or in any other useful capacity". The applicant provided no proof of economic loss. 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. The applicant's $1,500 claim is dismissed.

26. The applicant was unsuccessful in this dispute. In accordance with the Act and the tribunal's rules, I find he is not entitled to reimbursement of tribunal fees.

ORDER

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

Shelley Lopez, Vice Chair