



# Civil Resolution Tribunal

Date Issued: June 13, 2019

File: SC-2019-000094

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gutierrez v. Hitchplanet Online Inc.*, 2019 BCC 724

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

MIGUEL ANGEL MONTANO GUTIERREZ

**APPLICANT**

**A N D :**

HITCHPLANET ONLINE INC.

**RESPONDENT**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is about the applicant's agreement with a rideshare business called Poparide, operated by the respondent Hitchplanet Online Inc. The applicant, Miguel Angel Montano Gutierrez, says the respondent falsely accused him of reckless

driving and unfairly suspended his Poparide membership. The applicant claims \$2,800 in civil and moral damages, \$200 for fuel costs, and \$1,000 “to stop making false accusations”, for a total of \$4,000.

2. The respondent says it did not breach its agreement with the applicant. It says it received credible reports that the applicant was not providing a safe and appropriate driver service for Poparide users, which under the agreement allowed it to suspend the applicant’s account.
3. The applicant is self-represented. The respondent is represented by Flo Devellennes, who I infer is a principal or 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 9.3(2), 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 whether the respondent breached the parties' rideshare agreement when it suspended the applicant's account, and if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the burden of proof is on the applicant to prove his claims on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. The evidence shows Poparide is a ridesharing platform the respondent offers to match drivers with empty seats with passengers headed in the same direction. Poparide acts as a liaison between drivers and passengers, facilitating transactions and ensuring members' safety. The applicant registered with Poparide in January 2016.
11. The applicant provided a number of documents to show his vehicle has passed inspection in various jurisdictions, presumably to show his vehicle was safe. I find these documents are not relevant to the issue before me, which is whether the respondent reasonably suspended the applicant's Poparide membership as provided by the parties' agreement. While the safety of the applicant's vehicle was

mentioned by one complainant to Poparide, I find nothing turns on that particular issue given my conclusions discussed below.

12. While the applicant disputes the validity of the complaints, I find the evidence shows Poparide received complaints from at least 4 different passengers. The complaints were generally about overcrowding the car, not communicating in a timely way, and the driver being “unqualified”, which appeared to relate to his driving skills in winter weather conditions.
13. The applicant’s ‘Terms of Service’ agreement with Poparide included the following relevant terms:
  - a. A ‘member’ is a driver, passenger, or both.
  - b. A member must drive carefully.
  - c. The agreement for ridesharing is between the driver and the passenger.
  - d. Any breach of the terms of service will result in immediate suspension of a member’s account and they may be restricted from accessing further services.
  - e. “The eligibility of a Member to use the Rideshare service is [at] Poparide’s discretion and as such Poparide reserves the right to withdraw that service from any Member at any time” (clause 5.3).
  - f. “Poparide reserves the right to refund a Passenger and/or close the Driver’s Account if they fail to fulfil” the conditions on a rideshare trip. One requirement for a driver to get paid is the driver must turn up to the passenger pick-up spot 5 minutes in advance, as well as inform of any trip modifications in advance.
14. It is not entirely clear when the trips giving rise to complaints occurred, but 2 were apparently in or around October 2018 and in January 2019, but nothing turns on the precise dates. The issue in some of the complaints was that skis in the car were placed too close to passengers’ heads, and so were a safety concern. Other

complaints were that the applicant was late and a lack of communication by the applicant. The applicant's response is that for safety reasons he needed to drive slowly and because he was driving he could not call or text. The applicant does not explain why he did not pull over to do so. As noted above, complaints included "driver underqualified" and "I do not think he is a confident enough driver in winter weather...".

15. On balance, I find the applicant has not proved that he did not breach the terms of service, as the evidence shows Poparide received complaints that he was not on time and was not driving safely. In any event, the material point is that the applicant has not shown Poparide did not receive the complaints. His argument is that they were invalid, although he also admits 1 trip was 2 hours late to arrive and, in 2 other instances, admits to being 10 minutes late to pick up the passenger. On balance, I find the applicant has not shown the respondent unreasonably considered or investigated the complaints. I find that the respondent did act reasonably.
16. In any event, the Terms of Service give Poparide clear discretion to suspend a member's account. I find there is no basis to conclude Poparide did so here with any improper motive or for any reason that would enable me to conclude Poparide breached the agreement.
17. For these reasons, I dismiss the applicant's claims. Even if I had found Poparide had breached the agreement, I would not have allowed the claimed damages. The applicant does not explain how he arrives at the \$2,800 figure for "civil and moral damages" due to his inability to use the Poparide rideshare program. While he claims \$200 for the cost of fuel, he has provided no evidence to support that claim, such as trip records. To the extent the applicant asks for an additional \$1,000, I dismiss that claim for the same reasons set out above, but add that the tribunal has no jurisdiction to make an order that a party stop making false accusations. The tribunal does not have the power to grant injunctive relief in this context nor does it have jurisdiction over defamation.

18. In accordance with the Act and the tribunal's rules, as he was unsuccessful I find the applicant is not entitled to reimbursement of tribunal fees.

**ORDER**

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

---

Shelley Lopez, Vice Chair