



Civil Resolution Tribunal

Date Issued: March 4, 2020

File: SC-2019-006162

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Heimal v. Air Canada*, 2020 BCCRT 249

BETWEEN:

NATALLIA HEIMAL

APPLICANT

AND:

AIR CANADA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Natallia Heimal, purchased an international return ticket from the respondent, Air Canada.

2. The respondent's agent did not allow the applicant to board her flight because she did not have a "Schengen visa". The applicant says she did not need a Schengen visa. The applicant says the respondent should reimburse her \$3,790.34, the cost of her next-day ticket.
3. The respondent says the applicant required a Schengen visa. It says its decision to refuse to transport the applicant complied with its international tariff rules, which formed part of the terms and conditions of the applicant's ticket. The respondent says the claim should therefore be dismissed.
4. The applicant is self-represented. The respondent is represented by a person whom I infer is an employee.

JURISDICTION AND PROCEDURE

5. 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 (CRTA)*. 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.
6. 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.
7. 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.

8. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something or pay money. The tribunal may also order any terms or conditions the tribunal considers appropriate.

ISSUE

9. The issue in this dispute is whether the respondent breached its contract with the applicant by refusing to allow her to board her flight, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant must prove their claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
11. Most of the relevant facts are undisputed. The applicant holds a passport from Belarus. At the time she was denied boarding, she held a valid Canadian permanent resident card.
12. The applicant, through a travel agent, purchased a roundtrip ticket from Vancouver, BC to Minsk, Belarus, via Frankfurt, Germany. She was to depart July 24, 2018 and return August 29, 2018. The applicant's ticket included flights operated by the respondent and other airlines.
13. On July 24, 2018, the respondent refused to allow the applicant to board her flight from Vancouver to Frankfurt because she did not have a Schengen visa.
14. The respondent says it refunded the applicant for the unused ticket from Vancouver to Belarus. The applicant says she has not received a refund. Given that the refund does not form part of the applicant's claim, and given my conclusion that the respondent is not liable to the applicant, nothing turns on this.

15. The applicant admits she did not have a Schengen visa. She says she did not need one.
16. The respondent says nationals of Belarus must have a visa to enter a Schengen state, or must have a residence permit issued by a Schengen state. There is no dispute that Canada is not a member state of the Schengen agreement, which comprises 25 European states, including Germany and France. The respondent says the applicant therefore needed a visa to enter the Schengen Area.
17. The respondent says it relied on information published by the International Air Transport Association (IATA)'s "Timatic", a system used by airlines and travel agents to verify passenger travel document requirements. My reading of the respondent's Timatic excerpt does not support the respondent's position. The Timatic excerpt says that passengers transiting through Frankfurt from a non-Schengen state to another non-Schengen state can *transit* without a visa so long as they stay in the international transit area of the airport and have a confirmed onward ticket within 24 hours. The applicant's ticket shows a 1 hour and 45-minute layover in Frankfurt, so it appears she was permitted to transit without a visa.
18. The respondent also submitted a screen capture of the website "schengenvisainfo.com" showing that nationals of Belarus require a Schengen visa to enter any member country of the Schengen area. The applicant agrees that nationals of Belarus require a Schengen visa to *enter* Germany. However, she says she was not entering Germany – rather, she was transiting through the international airport in Frankfurt. After reviewing the relevant materials, I agree with this distinction.
19. The applicant provided a copy of Regulations of the European Parliament, listing countries whose nationals must have an airport transit visa when passing through the international transit area of airports in the EU member states. Belarus is not on the list. The respondent did not dispute the validity or application of these regulations.

20. The applicant says she flew to Belarus via Paris, France, the following day. There is no dispute that France, like Germany, is a Schengen state. The respondent did not explain why the applicant was able to fly through France and not Germany, although I note the applicant flew with Air France and not the respondent.
21. The applicant also provided a link to the “German Embassy in Ottawa” website. Although websites may change, the information on that website supports the distinction between entering a country and transiting through a country on a connecting flight. That distinction also appears in the Timatic and the Regulations. I therefore find that the applicant did not need a Schengen visa and that the respondent’s conclusion that the applicant lacked the required documentation for travel was incorrect. However, that does not conclude the analysis.
22. There is no dispute that the applicant was bound by the terms and conditions of her airline passenger ticket, including the respondent’s international tariff. The respondent says its decision to refuse to transport the applicant on July 24, 2018 complied with its tariff rules 65 and 75.
23. The respondent provided the text of those rules. Rule 75 affirms that the respondent will refuse to transport a passenger for various reasons, including if the passenger fails to comply with rule 65.
24. Rule 65(b) says that each passenger must obtain all necessary travel documents and comply with all government travel requirements. It also says the respondent is not liable to the passenger for any loss caused by her failure to comply with rule 65. I find that rule 65(b) does not apply because, explained above, the applicant did not need a Schengen visa to transit through Frankfurt.
25. However, Rule 65(d) says that the respondent has no liability “if it in good faith determines that what it understands to be applicable law, government regulation demand, order or requirement, requires that it refuse and it does refuse to carry a passenger.”

26. So, was the respondent acting in good faith when it refused to let the applicant fly? Barron's Canadian Law Dictionary defines "good faith" as a standard implying absence of intent to take advantage of another party, or the absence of an ulterior motive. One may act negligently but still act in good faith. Rule 65(d), in other words, means the respondent is not liable if it refused to allow the applicant to board because she did not have what it honestly believed was the required documentation, even if that belief was mistaken.
27. It would have been preferable for the respondent, a sophisticated organization, to provide direct evidence from the employees involved in its decision. However, in the absence of evidence to the contrary, I find the most likely explanation is that the respondent's agents simply made a mistake. The evidence does not allow me to conclude that the respondent or its agents were trying to take advantage of the applicant, or had an ulterior motive for denying carriage.
28. I find the weight of the evidence supports a conclusion the respondent acted in good faith when interpreting the applicable international travel requirements. As discussed above, the evidence indicates the respondent was wrong, but that is irrelevant given that the parties' contract allows the respondent to be wrong in determining travel requirements. Applying Rule 65(d), the respondent has no liability to the applicant. I therefore dismiss the applicant's claim.
29. Under the CRTA and tribunal's rules, as the applicant was unsuccessful, I find she is not entitled to reimbursement of tribunal fees.

ORDER

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

Micah Carmody, Tribunal Member