



Civil Resolution Tribunal

Date Issued: March 10, 2020

File: SC-2019-005940

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Baysal v. Delta Sunshine Taxi (1972) Ltd.*, 2020 BCCRT 274

B E T W E E N :

REIGNER BAYSAL and ZEKAI BAYSAL

APPLICANTS

A N D :

DELTA SUNSHINE TAXI (1972) LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. The respondent, Delta Sunshine Taxi (1972) Ltd., is a cab company and provides transportation service to and from the airport. The applicants, Reigner Baysal and Zekai Baysal, say that they missed their flight because the respondent's driver was

45 minutes late picking them up. They seek \$4,348.74 for the cab fare, cost of the flight, accommodations, gas, and emotional distress.

2. The respondent acknowledges that its driver was 45 minutes late but says that the applicants missed their flight because they waited too long to prebook a pickup time, were not prepared to leave when the cab arrived, and did not allow enough time to reach the airport.
3. The applicants are self-represented and the respondent is represented by an employee.

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* (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.
5. 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.
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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUE

8. The issue in this dispute is whether a) the respondent is responsible for the applicants having missed their flight and b) if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil dispute such as this, the applicants must prove their claim. They bear the burden of proof on a balance of probabilities. I will not refer to all of the evidence or address each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
10. Based on the evidence before me, I find the following occurred:
 - a. The applicants booked a domestic flight for their family of 4 that was departing on April 2, 2019 at 10:00 AM. They stayed at their friend MT's house the night before the flight.
 - b. On the day of the flight, the applicants called the respondent at 6:48 AM and asked for a taxi to arrive at 8:00 AM sharp at MT's house to drive them to the airport.
 - c. The applicants told the respondent that their flight was at 10:00 AM and the respondent agreed to arrive at 8:00 AM.
 - d. When the taxi did not arrive by 8:20 AM, the applicants called the respondent and were told the taxi was 5 minutes away. While they were waiting, MT offered to drive them to the airport, but they declined because they did not want to inconvenience him.
 - e. The taxi did not arrive at MT's house until 8:40 AM. It took the applicants 15 minutes to load the luggage, stroller, and to install a car seat.
 - f. The taxi left for the airport at 8:55 AM and arrived at 9:25 AM.

g. The applicants missed their flight by a few minutes.

11. Having reviewed the evidence, I find there was an enforceable oral agreement between the parties for the respondent to pick up the applicants at 8:00 AM and transport them to the airport. I find that an implied term of the agreement was that time was of the essence since the respondent knew the applicants' flight was departing at 10:00 AM (see *Bachman v. Woodpecker Floors (2000) Inc.*, 2008 BCPC 425 at paragraph 47). I find the respondent breached the agreement because it arrived approximately 40 minutes late.
12. The respondent says that passengers should arrive at the airport approximately 1.5 hours prior to a domestic flight. Since it took approximately 30 minutes to drive to the airport from MT's house, I find that if the respondent had arrived at 8:00 AM, then the applicants would likely have met the respondent's own timing recommendations of arriving at the airport by approximately 1.5 hours before the flight. I find that the respondent breached the agreement by arriving at least 40 minutes late to pick up the applicants and this likely caused the applicant to miss their flight.
13. However, I find that the applicants are not entitled to reimbursement for any expenses related to missing the flight. The law requires a person to mitigate damages. This means that a person is required to act reasonably to prevent avoidable expenses or costs. I find that the applicants should have accepted MT's offer to drive them to the airport when the taxi had still not arrived by 8:25 AM. Aside from the applicants' claim that it would have inconvenienced MT, there is no evidence before me as to why the applicants did not do so. If they had, then it is more likely than not that the applicants would not have missed their flight. Consequently, I find that the applicants are not entitled to reimbursement for any expenses related to missing the flight.
14. As such I dismiss the applicants' claims.

15. The applicants were unsuccessful. In accordance with the CRTA and the tribunal's rules, I find they are not entitled to reimbursement of tribunal fees paid.

ORDER

16. I dismiss the applicants' claims and this dispute.

Rama Sood, Tribunal Member