



Civil Resolution Tribunal

Date Issued: May 21, 2020

File: SC-2019-010251

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Khokhar v. Coast English Testing Inc.* 2020 BCCRT 555

BETWEEN:

JASPREET KHOKHAR

APPLICANT

AND:

COAST ENGLISH TESTING INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about language testing services. The applicant, Jaspreet Khokhar, says that the respondent, Coast English Testing Inc., did not provide him with an acceptable level of service. He seeks an order that the respondent refund him

\$930.20, and pay him damages for emotional distress. The respondent says that it provided services as contracted, and does not owe the applicant any money.

2. The applicant is self-represented. The respondent is represented by an employee.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. 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.

ISSUES

7. The issues in this dispute are:

- a. whether the applicant is entitled to a refund of \$930.20 in fees he paid to the respondent, and
- b. whether the applicant is entitled to damages for emotional distress.

EVIDENCE AND ANALYSIS

8. In a civil dispute like this one, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.

Entitlement to Refund

9. The applicant says he paid the respondent \$313.95 for an International English Language Testing System (IELTS) English language proficiency test on May 18, 2019. The applicant says the respondent provided unsatisfactory service during the test and in the handling of the results. He says he had an uncomfortable test experience as there was no dedicated washroom break. The applicant says that this resulted in an incident where he had a “washroom emergency” during the test. He had some sort of negative interaction with a staff member when the door to the room would not open for several minutes. According to the applicant, his test results were compromised as he had to take time out of the testing for this break. The applicant says that test takers should be given a dedicated break to allow them to relax during the test session.
10. The applicant also says that his test results were not consistent with those from his previous attempts. He suspects that his test papers may have been tampered with as he was required to use pencil, which he says could have been erased to alter his answers. The applicant says that his re-evaluation request (for which he paid \$204.75) and appeal process (at a cost of \$411.50) were not handled properly. According to the applicant, the respondent did not provide scanned copies of his test papers to show that they had not been tampered with, or other evidence to

prove that his test was scored appropriately. He seeks a refund of the \$930.20 in fees he paid to the respondent.

11. The respondent says its tests are administered with strict procedures in order to maintain the integrity of the results, and that it is scrupulous about compliance with these procedures. The respondent says that IELTS test takers are not permitted to take washroom breaks during certain parts of the testing process, and that this policy is communicated to participants at the beginning of the day. The respondent disagrees with the applicant's description of the washroom incident. According to the respondent, the applicant attempted to leave the testing room for a washroom break during one of the restricted periods, and reacted poorly when told that he needed to wait.
12. The respondent says that it does not administer the re-evaluation or appeal procedures as these are conducted by independent bodies. It says that the fees associated with re-evaluations and appeals are refunded if the test scores improve as a result of the review. As the applicant's scores did not change, the respondent says the applicant is not entitled to a refund.
13. The evidence before me shows that testing procedures are common among IELTS testing facilities and are not unique to the respondent. Statements from staff members confirm that the policies, including those around washroom visits, were read to test takers on May 18, 2019. Further, as the applicant has taken the test before, I find that he would have had some familiarity with the washroom policy. It is apparent that the applicant feels the respondent should change its testing procedures, but I find he did not establish that he was treated differently from other test takers. Similarly, I find that there is no indication that the applicant was promised a particular break schedule or other form of service he did not receive. Accordingly, I find the applicant is not entitled to a refund of his testing fee.
14. The results of the applicant's requests for re-evaluation and appeal are contained in a July 16, 2019 letter and a September 23, 2019 report. The re-evaluation involved the re-marking of the applicant's test papers, and his scores remained the same.

The letter did not set out the specific methodology used. The appeal report contained more information about the process, and specifically addressed the applicant's concern that his test papers had been tampered with. The report stated that the handwriting on the papers was scrutinized, and found to be consistent throughout. Neither document attached copies of the applicant's test papers, but the applicant has not proven that this disclosure would be part of the procedure for either the re-evaluation or appeal process.

15. Although the applicant suspects that his papers were tampered with because he did not receive the mark he expected, I find that he has not proven that his test papers were tampered with or that the re-evaluation or appeal procedures were not conducted appropriately. Further, the re-evaluation and appeal processes were conducted by independent authorities, not the respondent. I find that the respondent has not established that he is entitled to refunds of either the re-evaluation or appeal fees, and dismiss this claim.

Emotional Distress

16. The applicant claims damages of \$469.80 for humiliation that he says resulted from the events surrounding his "washroom emergency". He says he had to return to his seat "suffering the discomfort of the emergency in front of everyone", and this experienced haunted him. The applicant also says that this incident caused Post-Traumatic Stress Disorder (PTSD) and other unspecified trauma. He asks for an order that the respondent pay him additional damages of \$1,100 for mental pain and suffering. The respondent says the evidence does not support that the applicant suffered any humiliation or post-exam discomfort or condition.
17. Although the applicant makes separate claims for the humiliation and PTSD/trauma, I find that they are all claims for emotional distress, and will consider them together.
18. Although the applicant states that he found his experience on testing day to be unpleasant, he did not submit any evidence, such as evidence from a physician or mental health service provider to establish the presence of a diagnosed

psychological condition (PTSD or otherwise) or symptoms of emotional distress. As discussed in *Eggberry v. Horn et al*, 2018 BCCRT 224, in order for a claim to be successful, there must be medical evidence to establish mental distress. This decision is not binding upon me, but I find the reasoning to be persuasive. Therefore, although a diagnosis is not required, there must be some evidence to show that the applicant's condition rose above a trivial or minor inconvenience.

19. Based on the evidence before me, I find that the applicant has not proven that he suffered any form of emotional distress. Keeping in mind that the applicant bears the burden of proof, I find that the applicant has not proven his claim for emotional distress and dismiss it. Given my conclusion, it is not necessary for me to consider whether the applicant proved the amount of the damages he claimed.
20. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As the applicant was not successful, he is not entitled to reimbursement of his tribunal fees.

ORDER

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

Lynn Scrivener, Tribunal Member