



Civil Resolution Tribunal

Date Issued: May 28, 2020

File: SC-2019-010806

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sehgall v. All Nippon Airways Co., Ltd.*, 2020 BCCRT 587

BETWEEN:

SUDIP SEHGALL

APPLICANT

AND:

ALL NIPPON AIRWAYS CO., LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute over alleged missing items in checked baggage.
2. On August 24, 2019, the applicant, Sudip Sehgall, traveled on the respondent airline, All Nippon Airways Co., Ltd. (ANA), from India to Canada with a 9-hour connection in Japan. The applicant says items and cash were pilfered from his

checked luggage on-route. The applicant claims \$4,500 for the alleged pilfered items and cash.

3. ANA denies the applicant's claims and says it is not liable.
4. The applicant is self-represented. ANA is represented by 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, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
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, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.
9. As a preliminary matter, the applicant requests that the tribunal escalate this dispute “to a court and simultaneously also to both” the International Air Transport Association (IATA) and the International Civil Aviation Organization (ICAO). IATA is an association of airline traders and ICAO is a United Nations specialized agency. There are circumstances under CRTA section 11 where the tribunal may refuse to resolve a dispute. However, I find this is not one of them. I find this dispute falls within the tribunal’s small claims jurisdiction and the dispute is not overly complex. I find it is appropriate for the tribunal to resolve the dispute and provide the parties with finality over the applicant’s claims.

ISSUE

10. The issue in this dispute is whether ANA must pay the applicant the claimed \$4,500 for items allegedly pilfered from his checked luggage.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant bears the burden of proving his claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. The documents in evidence show that the applicant flew on ANA from Delhi to Vancouver, connecting through Japan on August 24, 2019. The applicant checked-in 2 suitcases when he departed Delhi. The applicant’s first flight flew into Narita airport, in Tokyo. His departing flight was out of Haneda, another Tokyo airport. Due to the airport change, the applicant had to pass through Japanese Immigration Control at Narita airport, retrieve his checked baggage, take ground transportation to Haneda, and re-check his baggage for his flight to Vancouver.

13. The applicant says that after clearing immigration, his baggage was sitting beside the conveyor belt as unclaimed baggage. He says he noticed the locks missing on his suitcases and reported this to ANA baggage services in Narita. The applicant says when he opened his suitcases, he noticed items missing from both suitcases.
14. As recorded on ANA's baggage irregularity reports in evidence, the applicant claimed several missing items from his 2 suitcases including, locks, several clothing items, 2 pairs of shoes, sunglasses, an Apple Laptop computer, several other electronic devices, and \$180 in US currency. The applicant says he later discovered additional missing items. He values his total loss at \$4,500, the claimed amount in this dispute.
15. As the applicant's flights were international, he is subject to what is commonly known as the 'Montreal Convention'. The Montreal Convention is part of Canadian law, under the federal *Carriage by Air Act*. The Montreal Convention limits the scope and type of damages an applicant can recover from an airline for lost or stolen baggage. The federal *Canada Transportation Act*, Air Passenger Protection Regulations (Regulations) also apply to air travel to Canada. Article 17(3) of the Montreal Convention and section 23(1) of the Regulations limit the airline carrier's liability to lost or damaged baggage and up to a prescribed amount. (The Regulations contain some additional provisions that I find do not apply here.) The carrier is only liable if it admits to the loss of baggage, or if the baggage is lost for more than 21 days, or is damaged. I find these are the exclusive bases for the applicant's international baggage claim, as set out under Montreal Convention Article 29, (see discussion in *Wettlaufer v. Air Transat A.T. Inc.*, 2013 BCSC 1245).
16. The applicant says the Montreal Convention and Regulations do not expressly require a passenger to prove the presence of items in checked baggage. He says it is impossible to prove missing items. He argues that ANA can only absolve itself of liability if it had first x-rayed the bags to verify the presence of each and every article.

17. It is the applicant who has the burden of proof to establish his claim on a balance of probabilities. ANA has not admitted liability and the applicant's baggage was not lost during the flights or damaged. I also find it more likely than not that the items were not pilfered or missing from his checked baggage as I explain below. I find the applicant is not entitled to the prescribed compensation under the Montreal Convention or Regulations. If he was entitled to compensation, I find his right would have been limited to the prescribed amount of 1,131 "special drawing rights" or SDR, which is about \$2,100 CAD.
18. The parties dispute whether the suitcases were locked at the time of check-in in Delhi. However, I find nothing turns on whether the suitcases were locked. ANA's electronic baggage data shows that the total weight of the applicant's two suitcases did not change over the course of his flights. ANA says the weight is electronically inputted, with no manual entry, when the baggage is put on the scale at check-in. According to ANA's weight data in evidence, the applicant's baggage totaled 46 kg for two bags at the check-in in Delhi and again, 46 kg at the check-in in Haneda. The baggage tags in evidence show that each suitcase weighed 23 kg. Considering the cumulative weight of the claimed items, I find each suitcase likely would have been less in Haneda if items were missing, especially without heavier items like shoes and a laptop.
19. I do not accept the applicant's uncorroborated assertion that his 2 suitcases weighed more in Delhi. The applicant says the ANA agent manually lowered the weight at check-in so that each suitcase would fall within the 23 kg baggage allowance. I have insufficient evidence that ANA's agent was able to manually change the baggage weight in the computer system. I also have insufficient evidence that the agent had incentive to provide false information and disrupt the accuracy of ANA's aircraft's total weight. I find it is more likely than not that the total baggage weight was electronically imputed as 46 kg. I find the baggage weighed the same in Delhi and in Haneda and that this was because no items were missing. On balance, I find the applicant has not established that the claimed items were missing from his baggage.

20. For all the reasons above, I dismiss the applicant's claim. I do not need to address the value of his claimed items, given my conclusion that no items were missing.

21. In accordance with the CRTA and the tribunal's rules, I find the unsuccessful applicant is not entitled to any reimbursement of tribunal fees or dispute-related expenses. The successful respondent did not pay tribunal fees or claim expenses.

ORDER

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

Trisha Apland, Tribunal Member