



Civil Resolution Tribunal

Date Issued: June 25, 2020

File: SC-2020-001125

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dell v. Air Canada*, 2020 BCCRT 708

B E T W E E N :

ANDREI DELL,
ANDREI DELL as Litigation Guardian of BORIS DELL, Minor, and
ANDREI DELL as Litigation Guardian of CAISAR DELL, Minor

APPLICANTS

A N D :

AIR CANADA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about the transferability of airline flight tickets.
2. The applicant, Andrei Dell, purchased airfare tickets for the other applicants, his 2 minor children, on the respondent Air Canada's website. Mr. Dell says that the

flights he booked were operated by another airline but that shortly before the trip, the flights were changed to Air Canada-operated flights, with different aircraft and different connecting flight arrangements, causing the applicant children disappointment, stress and discomfort. Mr. Dell seeks a full refund of \$2,937.64 for the tickets.

3. Air Canada denies the applicants' claims. It says it has no obligation to guarantee a specific aircraft or itinerary and that the applicants' claims are not recognized under the *Montreal Convention*, which governs compensation for claims involving international travel.
4. Mr. Dell represents all 3 applicants. Air Canada is represented by an employee.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act (CRTA)*. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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 CRT 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 CRT 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 CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

9. The issue in this dispute is to what extent, if any, the applicants are entitled to a refund due to the transfer of their flight tickets from one airline to another.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicants 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. The applicant Mr. Dell booked international tickets for the 2 applicant children, who were travelling on their own. The flights had one layover in the European Union (EU) on both the departure and return legs. The tickets were sold on Air Canada's website, but the flights were operated by German airline, Lufthansa. Lufthansa is not a party to this dispute.
12. The applicants say that they booked the Lufthansa flights specifically because one of the applicant children wanted to fly on a 747 aircraft, they believe Lufthansa has better service than Air Canada, and they wanted to avoid a domestic stopover because the applicant children do not have a credit card, which is required to purchase food on a domestic flight. It is undisputed that the flight was changed to an Air Canada-operated flight, on a non-747 aircraft, with a layover in Canada rather than the EU. The applicants say that the product they purchased was substituted with an "inferior" product and that they should receive a full refund.
13. The applicant children did travel to their intended destination on the Air Canada-operated flights. Because their trip was an international one, the parties were bound

by the terms of the *Montreal Convention*, in addition to the terms and conditions of their airline passenger tickets.

14. The *Montreal Convention* is an international treaty with the force of law in Canada, under the federal *Carriage by Air Act*: see *Wettlaufer v. Air Transat A.T. Inc.*, 2013 BCSC 1245. The *Montreal Convention* limits the scope and type of claim that a person can make for disputes about international air travel. It permits claims for death or bodily injury, destruction, damage or loss of baggage and cargo and for delay: articles 17 to 19. It bars all other actions for damages, however founded, in the carriage of passengers, baggage and cargo: article 29.
15. The case law makes it clear that article 29 of the *Montreal Convention* does not permit compensation for purely mental injury, such as emotional stress or inconvenience, in the absence of a physical injury: see *Thibodeau c. Air Canada*, 2014 SCC 67. Here, it is undisputed there was no physical injury. The applicant children claim for disappointment that they did not get to fly on a 747 aircraft, stress related to having to clear customs during a domestic layover, and discomfort related to the inability to purchase food on the domestic leg of their trip and alleged cramped seating.
16. In the absence of any evidence of physical injury or economic loss, I find that the *Montreal Convention* does not permit the applicants' claims, which I find is sufficient to dismiss them.
17. However, I note that Mr. Dell made lengthy submissions that the terms and conditions of the tickets did not permit Air Canada to transfer the tickets from Lufthansa to Air Canada flights. Because the terms and conditions of their tickets also apply, I will consider these submissions briefly. Mr. Dell says that because the tickets were "issued" by Lufthansa, the Lufthansa conditions of carriage apply to the tickets and only Lufthansa had the authority to transfer the tickets. I disagree for the following reasons.

18. The booking confirmation in evidence clearly indicates that the flights were “codeshare” flights with Lufthansa, which Mr. Dell acknowledges. While the booking confirmation directs ticket holders to the Lufthansa website for information on its rules and policies, I find that this does not mean Air Canada had transferred exclusive authority to Lufthansa to make itinerary changes or that only Lufthansa conditions of carriage apply, as Mr. Dell submits. Rather, I find that Air Canada was alerting travelers to the fact that flights operated by its partner airlines may have different rules and policies that travelers must adhere to, despite booking the flight through Air Canada.
19. I note that code sharing refers to the practice of jointly marketing a flight that is operated by one airline, as a flight by one or more other airlines. These partnerships with other airlines allow Air Canada to offer flights around the world without the need to operate all flights with Air Canada aircraft. While this was not explicitly explained on the booking confirmation, the evidence shows that the flights were marketed and sold by Air Canada with Air Canada’s designator code (AC) flight numbers. Further, Mr. Dell was provided with an Air Canada booking confirmation and one of the applicants applied an Air Canada loyalty card number to the ticket purchase.
20. Based on the evidence summarized above, I find that the tickets were “issued” by Air Canada. Therefore, Air Canada’s terms and conditions apply, which provide it with the authority to change the itinerary, including transferring the flights to another airline. I agree with Air Canada’s submission that if Mr. Dell wanted to contract with Lufthansa, he should have purchased the tickets directly from Lufthansa.
21. Further, the undisputed evidence shows that Air Canada emailed Mr. Dell about the schedule change for the departing flights 5 days before the scheduled departure. The updated flight itinerary shows a change in the departure time, aircraft type and layover location, and no longer indicates that the outgoing flights are operated by Lufthansa. There is no evidence that Mr. Dell attempted to contact Air Canada or Lufthansa about the updated itinerary upon receipt of this email. Mr. Dell was later

notified by email about the schedule change for the return flights, with the updated itinerary, 6 days before the return flights.

22. I find Air Canada provided Mr. Dell with sufficient notice of the itinerary changes, so he could make further inquiries or alternative arrangements, but there is no evidence that he did so.

23. I find the applicants' claims must be dismissed. As the applicants were unsuccessful, in accordance with the CRTA and the CRT rules, I find they are not entitled to reimbursement of CRT fees.

ORDER

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

Kristin Gardner, Tribunal Member