



Civil Resolution Tribunal

Date Issued: June 30, 2020

File: SC-2020-001113

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Khokhar v. Blue Bird Flight Academy Inc.*, 2020 BCCRT 723

BETWEEN:

ZAWWAR KHOKHAR

APPLICANT

AND:

BLUE BIRD FLIGHT ACADEMY INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about a flight school tuition refund. The applicant, Zawwar Khokhar, received flying lessons from flight school respondent, Blue Bird Flight Academy Inc. (Blue Bird). Mr. Khokhar says Blue Bird owes a refund of more than \$5,000 for unused tuition when he ended his training early. By initiating this dispute, I find Mr.

Khokhar has abandoned any amounts over the \$5,000 Civil Resolution Tribunal (CRT) maximum under its small claims jurisdiction.

2. Blue Bird agrees it owes Mr. Khokhar a refund but it disputes the amount. Blue Bird says Mr. Khokhar incurred more flight training expenses than he claims. Also, Blue Bird says its refund policy limits Mr. Khokhar's refund to 50%. Blue Bird says it owes Mr. Khokhar a \$1,940.79 refund. Blue Bird says it offered the \$1,940.79 to Mr. Khokhar but he refused this refund.
3. The Dispute Notice named JS, doing business as Bluebird Flight Academy (JS), and HS as the respondents. Although Blue Bird was not named as a respondent, Blue Bird submitted a Dispute Response on behalf of the respondents. All parties agreed to amend the Dispute Notice to remove JS and HS as respondents and to name Blue Bird as the respondent. Based on this agreement, I have amended the Dispute Notice as requested pursuant to section 6(1.1) of the *Civil Resolution Tribunal Act (CRTA)*. As amended, Blue Bird is the sole respondent.
4. Mr. Khokhar is self-represented. Blue Bird is represented by a business representative.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the CRT. The CRT has jurisdiction over small claims brought under section 118 of the 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, 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 CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.

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.

ISSUES

9. The issues in this dispute are:
 - a. How much of a tuition refund does Blue Bird owe Mr. Khokhar?
 - b. Does Blue Bird's refund policy limit the amount of the tuition refund owed to Mr. Khokhar? If so, what does Blue Bird owe Mr. Khokhar?

EVIDENCE AND ANALYSIS

10. In this civil claim, Mr. Khokhar bears the burden of proof on a balance of probabilities. I have only referenced the evidence and submissions as necessary to explain my decision.
11. The parties agree that Mr. Khokhar enrolled as a student pilot in Blue Bird's flight school in May of 2019 and that he ended his flight training without completing the course in October 2019.

Contract terms

12. The parties disagree about whether they had a written contract. Mr. Khokhar says there was no written contract and Blue Bird says there was.
13. I note that Blue Bird did not provide a copy of the alleged written agreement. If a party fails to produce evidence in favour of their position, and has no reasonable explanation for failing to call the evidence, an adverse inference can be made (See *Zawadski v. Calimoso*, 2011 BCSC 45).
14. If a written contract existed, I expect Blue Bird would have provided it to support their position. I would expect a professional flight school to keep copies of their flying lesson contracts. The central issue in this matter is the calculation of Mr. Khokhar's refund based on the flight training contract. In these circumstances, the written contract is relevant. In addition, Blue Bird has not provided any explanation for not providing the contract.
15. In these circumstances, I find that it is appropriate to make an adverse inference against Blue Bird for its failure to provide a copy of the alleged written agreement. Based on this adverse inference, I find that the parties did not have a written agreement.
16. However, even though the parties did not have a written contract, it is undisputed that the parties still had an agreement for flight school services. I note that a contract does not need to be written to be enforceable.
17. So, what did the parties agree to?
18. The parties agree that Mr. Khokhar paid a \$10,000 deposit to Blue Bird for flight training when he enrolled. The parties also agree that Blue Bird charged \$200 per hour for flight training with an instructor.

19. Mr. Khokhar says he received 18.3 hours of flight training with an instructor. Blue Bird's flight training record says they gave Mr. Khokhar 18 hours of flight training. I find Blue Bird's flight training record more likely to be accurate than Mr. Khokhar's submission because the flight training record is detailed and itemized. Based on Blue Bird's flight the training record, I find that Blue Bird provided 18 hours of flight training services. At the agreed price of \$200 per hour, I find that Mr. Khokhar incurred \$3,600 of flight training expenses.
20. The parties also agree that Mr. Khokhar would pay for ground training. Mr. Khokhar says that he agreed to pay \$50 per hour for ground training. Blue Bird says they agreed to charge "\$51" for ground training. It is not clear whether Blue Bird is saying that the ground training cost \$51 per session or \$51 per hour. Since Mr. Khokhar's description of the ground training costs is clearer than Blue Bird's, I find that Mr. Khokhar's description is more likely to be accurate. So, I find that Mr. Khokhar agreed to pay \$50 per hour for ground training.
21. Blue Bird's itemized training record shows they provided 5.4 hours of ground school training to Mr. Khokhar. Mr. Khokhar says that the ground training lasted approximately 10 to 15 minutes per briefing. Since Blue Bird's training record is detailed and itemized, I find their training record is likely accurate. I find that Blue Bird provided 5.4 hours of ground training. So, at the rate of \$50 per hour, I find that Mr. Khokhar incurred \$270 in ground school training costs.
22. Blue Bird initially claimed that Mr. Khokhar owed a \$3,000 agent fee. However, Blue Bird amended their response to withdraw their allegation about the agent fee. Since this issue is no longer in dispute, I will not make any findings about the agent fee.
23. Blue Bird also says that Mr. Khokhar agreed to pay additional expenses such as exam fees, administration fees and fuel surcharges. Blue Bird says it emailed Mr. Khokhar a detailed cost breakdown when he joined the flight school. In contrast, Mr. Khokhar says that Blue Bird did not notify him of these alleged additional expenses.

24. Blue Bird did not provide the alleged email or give an explanation for its absence. If this email existed, I would expect Blue Bird to provide it to support their position. In these circumstances, I find that it is appropriate to draw an adverse inference against Blue Bird for their failure to provide a copy of the alleged email.
25. Based on this adverse inference, I find that Blue Bird did not notify Mr. Khokhar of any additional expenses other than the flight training fees and the grounds school fees discussed above. I find that Mr. Khokhar is not required to pay for expenses he was not aware of or agreed to.
26. For the reasons discussed above, I find that Mr. Khokhar and Blue Bird only agreed to the flight training fees and the ground training fees. This totals \$3,870, leaving a \$6,130 balance from the \$10,000 deposit.

Refund policy

27. Blue Bird argues that the refund policy posted on their website limits Mr. Khokhar's refund to 50% of his unused tuition deposit.
28. Blue Bird provided a copy of their refund policy which says students will receive a 50% refund of unused tuition if the student cancels the flight lessons after completing between 10% and 30% of the lessons (cancellation period). Blue Bird argues that their refund policy applies to Mr. Khokhar and he cancelled the contract during this cancellation period. So, Blue Bird says that Mr. Khokhar is only entitled to a 50% refund of his unused tuition.
29. Mr. Khokhar says that Blue Bird did not tell him about the refund policy and he did not agree to it. So, Mr. Khokhar argues that the refund policy does not apply to him.
30. The BC Supreme Court discussed the issue of incorporating website terms into contracts in the decision of *Century 21 Canada Limited Partnership v. Rogers Communications Inc.*, 2011 BCSC 1196 (CanLII). The court said that, depending on the circumstances, website terms could form a binding agreement. In *Century 21*,

the court found that parties were bound by terms of use displayed on a party's website because the other party was aware of the website terms.

31. However, this matter is very different from *Century 21*. There is insufficient evidence that Mr. Khokhar was aware of the refund policy on Blue Bird's website. There is no evidence that Mr. Khokhar accessed the website or that Blue Bird directed Mr. Khokhar to the website. In the absence of evidence that Mr. Khokhar visited, or was directed to visit, Blue Bird's website, I am not satisfied that the Mr. Khokhar agreed to the terms of the refund policy displayed there. So, I find that the refund policy displayed on Blue Bird's website does not apply to Mr. Khokhar.
32. I find that Blue Bird must refund the entire unused tuition, which above I calculated to \$6,130. Mr. Khokhar claims \$5,000, the CRT's maximum under its small claims jurisdiction, and has abandoned the excess over \$5,000.
33. The *Court Order Interest Act* applies to the CRT. Mr. Khokhar is entitled to pre-judgement interest on the \$5,000 tuition refund, calculated from the date he cancelled his flight school to the date of this decision. Since Mr. Khokhar did not provide the specific date in October 2019 that he cancelled his flight lessons, I find that interest began accruing on October 31, 2019. This equals \$65.18 of pre-judgement interest.
34. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Since Mr. Khokhar was successful, I find that he is entitled to reimbursement of the CRT fee, being \$175.

ORDERS

35. Within 30 days of the date of this order, I order Blue Bird to pay Mr. Khokhar a total of \$5,240.18, broken down as follows:
 - a. \$5,000 in debt, for the tuition refund,

- b. \$65.18 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

36. Mr. Khokhar is entitled to post-judgment interest, as applicable.

37. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

38. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Richard McAndrew, Tribunal Member