



# Civil Resolution Tribunal

Date Issued: April 23, 2021

File: SC-2020-008516

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Labadie v. Sayers*, 2021 BCCRT 423

B E T W E E N :

MICHEL LABADIE

**APPLICANT**

A N D :

MELISSA SAYERS, ALPHA AVIATION INC., and CITY OF DELTA

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about an airside access card (AAC) and an airside vehicle operating permit (AVOP) for the Boundary Bay airport (airport). The AAC and AVOP (passes) are essentially a privilege giving unsupervised access to certain restricted airport

areas. As discussed below, the applicant Michel Labadie used 2 planes stored at the airport and as of late May 2018 used the passes to access them unsupervised.

2. Mr. Labadie alleges that in November 2018 the respondent Melissa Sayers, then the general manager of the respondent airport operator Alpha Aviation Inc. (Alpha), arbitrarily and maliciously revoked Mr. Labadie's passes. Mr. Labadie seeks \$2,900 for the denial of unsupervised access to his aircraft, plus an order that the respondents be required to reinstate his passes, which he values at \$100.
3. Ms. Sayers says that at all material times she acted as Alpha's general manager, and not in her personal capacity. Ms. Sayers and Alpha say Mr. Labadie's passes were validly revoked because he failed to pay an invoice for recovery services following his plane's August 2018 crash, and because he engaged in inappropriate and threatening behaviour. Mr. Labadie denies he behaved inappropriately. Ms. Sayers and Alpha further say that Mr. Labadie remains entitled to supervised access to the aircraft he used, which Mr. Labadie says is impractical.
4. The respondent City of Delta (Delta) owns the airport land and leases it long-term to Alpha. Mr. Labadie says Delta should be jointly liable as the airport's lessor because Delta allegedly failed to supervise Alpha, which Delta denies.
5. Mr. Labadie is self-represented. The respondents are represented by Lana Li, a lawyer.
6. For the reasons that follow, I dismiss Mr. Labadie's claims.

## **JURISDICTION AND PROCEDURE**

7. 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.

8. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these.
9. Under section 42 of the CRTA, 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.
10. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other, with respect to Mr. Labadie's and Ms. Sayers' behaviour at an October 11, 2018 meeting. I note the decision in *Yas v. Pope*, 2018 BCSC 282, where the court recognized that oral hearings are not necessarily required where credibility is in issue. I note that in final reply submissions Mr. Labadie asked for the opportunity to cross-examine Ms. Sayer and the respondents' witnesses, because he says their affidavits contain falsehoods and misrepresentations. I decline to order such cross-examination. I find Mr. Labadie had a reasonable opportunity to provide his evidence and make the written submissions he wished to make. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute through written submissions.
11. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.
12. Next, Mr. Labadie submitted all his supporting evidence late, which Ms. Li objects to. The late evidence is a) a statement from YPS Aviation LTD (YPS) about Mr. Labadie's storage costs for 1 plane, which he submitted in support of his \$2,900 damages claim, b) a copy of Mr. Labadie's lawsuit in the United States against third

parties, and c) a witness statement from TB, Mr. Labadie's friend and co-shareholder of the plane. I find only TB's statement and the YPS evidence is relevant and I allow both, given the CRT's flexible mandate and the fact that the respondents had an opportunity to address it. I do not allow the late evidence about the US lawsuit as I find it irrelevant, bearing in mind I place no weight on the historical evidence about Mr. Labadie's demeanour with non-parties which was submitted on time by the respondents.

13. Finally, Delta objects to Mr. Labadie particularizing his claim against it only through submissions, and not doing so earlier in his application to the CRT. Given my ultimate conclusion below, nothing turns on this.

## **ISSUE**

14. The issue in this dispute is whether any of the respondents improperly revoked Mr. Labadie's airport passes, and if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

15. In a civil claim like this one, as the applicant Mr. Labadie bears the burden of proving his claim, on a balance of probabilities. While I have reviewed the parties' submitted evidence and arguments, I have only referenced below what I find is necessary to give context to my decision.
16. It is undisputed Mr. Labadie, through corporations or partnerships, is owner or part owner of 2 planes stored at the airport in restricted areas.
17. On May 25, 2018, Mr. Labadie applied for an AAC application with Alpha. In it, Mr. Labadie acknowledged he had read and agreed to the "Conditions of Issue" (Conditions). The passes, issued that date, gave him unsupervised access to his 2 planes. The AAC was set to expire on December 1, 2021 and the AVOP to expire on May 25, 2021. There is no evidence Mr. Labadie paid any fee to obtain the passes. None of this is disputed.

18. On May 25, 2018, Mr. Labadie also separately signed the 2-page Conditions document. The Conditions state at the top that the passes are privileges or permissions of use. Significantly, clause 4 says that Mr. Labadie agrees the passes belong to Alpha and that he will surrender them immediately upon request.
19. I find Alpha had discretion to revoke his passes. I acknowledge Mr. Labadie's arguments about Alpha's lease from Delta that required Alpha to operate a public aerodrome. However, as set out in the decision submitted by Ms. Li, at paragraph 107 of *Kitov Resources Corp. v. Alpha Aviation Inc.*, 2020 BCSC 820, the court found Alpha had the right to control certain conduct and activities at the airport. In *Kitov*, the court accepted that the plaintiff's representative had engaged inappropriately with Alpha and found Delta's lease with Alpha about the airport being "open to the public" did not determine Alpha's dealings with the plaintiff or its representative. The court found Alpha was entitled to bar the representative from the airport.
20. Similarly, I find Mr. Labadie has no public right to unsupervised access to the airport's restricted areas. Given the above, I find Mr. Labadie's essential remaining argument is that in revoking his passes Alpha exercised its discretion in bad faith and without any legitimate basis.
21. I turn then back to the relevant chronology. One of Mr. Labadie's planes was involved in a crash at the airport on August 24, 2018, which the evidence shows impacted the airport's operations that day. On September 19, 2018, Alpha issued Mr. Labadie a \$1,339.75 invoice for airport operations assistance provided on August 24, 2018. As discussed below, the crashed plane is owned by a corporation that Mr. Labadie co-owns.
22. On October 11, 2018, Mr. Labadie and TB, his friend of 20 years and fellow shareholder of the crashed plane, attended Alpha's offices to discuss Alpha's invoice for the crash. Mr. Labadie and TB's submitted statement say that while Mr. Labadie was content to pay for certain of the charges, they wanted to discuss and

hopefully get a reduction on others. I note I have no evidence before me to establish the \$1,339.75 was in fact unreasonable, to the extent Mr. Labadie might argue it.

23. Both Mr. Labadie and TB say that on October 11, 2018 they met with Ms. Sayers and KS (another senior Alpha employee), with TB and KS largely acting as bystanders during Mr. Labadie's and Ms. Sayers' conversation. I note there is no evidence Mr. Labadie mentioned at this meeting that the invoice should be re-directed to the plane's corporate owner, a position he took later as discussed below.
24. This brings me to the central issue in dispute. Namely, whether Mr. Labadie or Ms. Sayers was the hostile party during the October 11, 2018 meeting. This relates to whether Alpha reasonably revoked Mr. Labadie's passes based on his behaviour at this meeting. Mr. Labadie and TB say Ms. Sayers became aggressive. In contrast, Ms. Sayers, KS, and another now-former Alpha employee present, NS, say Mr. Labadie was aggressive.
25. None of the parties to this dispute are neutral. I place the most weight on NS' statement because when she swore her affidavit for this proceeding she was no longer employed by Alpha, and, because she was not actively involved in the invoice discussion but undisputedly directly overheard it. NS said when Mr. Labadie and TB came into the office, she was sitting behind the reception desk and their conversation took place in front of her. NS said she recalled the conversation started off "normal" and then heated up. She said Mr. Labadie became louder, and his demeanour and tone of voice became more aggressive. She said she felt uncomfortable. While I acknowledge this version of events is inconsistent with Mr. Labadie's and TB's statements, I find it is consistent with Ms. Sayers' and KS's statements.
26. I note Mr. Labadie suggests a review of camera footage will support his version of events. However, Ms. Li says there are no cameras in the office and I have no supporting evidence otherwise.

27. On balance, I find it was Mr. Labadie who likely became hostile during the October 11, 2018 meeting. I find I do not need to determine whether he in fact intended to intimidate or threaten Ms. Sayers. Rather, I find it is sufficient that the majority of those present reasonably perceived his behaviour was threatening.
28. Given my conclusions above, I find Mr. Labadie has not proven Ms. Sayers or Alpha unfairly labelled him as aggressive during the October 11, 2018 meeting. The fact that Mr. Labadie admittedly emailed Ms. Sayers later on October 11, 2018 about KS's promotion announced that same day, and said "what a queen B you are ... Get off your ego horse!" also does not support Mr. Labadie's position.
29. Further, Mr. Labadie's "queen B" email quoted above further deteriorated the parties' relationship. He sent that email to Alpha's "info" box, though Mr. Labadie says he did not realize that it would be received by multiple Alpha staff. I find Mr. Labadie likely knew or at least ought to have known that sending an email to Alpha's "info" email box would not necessarily reach only Ms. Sayers, Alpha's general manager. I find his emailing the "info" box was inappropriate.
30. I turn then to Alpha's revocation of the passes.
31. In response to Mr. Labadie's "queen B" email, on Alpha's behalf Ms. Sayers emailed him to say that "due to the recent events", his AVOP and aircraft storage for the 2 plans was "under review". While the parties dispute whether the planes were properly authorized, I find I do not need to address that address in order to resolve this dispute about the passes.
32. It appears the parties' next correspondence was on October 25, 2018, when NS emailed Mr. Labadie reminding him to pay the outstanding invoice for the August 24, 2018 crash expenses.
33. Then, on November 27, 2018, Ms. Sayers emailed Mr. Labadie that his "AVOP access" had been revoked until he paid the outstanding invoice.

34. Later on November 27, Mr. Labadie emailed Alpha and for the first time said that Alpha should send its invoice to the plane's corporate owner. I find the evidence shows that Alpha did not know Mr. Labadie did not directly own the planes until this November 27 email. Mr. Labadie demanded that Alpha reinstate his AVOP.
35. Ms. Sayers responded that it was Alpha's right to exercise its discretion as the airport authority and revoke the AVOP, under section 4 of the Conditions. She added that Mr. Labadie had an outstanding balance, and that his AVOP had never been endorsed or authorized by Mr. Labadie's "landlord", and that neither aircraft Mr. Labadie was involved with at the airport were registered or authorized. Again, I find I do not need to address the aircraft registration or authorization.
36. At this point, I note NS' undisputed evidence that she tried to forward the invoice to the plane's owner at Mr. Labadie's request in late November 2018, but the mail was returned in January 2019. The undisputed evidence is that Mr. Labadie never gave NS updated contact information for the plane's owner, despite her request and his ownership in the corporation. The evidence before me is that Alpha's invoice for the crash remains unpaid.
37. I acknowledge the Conditions do not expressly refer to payment of accounts or interpersonal behaviour. They do however give Alpha discretion to revoke the passes. Given my findings above, I find it unproven that Alpha arbitrarily or maliciously exercised its discretion in revoking Mr. Labadie's passes. It first did so expressly based on the invoice, which I find at the time Alpha reasonably believed was owed by Mr. Labadie who had not said otherwise. That said, I also find the evidence shows Alpha was also reasonably concerned about Mr. Labadie's behaviour, both at the meeting and the "queen B" email, given the timing of Alpha's response that the passes were under review "due to recent events".
38. The court in *Kitov* found the plaintiff's representative's inappropriate behaviour was similar justification for barring the representative from the airport. Here, Mr. Labadie is not barred from the airport and can still access his planes with supervision into the restricted areas. The passes are privileges, not rights. On balance, I find Alpha



was entitled to exercise its discretion in revoking the passes and so I dismiss Mr. Labadie's claim. I do not need to discuss his claimed \$2,900 in damages in any detail.

39. Given my conclusion above, I also do not need to address Delta's or Ms. Sayers' liability in any detail, other than to say I find no legal basis to hold Delta liable for Alpha's independent revocation of the passes. I am not aware of any legal authority that would hold Delta responsible based on the long-term lease, and the decision in *Kitov* does not support such a conclusion. As for Ms. Sayers, I find she acted in her capacity as Alpha's representative at all material times, and I find no basis for personal liability. In other words, I would have dismissed the claims against Delta and Ms. Sayers in any event.
40. Further, even if I had found Alpha or Ms. Sayers had improperly revoked the passes, I have no jurisdiction to order Alpha to reinstate the passes. That is an order to do something, known in law as injunctive relief, and there is no provision for me to do so under section 118 of the CRTA.
41. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to the recovery of their CRT fees and reasonable dispute-related expenses. Mr. Labadie was unsuccessful and so dismiss his claim for reimbursement of CRT fees. Delta is entitled to reimbursement of the \$25 it paid in CRT fees. Alpha claims reimbursement of \$81.90 and \$5.25 for company searches of the corporation that owns the plane that crashed. In the circumstances, I find these were reasonable dispute-related expenses and I order Mr. Labadie to reimburse them.

## **ORDERS**

42. I dismiss Mr. Labadie's claims.
43. Within 21 days of this decision, I order Mr. Labadie to pay \$112.15, broken down as follows:
  - a. \$25 in CRT fees, payable to Delta, and

b. \$87.15 in dispute-related expenses, payable to Alpha.

44. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.
45. 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.

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Shelley Lopez, Vice Chair