



# Civil Resolution Tribunal

Date Issued: July 21, 2021

File: SC-2021-001172

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Maruf v. Air China Limited*, 2021 BCCRT 796

B E T W E E N :

NILUFAR ABDUL MARUF

**APPLICANT**

A N D :

AIR CHINA LIMITED

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. This dispute is about compensation for delayed baggage on an international flight.
2. In February 2019, the applicant, Nilufar Abdul Maruf, travelled from Vancouver to Kabul on a ticket purchased from the respondent, Air China Limited (Air China). Miss

Maruf did not receive her baggage until May 2019. She seeks \$1,232.39 as reimbursement for items she bought in Kabul.

3. Air China says Miss Maruf's baggage delay was not "entirely" caused by Air China. From the evidence I infer that it means either Miss Maruf or another airline contributed to the baggage delay.
4. Miss Maruf represents herself. Air China is represented by an employee. For the reasons that follow, I allow Miss Maruf's claims in part.

## **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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
6. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
7. Section 42 of the CRTA says 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.

### ***Late evidence***

9. Miss Maruf provided evidence after the stated deadline. The evidence was a list of exchange rates between Afghan currency and Canadian currency on certain dates, which I find relevant. Given the CRT's mandate that includes flexibility, and since Air China had an opportunity to respond to the late evidence, I find it admissible and where relevant I discuss it below.

### **ISSUE**

10. The issue in this dispute is whether Air China must compensate Miss Maruf for her delayed baggage, and if so, what compensation is appropriate?

### **EVIDENCE AND ANALYSIS**

11. As the applicant in this civil dispute, Miss Maruf must prove her 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.
12. Most of the facts are undisputed. On February 10, 2019, Miss Maruf departed Vancouver, BC with a destination of Kabul, Afghanistan. The flight was operated by Air China and included stops in Beijing, China and Islamabad, Pakistan.
13. In Islamabad, Miss Maruf was denied entry because her visa was expired. She returned to Beijing, where she purchased a new ticket to travel to Kabul, with a stop in Delhi, India. The trip's Beijing-Delhi leg was operated by Air China, and the Delhi-Kabul leg was operated by SpiceJet. Neither party provided a copy of the contract of carriage or any applicable terms and conditions. SpiceJet is not a party to this dispute.

14. When Miss Maruf arrived in Kabul, her baggage did not arrive. Miss Maruf reported the delayed baggage to Air China on February 17. The baggage was found in Beijing no later than April 15, 2019. Miss Maruf did not receive her baggage until May 2019. None of this is disputed.
15. Because Miss Maruf's trip was an international one, the parties were bound by the terms of the *Montreal Convention*. The flights took place before the *Airline Passenger Protection Regulations* took effect on July 15, 2019, so those regulations do not apply.
16. 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. It applies to all international air carriage of people, baggage or cargo. The *Montreal Convention* limits the scope and type of claim that a person can make for disputes about international air travel.
17. Article 19 of the *Montreal Convention* says Air China is liable for damage due to baggage delay, unless it proves that it took all reasonable measures to avoid the damage or that it was impossible to take such measures. Air China's submissions do not explicitly address whether it took any measures to avoid delaying Miss Maruf's baggage, or whether it was impossible to take such measures.
18. Air China says it did a full investigation and found the baggage delay was "not entirely caused by Air China".
19. According to a translated copy of Air China's investigation report, the Delhi airport confirmed it did not receive Miss Maruf's baggage. Since Air China operated every flight up to and including the Beijing-Delhi flight, I find Air China and not SpiceJet was responsible for the delayed baggage. This is also supported by the report's observation that the baggage was found in Beijing.

20. The report says Miss Maruf did not complete a “property irregularity report” in Delhi. Miss Maruf undisputedly completed a form, but it was not the form Air China expected. I find this is insufficient for Air China to avoid liability because there is no evidence that Air China made Miss Maruf aware that she was required to complete a property irregularity report. There is also no evidence that completing the report would have returned her baggage sooner such that she would not have had to replace her items.
21. Based on the above findings and Article 19 of the *Montreal Convention*, I find Air China is liable for damages due to its delay of Miss Maruf’s baggage.
22. As of the time of Miss Maruf’s travel, Article 22 of the *Montreal Convention* limited Air China’s liability for lost, damaged or delayed baggage to 1,131 special drawing rights (SDRs). This is approximately \$2,000 today, but since Miss Maruf’s claim is \$1,232.39, there is no dispute that her claim is within Article 22’s liability limit.
23. So, has Miss Maruf proved her claimed \$1,232.39 in damages?
24. Miss Maruf provided 2 receipts dated February 17 and February 19, 2019. The receipts show that she purchased 2 bags, 2 pairs of boots, 2 pairs of shoes, 1 bottle of perfume, 3 pairs of trousers, 4 long shirts, 3 dresses, 4 pairs of wide-legged pants, 3 nightgowns, 2 winter jackets and 4 pairs of leggings. The total is 74,980 AFN. Today that is around \$1,193.
25. Miss Maruf’s damages must be reasonable. Miss Maruf does not explain why it was necessary to purchase multiples of the same items of clothing. She does not explain her travel purpose, or how long she intended to remain in Kabul. Also, Miss Maruf eventually recovered the contents of her baggage, so I find ordering a full reimbursement would result in something of a windfall for Miss Maruf. At the same time, I accept that she had to buy enough clothing to get by in Kabul. On the limited evidence available, I allow \$600 in damages.

26. The *Court Order Interest Act* applies to the CRT. Miss Maruf is entitled to pre-judgment interest on the \$600 from February 19, 2019 to the date of this decision. This equals \$18.82.
27. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. I find Miss Maruf is entitled to reimbursement of \$125 in CRT fees. She did not claim any dispute-related expenses.

## ORDERS

28. Within 14 days of the date of this order, I order Air China to pay Miss Maruf a total of \$743.82, broken down as follows:
- a. \$600.00 in damages,
  - b. \$18.82 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125.00 in CRT fees.
29. Miss Maruf is entitled to post-judgment interest, as applicable.
30. 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.

31. 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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Micah Carmody, Tribunal Member