



Civil Resolution Tribunal

Date Issued: August 31, 2021

File: SC-2021-000956

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dunnett Classic Drums Ltd. v. Federal Express Canada Corporation*,
2021 BCCRT 951

B E T W E E N :

DUNNETT CLASSIC DRUMS LTD.

APPLICANT

A N D :

FEDERAL EXPRESS CANADA CORPORATION

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about an allegedly misdelivered shipment. The applicant, Dunnett Classic Drums Ltd. (Dunnett), used the “FedEx Ground” service to ship an item from Washington State, USA to New Jersey, USA. Dunnett says that the named respondent, Federal Express Canada Corporation (FedEx Canada), either lost the

item or delivered it to a non-existent address. Dunnett claims \$1,015 for the item's replacement cost.

2. FedEx Canada says that they are not the correct respondent in this dispute. They say the correct respondent is FedEx Ground Package System, Inc. (FedEx GPSI), which is an American company they refer to as "FedEx Ground". FedEx Canada says Dunnett contracted with FedEx GPSI for the shipment, which was transported solely within the US. FedEx Canada also says there is no connection to Canada, so this dispute should be filed in a US court.
3. FedEx Canada says they have no liability to Dunnett and did not ship the item. Further, FedEx Canada says that FedEx GPSI has no liability under its shipping tariff, because Dunnett provided an incorrect destination address for the shipment. FedEx Canada says Dunnett did not request a delivery signature and did not declare a value for the shipment, so the tariff limits FedEx GPSI's liability to \$100 in any event.
4. Dunnett is represented by its President and CEO, Ronn Dunnett. FedEx Canada is represented by an authorized 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). 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. Under section 11 of the CRTA, the CRT may refuse to resolve a claim within its jurisdiction if it would be more appropriate for another legally binding process or dispute resolution process, among other listed reasons.
8. 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.
9. 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.
10. On March 26, 2021, a tribunal member issued a preliminary decision about the CRT's jurisdiction to resolve this dispute. On a preliminary basis, the tribunal member found that it was appropriate for the CRT to resolve the dispute, even though the facts largely related to events outside of British Columbia. The preliminary decision did not address whether the respondent was properly named, although it indicated that the parties might want to address that issue further during the CRT facilitation stage.

ISSUES

11. The issues in this dispute are:
 - a. Does the CRT have jurisdiction to hear this dispute?
 - b. Is FedEx Canada the correct respondent in this dispute, and in particular did they contract with Dunnett to ship an item?
 - c. If so, is FedEx Canada liable for losing or misdelivering the item, and what amount do they owe Dunnett for damages, if anything?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, Dunnett must prove its claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.

Does the CRT have jurisdiction to hear this dispute?

13. First, I will consider whether the CRT has jurisdiction to hear this dispute, because the March 26, 2021 preliminary decision is not binding on me.

14. Dunnett is a BC company that operates in BC. FedEx Canada is a Nova Scotia company. FedEx GPSI is a Delaware, USA company. Dunnett has a FedEx account, under which Dunnett provided a US address to receive FedEx invoices and send shipments from. Dunnett provided shipping data for the shipped item from a computer in BC and produced the shipping label in BC, under its FedEx account. Dunnett then brought the item into Washington State, USA and dropped it off for FedEx to ship to New Jersey, USA as agreed. None of this is disputed.

15. Given that Dunnett arranged for FedEx shipping and created the shipping label in BC, I find that the shipping contract was likely made in BC. I find that this is a presumptive connecting factor to BC, as described by the Supreme Court of Canada in *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17. Although FedEx Canada says the shipment was transported entirely within the US by an American company, on balance I find that FedEx Canada has not successfully rebutted the presumption that the contract was made Canada, and that this connects the dispute to Canada. So, I find this claim has a real and substantial connection to BC, and that the CRT has jurisdiction to hear it.

16. Further, I find FedEx Canada has not shown that a different forum is "clearly more appropriate" than the CRT, under the legal principle known as *forum non conveniens*. Although FedEx Canada says that a US court would be more appropriate, they do not argue that the CRT's remote and online processes have been inconvenient or have limited their participation. The evidence before me does not show that Dunnett

would be able to use similar remote and online processes in a US court, or that it could otherwise avoid the inconvenience of international travel to participate in a US court proceeding. Despite the subject matter of this dispute having clear connections to the US, I do not refuse to resolve this claim under CRTA section 11(1)(a)(i), because I find that another legally binding process or dispute resolution process would not be more appropriate than the CRT.

Is FedEx Canada the correct respondent in this dispute?

17. I find the evidence shows that FedEx Canada is not the correct respondent in this dispute and is not liable for the claimed damages. My reasons follow.
18. As noted, FedEx Canada says they are not the correct respondent in this dispute. Dunnett disagrees. The March 26, 2021 preliminary decision suggested that the parties might want to address this issue. However, Dunnett has not amended the Dispute Notice, and has not named FedEx GPSI or anyone else as an additional respondent in this dispute.
19. How is FedEx Canada related to this dispute? Dunnett says that FedEx Canada is the proper respondent because Dunnett initiated the shipment by entering shipping information on a FedEx web page from a computer in Canada, and because the shipping contract was agreed to in Canada. However, Dunnett does not explain whether its web page transaction was explicitly with FedEx Canada, or how agreeing to a shipping contract in Canada would make FedEx Canada a party to that contract.
20. Dunnett says its telephone calls were answered by FedEx agents in Canada, but it does not explain how it determined this. Dunnett does not describe those calls in any detail, and does not say whether the agents identified themselves as FedEx Canada representatives. Dunnett also says that by “FedEx’s own admission, Canada is the shipment country of origin” for the shipment. I give this allegation no weight because I see no such admission in the materials before me, and I find the evidence shows that the item was shipped from Washington State to New Jersey and was transported solely within the US. Further, I find that none of the submitted evidence, including

shipment receipts and tracking information, specifically identifies FedEx Canada as the item's shipper.

21. In a June 4, 2021 written statement, a FedEx Canada law clerk employee, TR, said that FedEx Canada provides air transportation within Canada, but provided no transportation for Dunnett's disputed shipment. TR said that Dunnett tendered the shipment to the motor carrier FedEx GPSI who transported it solely within the US, which is also confirmed by a FedEx GPSI written statement. FedEx Canada says it is not the proper respondent in this dispute and has no liability for Dunnett's shipment.
22. Dunnett refers to and relies on a FedEx Transportation Services Agreement (Agreement) in evidence. Dunnett does not deny that the item was shipped under the Agreement's terms. On February 24, 2018, Dunnett entered into the Agreement with "each as applicable, and their affiliates and subsidiaries, Federal Express Corporation, FedEx Ground Package System, Inc., and FedEx Freight, Inc. (collectively "FedEx") by their agent FedEx Corporate Services, Inc."
23. FedEx Canada was not explicitly named as a party to the Agreement. Further, I find the evidence does not show that FedEx Canada shipped, or agreed to ship, Dunnett's item as an applicable affiliate or subsidiary of any named party to the Agreement. I find the evidence fails to show that FedEx Canada had custody or control of Dunnett's item or corresponded with Dunnett about the shipment. Although the evidence shows that FedEx GPSI shipped the item under the Agreement, as noted FedEx GPSI is not a named respondent in this CRT dispute. Dunnett does not explain why it took the item to the US to be shipped, rather than shipping it from within BC.
24. I find that FedEx Canada is not responsible for Dunnett's item simply because Dunnett arranged for US shipping, under its Agreement with a different FedEx company, from a computer located in Canada. Similarly, I cannot find that FedEx Canada is responsible for the shipment simply because Dunnett contacted customer service agents allegedly located in Canada.

25. Having weighed the evidence, I find that Dunnett has not met its burden of showing that FedEx Canada is responsible for the shipped item, under the Agreement or otherwise. I find it is not necessary to consider whether the shipment was lost or misdelivered by a different company, because I cannot order relief against non-parties. I find that FedEx Canada is not liable for the claimed \$1,015.
26. 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. Dunnett was unsuccessful, so is not entitled to fee or expense reimbursements. FedEx Canada was successful but paid no CRT fees and claimed no CRT dispute-related expenses. So, I order no reimbursements.

ORDER

27. I dismiss Dunnett's claims, and this dispute.

Chad McCarthy, Tribunal Member