



Civil Resolution Tribunal

Date Issued: May 13, 2022

File: SC-2021-007874

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Knight v. Air Canada*, 2022 BCCRT 571

BETWEEN:

SIMON KNIGHT

APPLICANT

AND:

AIR CANADA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. Simon Knight booked an Air Canada flight from Vancouver to Auckland, which he later cancelled because of the COVID-19 pandemic. On June 10, 2021, he says he requested a refund under a new Air Canada policy allowing full refunds for cancelled flights. He says that Air Canada refunded an expired credit card, so he never received the money. He claims \$2,823.40, the full cost of the flight.

2. Air Canada says it has refunded the ticket on the same credit card Mr. Knight used to book the ticket. Air Canada asks me to dismiss Mr. Knight's claim.
3. Mr. Knight is self-represented. Air Canada is represented by an employee.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Did Air Canada breach the parties' contract by refunding an expired credit card?
 - b. If so, what, if anything, are Mr. Knight's damages?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, Mr. Knight as the applicant must prove his case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. The following background facts are undisputed. Mr. Knight first purchased an Air Canada return flight from Vancouver to London, UK, for travel March 25 to 31, 2019. This ticket cost a total of \$3,176.62. He paid using a credit card with the last 4 digits 3795. While neither party says so explicitly, I find it clear from the evidence that Mr. Knight cancelled this trip and received a travel credit.
11. In January 2020, Mr. Knight booked a return flight from Vancouver to Auckland, New Zealand for travel March 12 to 21, 2020. After using his travel credit, he received an \$815.71 refund on the 3795 card but paid an additional \$462.49 on a card with the last 4 digits 5669. The reasons for this split are not important to this decision. The net result is that Mr. Knight paid a total of \$2,823.40 for the Auckland flights.
12. On February 12, 2020, Mr. Knight cancelled the Auckland flights. He initially received a travel credit. On June 10, 2021, after Air Canada changed its COVID-19 refund policy, he requested a full refund. Air Canada confirmed in an email the same day that he was entitled to the refund, which would be "credited to the original form of payment". Air Canada refunded the ticket on July 17, 2021, on the 3795

card, which it considers to be the “original form of payment”. Again, none of this is disputed. The question is whether Air Canada has paid the refund as required.

13. Air Canada relies on rule 100 of its international tariff, which governs the processing of refunds. In the confirmation email Mr. Knight received, Air Canada incorporated by reference “any applicable tariffs”, which I find included the international tariff because Mr. Knight’s flight was an international flight. The rule says that refunds will be made “in the original form of payment used to make the booking”. I disagree with Mr. Knight that Air Canada’s decision to offer refunds because of the COVID-19 pandemic affects the rules that govern how Air Canada must process the refunds.
14. Mr. Knight’s primary argument is that he has no way to obtain the refund from his old credit card provider because at the end of every calendar year he shreds “anything not needed”, including all credit card statements. He says he does not know the full card number, has no statements, and has no way of even finding out the credit card provider’s telephone number. In any event, he says that Air Canada made a mistake refunding his old card, so Air Canada should have to figure it out.
15. Air Canada admits it should have refunded the \$462.49 portion to the 5669 card but says that it cannot do so without Mr. Knight’s cooperation. Air Canada says that it needs the expiry date of the 3795 card to debit the 3795 card the \$462.49 portion, but Mr. Knight has refused to provide it. Air Canada essentially says that it cannot proceed without that information. In his reply submissions, Mr. Knight insists he “does not have any details” about the 3795 card, “or any way of finding out”.
16. I find that I do not need to determine whether Air Canada breached the parties contract by providing the entire refund to the 3795 card. This is because even if Air Canada breached the contract as alleged, I still would not order Air Canada to provide Mr. Knight with a refund.
17. I say this because Air Canada has undisputedly refunded the money to an account to Mr. Knight’s credit. I am not persuaded that the refund is lost to Mr. Knight simply because he cancelled the credit card. I find it more likely than not that Mr. Knight

either remembers or has some way of finding out what institution issued the 3795 card. From there, I find it would be relatively easy for Mr. Knight to obtain copies of his records (including statements) and determine how to access the refunded funds. Despite Mr. Knight's assertion that he has no records whatsoever from the 3795 card, I find that with reasonable diligence, he could obtain those records.

18. Put another way, even if Air Canada breached the parties' contract by refunding the wrong card, Mr. Knight is only entitled to the amount of money it would take to make up any losses caused by the breach. Because I find that with reasonable diligence Mr. Knight could access the full refund, I find that he has suffered no loss from Air Canada's breach. With that, I find that ordering Air Canada to provide a second refund would result in a windfall for Mr. Knight.
19. For these reasons, I dismiss Mr. Knight's claim.
20. 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. Mr. Knight was unsuccessful, so I dismiss his claim for CRT fees and dispute-related expenses. Air Canada did not pay any CRT fees or claim any dispute-related expenses.

ORDER

21. I dismiss Mr. Knight's claims, and this dispute.

Eric Regehr, Tribunal Member