



# Civil Resolution Tribunal

Date Issued: November 22, 2022

File: SC-2022-004937

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Martens v. Air Canada*, 2022 BCCRT 1260

Default decision – non-compliance

**B E T W E E N :**

VANETTA MARTENS

**APPLICANT**

**A N D :**

AIR CANADA

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sherelle Goodwin

## **INTRODUCTION**

1. This final decision of the Civil Resolution Tribunal (CRT) has been made without the participation of the applicant, Vanetta Martens, due to their non-compliance with the CRT's mandatory directions as required, as discussed below.

2. The applicant says the respondent, Air Canada, lost the applicant's luggage. The applicant says the \$1,665 in compensation provided by the respondent is inadequate. The applicant claims \$5,000 in damages.
3. The respondent denies any wrongdoing and says the applicant has not proved their claimed damages or loss. It says the respondent's International Tariff and the *Montreal Convention* limit the applicant's claims and potential damages.
4. The applicant is self-represented. The respondent is represented by an employee.

## **JURISDICTION AND PROCEDURE**

5. Section 36 of the *Civil Resolution Tribunal Act* (CRTA) applies if a party to a dispute fails to comply with the CRTA or its regulations. It also applies if a party fails to comply with CRT rules in relation to the case management phase of the dispute, including specified time limits, or an order of the CRT made during the case management phase. After giving notice to the non-compliant party, the case manager may refer the dispute to a CRT member for resolution and the CRT member may:
  - a. Hear the dispute in accordance with any applicable rules,
  - b. Make an order dismissing a claim in the dispute made by the non-compliant party, or
  - c. Refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
6. A CRT case manager referred the applicant's non-compliance with the CRT's rules to me for a decision as to whether I ought to hear the dispute, refuse to resolve it, or dismiss it.
7. These are the CRT's formal written reasons. 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.

8. Where permitted under section 118 of the CRTA, 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 CRT considers appropriate.
9. For the following reasons, I dismiss the applicant's claim.

## **ISSUES**

10. The issues are:
  - a. Is the applicant non-compliant with the CRTA and the CRT's rules?
  - b. If so, should I dismiss or refuse to resolve this dispute without the applicant's further participation?

## **EVIDENCE AND ANALYSIS**

### ***Non-compliance***

11. For the following reasons, I find the applicant is non-compliant in this dispute, having failed to participate in the case management phase, as required by sections 25 and 32 of the CRTA, and CRT rules 1.3(1), 1.9 and 5.1 to 5.4. This is despite multiple attempts by the case manager to contact the applicant with a request for a reply.
12. The applicant submitted their application for dispute resolution on August 2, 2022, which included their email address and telephone number to be used for this dispute. During the course of the dispute, the applicant updated the name of their representative, and that representative's email address.
13. The case manager provided details of the applicant's non-compliance, as follows:

- a. In an October 31, 2022 email to both parties the case manager explained the CRT facilitation process. He reminded both parties they were expected to follow the directions and timelines the case manager set, to check their emails daily, and to respond to all email requests within 48 hours unless otherwise stated. The case manager asked the applicant to confirm their availability for a teleconference on November 7, 2022 at 10 a.m. He asked the parties to respond to the email by November 3, 2022 at 9 a.m.
- b. On November 3, 2022 the case manager telephoned the applicant and left a voicemail message asking the applicant to return the call or email the case manager by November 4, 2022 at 5 p.m. The case manager says the outgoing voicemail message used the applicant's name, so I am satisfied the case manager used the correct telephone number for the applicant.
- c. In a November 4, 2022 email, the case manager reminded the applicant how important it was for them to respond to the case manager's emails. The case manager asked the applicant to confirm a private telephone meeting on November 7, 2022 at 10 a.m. or propose alternate times the applicant was available for the call. The case manager asked the applicant to respond by 9 a.m. on November 7, 2022, by phone or email.
- d. On November 7, 2022 at 10 a.m., the case manager phoned the applicant and left a voicemail message asking for a return call or email by 5 p.m. on November 8, 2022. The case manager warned the applicant that, if they did not respond, they could be found to be non-compliant, resulting in their claim being dismissed.
- e. On November 7, 2022 at 10:28 a.m. the case manager emailed the applicant, noting they had failed to comply with the case manager's directions. The case manager referred to section 36 of the CRTA and warned the applicant that, if it did not respond, they could be found non-compliant. The case manager explained that meant a tribunal member may dismiss or refuse to resolve the applicant's claim, without the applicant's participation. The case manager told

the applicant to email or call him by 5 p.m. on November 8, 2022 to provide 2 times the applicant was available to speak to the case manager.

- f. The applicant did not respond to the case manager's emails or voicemail messages.
14. The case manager referred the matter of the applicant's non-compliance with the CRTA and the CRT's rules to me for a decision as to whether I should hear the dispute without the applicant's further participation.
15. Based on the above, I find the applicant is non-compliant with the CRTA and the CRT's rules for failing to respond to the case manager's requests for contact. As noted above, applicant was warned, in writing, about the risks of its failure to respond to the case manager's communications.

***Should the CRT hear the dispute without the applicant's further participation?***

16. I find the case manager's attempted emails and voicemail were sent to the email address and telephone number provided by the applicant. I find the case manager made a reasonable number of contact attempts, but the applicant failed to respond.
17. As noted above, the applicant initiated this CRT dispute. They provided no explanation about why they failed to respond to the case manager's communications. Given the case manager's multiple attempts at contact, I find the applicant likely knew about the case manager's attempts but failed to respond.
18. Rule 1.4(2) states that if a party is non-compliant, the CRT may:
  - a. Decide the dispute relying only on the information and evidence that was provided in compliance with the CRTA, a rule or an order,
  - b. Conclude that the non-compliant party has not provided information or evidence because the information or evidence would have been unfavourable to that party's position, and make a finding of fact based on that conclusion,

- c. Dismiss the claims brought by a party that did not comply with the CRTA, a rule or an order, and
  - d. Require the non-compliant party to pay to another party any fees and other reasonable expenses that arose because of a party's non-compliance with the CRTA, a rule or an order.
19. Rule 1.4(3) says that to determine how to proceed when a party is non-compliant, the CRT will consider:
- a. Whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute,
  - b. The stage in the facilitation process at which the non-compliance occurs,
  - c. The nature and extent of the non-compliance,
  - d. The relative prejudice to the parties of the CRT's order addressing the non-compliance, and
  - e. The effect of the non-compliance on the CRT's resources and mandate.
20. Based on the evidence described above, I find that the applicant had proper notice of the case manager's attempts to contact them. I further find the applicant knew the consequences if they failed to respond, which was the potential dismissal of their dispute. I am also satisfied the dispute only affects the named parties, and I see no prejudice to the respondent in making an order dismissing the applicant's dispute.
21. If I were to refuse to resolve the claim, there would be no finality to this dispute. This is because it would be open to the applicant to make a further request for CRT resolution, subject to any limitation period. I find that in refusing to resolve, there would be no finality and no consequence to the applicant for failing to participate, which would be unfair to the respondent.
22. The applicant's non-compliance here occurred early in the tribunal decision process, and the parties have not provided any evidence or submissions.

23. The CRT's resources are valuable. I find that it would be wasteful for the CRT to continue applying its resources on a dispute where, through a failure to respond as required, the applicant shows they do not want the CRT's assistance in resolving his claim.
24. Although not binding on me, I agree with and apply the former CRT Chair's reasoning in *Grand-Clement v. The Owners, Strata Plan KAS 2467*, 2017 BCCRT 45, that it is problematic to force an unwilling applicant to pursue a dispute with the CRT. I agree that to do so would go against the CRT's mandate and impair the fairness of the process by creating an imbalance of the CRT's fact finding and decision-making functions.
25. In weighing all the factors, I find the applicant's claims, and this dispute, should be dismissed.
26. Given the applicant's non-compliance, I find they are not entitled to a refund of any CRT fees they may have paid. The successful respondent did not pay any CRT fees or claim any dispute-related expenses.

## **ORDER**

27. I dismiss the applicant's claims and this dispute.

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Sherelle Goodwin, Tribunal Member