



Civil Resolution Tribunal

Date Issued: February 6, 2023

File: SC-2022-001941

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hussain v. Air Canada*, 2023 BCCRT 105

B E T W E E N :

HABIB HUSSAIN

APPLICANT

A N D :

AIR CANADA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicant, Habib Hussain, says the respondent airline, Air Canada, unreasonably refused to transport him because it allegedly misunderstood his COVID-19 test. He claims \$4,500, for the price of new tickets, the cost of a new COVID-19 test, miscellaneous expenses, and “compensation”.

2. Air Canada denies liability. It says that Mr. Hussain lacked proper travel documents and did not sustain any compensable loss.
3. Mr. Hussain represents himself. An employee represents Air Canada.
4. For the reasons that follow, I dismiss Mr. Hussain's claims.

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. Some of the evidence in this dispute amounts to a "he said, they said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.
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.

Air Canada's Request that I Refuse to Resolve this Dispute

9. Air Canada says I should refuse to resolve this dispute for 2 reasons. First, it says Mr. Hussain filed a complaint with the Canadian Transportation Agency (Agency) about the same issues. I find this unproven by evidence. Mr. Hussain denies ever filing a complaint with the Agency. He says he may do so, but as he has not filed a complaint yet, I do not find this enough to justify refusing to resolve this claim.
10. Second, Air Canada says that the Agency is the more appropriate forum. CRTA section 11(1)(a)(i) says the CRT may refuse to resolve a dispute if the dispute would be more appropriate for another legally binding or dispute resolution process.
11. In previous decisions, the CRT has noted that there is no clear expression by Parliament that disputes of this nature should be resolved exclusively by the Agency. The CRT has also previously decided disputes involving the interpretation of airline tariffs. See, for example, *Hulewicz v. Flair Airlines Ltd.*, 2021 BCCRT 287 and *Stojasavljevic v. Flair Airlines Ltd.*, 2022 BCCRT 1231. Although these CRT decisions are not binding, I agree with their approach and find it supports deciding the dispute.

Claims under the Air Passenger Protection Regulations

12. Mr. Hussain says he may claim \$2,400 for denied boarding under the *Air Passenger Protection Regulations* (APPR) in a future Agency proceeding. He expressly says he is not claiming for denied boarding as the term is used under the APPR in the current proceeding. So, I have not considered that here.

ISSUE

13. The issue in this dispute is whether Air Canada breached the parties' contract and if so, what remedy is appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, Mr. Hussain as the applicant must prove his claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
15. The parties agree on the following facts. Mr. Hussain purchased a roundtrip ticket from Etihad Airways (Etihad) on June 12, 2021. The itinerary originally outlined departing on June 25, 2021, flying from Vancouver to Islamabad-Rawalpindi, via Toronto and Abu Dhabi and returning to Vancouver on August 9, 2021. However, Etihad exchanged Mr. Hussain's ticket so that he would depart from Vancouver on July 23, 2021 instead.
16. As noted above, Air Canada says it refused transportation because its staff decided that Mr. Hussain did not have valid travel documents for his final destination. Air Canada did not explicitly say so, but I infer it argues that Mr. Hussain's COVID-19 test results were invalid for entry into either Pakistan or the United Arab Emirates. With that in mind, I turn to the chronology.
17. Air Canada's customer service notes summarize what happened at YVR airport on July 23, 2021. I find the notes consistent with Mr. Hussain's submissions, so I accept them as accurate. Air Canada requested Mr. Hussain show his COVID-19 test results before transport. Mr. Hussain provided Air Canada his July 21, 2021 test results. Air Canada's notes state that Mr. Hussain needed to provide an RTPCR test for transport, but Mr. Hussain provided a NAAT test instead.

18. Mr. Hussain provided a copy of the test results in evidence. Under specimen description, it said “COVID-19 Coronavirus RNA (PCR/NAAT)”. The test result was negative. It also said, “No COVID-19 virus (2019-nCoV) detected by NAT”.
19. The notes continue as follows. Mr. Hussain called Air Canada to reschedule. Air Canada told Mr. Hussain he would have to pay for rescheduling and also produce a NAAT test for transport. Mr. Hussain went to the airport’s clinic. He said the clinic advised his test was acceptable. I find this key submission unsupported by evidence, such a letter from clinic staff. Air Canada still refused to transport him.
20. Mr. Hussain adds he tried to obtain a new test with the airport’s clinic. However, the clinic advised that it would take at least 48 hours to provide results. A receipt and itinerary show that Mr. Hussain subsequently booked different travel plans on July 26, 2021 with Etihad. The itinerary shows the first part of the flight was with WestJet. Mr. Hussain says that WestJet accepted his original July 21, 2021 test result. I find this is another key submission that is unsupported by evidence. For example, there are no letters or emails from WestJet to verify Mr. Hussain’s account.
21. From August to November 2021 the parties exchanged emails. Mr. Hussain included images of his test results and a photo of the clinic’s sample test, which I discuss below. Air Canada reiterated that it had to cancel his reservation until he had proper documents that would be accepted by the country he is travelling to. Air Canada subsequently asked its airport procedures team to review his file. As stated in the emails, the team advised that Mr. Hussain’s test was unacceptable because it was a “NAT” test, though it used the term NAAT elsewhere. The procedure team said Mr. Hussain needed 1 of the following tests: COVID-19 PCR, COVID-19 Real Time RT-PCR, COVID-19 RT-PCR, SARS-CoV2 GeneXpert, SARS-CoV2 PCR, SARS-CoV2 Real Time RT-PCR, SARS-CoV2 RT-PCR, and SARS-CoV2 Xpert Xpress.

Did Air Canada breach the parties’ contract?

22. Air Canada provided a copy of its international tariff. CTA section 67 requires airlines like Air Canada to post its tariff publicly. I find the tariff was binding on the parties.

23. Tariff rule 75(5) says that a carrier must refuse to transport a passenger across any international boundary if, among other reasons, a passenger failed to comply with the requirements of rule 65.
24. Rule 65(A) states that a passenger must comply with all laws, regulations, orders, demands, or travel requirements of countries to be flown from, into, or over, and with all rules, regulations, and instructions of the carrier.
25. Rule 65(D) says a carrier is not liable if it determines in good faith what it understands to be applicable law requires that it refuse to transport a passenger, and it does so.
26. Air Canada says it refused transportation because its staff determined that Mr. Hussain did not have valid travel documents for the United Arab Emirates and Pakistan. Mr. Hussain bears the burden of proving his claims. He did not provide any evidence about the travel documents required for his destination countries. So, I find it unproven that Air Canada's decision to refuse transport was incorrect or otherwise unreasonable.
27. Mr. Hussain also says that his test should have been accepted in any event. Mr. Hussain's test said "COVID-19 Coronavirus RNA (PCR/NAAT)". As noted above, Air Canada's notes state that Mr. Hussain needed to provide an RTPCR test for transport, but Mr. Hussain provided a NAAT test instead. I find that the issue of whether this test met the necessary requirements is an issue that requires expert medical evidence. Mr. Hussain only provided a copy of an April 2020 document from the BC Centre for Disease Control. It does not directly address the issue in this dispute. So, I find it unproven that Mr. Hussain's test was equivalent to the requirements of Air Canada, including the tests listed by the procedures team.
28. For all those reasons, I dismiss Mr. Hussain's claims.
29. 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. I dismiss Mr. Hussain's claims for reimbursement of CRT fees.

ORDER

30. I dismiss Mr. Hussain's claims and this dispute.

David Jiang, Tribunal Member