



# Civil Resolution Tribunal

Date Issued: December 21, 2023

File: SC-2023-003505

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Monteith v. Air Canada*, 2023 BCCRT 1134

Default decision – non-compliance

B E T W E E N :

CARI MONTEITH

**APPLICANT**

A N D :

AIR CANADA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin, Vice Chair

## INTRODUCTION

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

2. The applicant booked a flight with the respondent, Air Canada. The applicant says the flight was delayed. They claim \$1,000 as compensation for the delay under the *Air Passenger Protection Regulations* (APPR).
3. The respondent says the delay was caused by an unexpected aircraft malfunction and so the applicant is not entitled to any compensation under the APPR, or under the terms of the parties' contract for air carriage.
4. The applicant is self-represented. An employee represents the respondent.

## **JURISDICTION AND PROCEDURE**

5. These are the CRT's formal written reasons.
6. 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.
7. 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.

8. CRT staff have 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.

## **ISSUES**

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

## **EVIDENCE AND ANALYSIS**

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

10. For the following reasons, I find the applicant is non-compliant in this dispute, having failed to participate in the case management phase and pay the tribunal decision fee, as required under sections 25 and 32 of the CRTA, and CRT rules 1.3(1) and 5.1 to 5.4. This is despite multiple attempts by the CRT to contact the applicant with a request for a reply.
11. CRT staff provided details of the applicant's non-compliance, as follows:
12. CRT staff emailed the applicant and asked them to pay the \$50 tribunal decision fee by October 10, 2023 in order for the dispute to proceed through the tribunal decision process for a final decision. The email included a warning that, if the applicant did not pay the fee, the CRT would give the other party the option to pay. However, if no party paid the fee, the CRT could dismiss or refuse to resolve the dispute.
  - a. On October 11, 2023 CRT staff emailed the applicant that the fee payment was overdue and extended the due date to October 13, 2023. The email contained the same warning as the previous email.

- b. On October 18, 2023 CRT staff telephoned the applicant. Although the applicant did not answer, the staff member left a voicemail message telling the applicant the fee was overdue and that the due date was extended again, to October 20, 2023.
  - c. On October 23, 2023, CRT staff emailed the applicant that the fee payment was overdue and again extended the due date to October 25, 2023. CRT staff warned the applicant that the dispute could be decided by a tribunal member without any further warning if the applicant did not pay the fee.
  - d. On November 7, 2023, CRT staff emailed the respondent and asked them to pay the decision fee by November 14, 2023, if they wished to proceed to adjudication. The email included a warning that, if no party paid the decision fee, the CRT could choose to dismiss or refuse to resolve the dispute.
  - e. Neither party has paid the \$50 decision fee.
13. CRT staff 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.
14. Based on the above, I find the applicant is non-compliant with the CRTA and the CRT's rules for failing to pay the tribunal decision fee.
15. I find CRT staff provided the applicant with a reasonable number of opportunities to pay the fee, through both the email address and phone number that the applicant provided. As noted above, the applicant was warned, in writing, about the risks of their failure to pay the tribunal decision fee or respond to the CRT staff's communications. I find the applicant knew about the outstanding tribunal decision fee but refused to pay it.

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

16. Under CRT rule 5.4(3), where neither party pays the tribunal decision fee, the CRT can refuse to resolve the dispute, proceed to hear it, or dismiss it.
17. 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.
18. 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.

19. Based on the evidence described above, I find that the applicant had proper notice of the outstanding tribunal decision fee. I further find the applicant knew the consequences if they failed to pay the fee, 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.
20. On the other hand, 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.
21. The applicant's non-compliance here occurred early in the tribunal decision process, and the parties have not provided any evidence or submissions.
22. The CRT's resources are valuable and its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party does not want to participate. 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 their claim.
23. 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.
24. In weighing all the factors, I find the applicant's claims, and this dispute, should be dismissed.
25. Under its rules, the CRT can make orders about payment of fees or reasonable dispute-related expenses in the case of a withdrawal or dismissal. 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 expenses.

## **ORDERS**

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

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Sherelle Goodwin, Vice Chair