



Civil Resolution Tribunal

Date Issued: January 23, 2024

File: SC-2023-000718

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lbabi v. China Airlines Limited*, 2024 BCCRT 71

BETWEEN:

DAVID LBABI

APPLICANT

AND:

CHINA AIRLINES LIMITED

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about delayed baggage on an international trip.
2. David Lbabi traveled on China Airlines Limited (China Airlines) from Bangkok to Vancouver, via Taipei, in December 2022. When he arrived in Vancouver, 1 of his 2 checked bags was missing. Mr. Lbabi received the missing baggage approximately

3 days after his arrival in Vancouver. He says in the meantime, he needed to buy winter clothes to replace those in the missing baggage. Mr. Lbabi claims \$444.57 for the replacement clothing.

3. China Airlines disputes Mr. Lbabi's claims. It says Mr. Lbabi's baggage was delayed in Taipei after a lighter was found in his bag during security checks. China Airlines says since the delay was due to airport security screening procedures, which are out of its control, it owes Mr. Lbabi nothing.
4. Mr. Lbabi is self-represented. An employee represents China Airlines.

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.
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, without the need for an oral hearing.
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.
8. A piece of China Airlines' documentary evidence, a form, is not in English, except for Mr. Lbabi's name. CRT rule 1.7(5) requires information and evidence relied on to be in English or translated to English. China Airlines did not provide a word for word translation of the form, though it briefly summarized it. Mr. Lbabi disputes the form. Since China Airlines did not provide a complete translation of the form despite the

CRT's rules, I have not considered it or the English summary in coming to my decision.

ISSUES

9. The issues in this dispute are:
 - a. Did Mr. Lbabi report his delayed baggage in time?
 - b. If so, is Mr. Lbabi entitled to his claimed damages?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mr. Lbabi must prove his claims on a balance of probabilities, meaning more likely than not. I have read all the parties' submissions and evidence but refer only to that which I find necessary to provide context for my decision.

Background

11. On December 16, 2022, Mr. Lbabi flew China Airlines from Bangkok to Taipei, and then to Vancouver. China Airlines says 1 of Mr. Lbabi's 2 checked bags was delayed in Taipei due to additional security screening procedures. China Airlines says the extra checks were required because the bag contained 2 lighters, which are prohibited from transportation in checked baggage. Mr. Lbabi denies having the lighters in his checked baggage, and provided a doctor's note confirming he is a non-smoker.
12. It is undisputed that Mr. Lbabi's bag was delayed in Taipei and was not delivered to him until either December 18 or 19. As explained below, nothing turns on the exact date. On December 17, Mr. Lbabi purchased what he says were essential items to replace the winter clothes that were in the missing bag. Mr. Lbabi provided receipts for \$444.57, which is what he claims from China Airlines. China Airlines says Mr. Lbabi was responsible to ensure his checked baggage did not contain prohibited

items. It also says the airport is responsible for the additional security screening procedures and therefore, for the baggage delay. So, China Airlines says it is not responsible for any damages arising from the delay.

The applicable law

13. The *Montreal Convention* is an international treaty with the force of law in Canada under the federal *Carriage by Air Act* (see *Thibodeau v. Air Canada*, 2014 SCC 67). It applies to all international air carriage of people, baggage, and cargo. The *Montreal Convention* limits the scope and type of claim a person can make against a carrier like China Airlines. It is undisputed, and I find, that the *Montreal Convention* applies to this dispute.
14. Under article 19 of the *Montreal Convention*, China Airlines is liable for damage due to baggage delay, unless it can prove it took all measures that could reasonably be required to avoid the damage or that it was impossible to take such measures. However, under article 31, Mr. Lbabi had to complain to China Airlines about the baggage delay in writing within 21 days of the baggage being delivered to him. Otherwise, Mr. Lbabi has no right of action against China Airlines, except in the case of fraud.
15. China Airlines submitted a January 11, 2023 letter from Mr. Lbabi in which he requested compensation for the delayed baggage. I find the date of the letter is more than 21 days from the date his delayed bag was delivered to him, whether the delivery date was December 18 or 19, 2022. Mr. Lbabi did not submit any evidence that he complained in writing to China Airlines earlier than January 11, 2023. So, I find Mr. Lbabi missed the deadline set out in the *Montreal Convention*.
16. Though he does not explicitly allege fraud, I find Mr. Lbabi suggests it in submissions. As noted above, Mr. Lbabi denies packing any lighters in his checked baggage, and provided evidence he is a non-smoker. He also says his baggage cleared security in Bangkok without any problems or delay. I infer Mr. Lbabi is saying this is evidence he did not have lighters in his bag, and his baggage was delayed in Taipei for some

other, undisclosed reason. Even if Mr. Lbabi did not have lighters in his bag, I find this is insufficient to show China Airlines committed fraud, given the existence of other potential innocent explanations for the delay. Without more, I find Mr. Lbabi has not proven fraud.

17. In these circumstances, I dismiss Mr. Lbabi's claim for compensation for baggage delay.
18. 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. As Mr. Lbabi was unsuccessful, I dismiss his claims for CRT fees and dispute-related expenses, which were unsupported by documentary evidence in any case. China Airlines did not pay CRT fees or claim dispute-related expenses.

ORDER

19. I dismiss Mr. Lbabi's claims and this dispute.

Megan Stewart, Tribunal Member