



# Civil Resolution Tribunal

Date Issued: January 22, 2024

File: SC-2023-005367

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *White v. Air Canada*, 2024 BCCRT 63

B E T W E E N :

SHARON ICE WHITE

**APPLICANT**

A N D :

AIR CANADA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Christopher C. Rivers

## INTRODUCTION

1. This dispute is about damaged luggage.
2. The applicant, Sharon Ice White, flew with the respondent, Air Canada, from Vancouver to London, England. The applicant's luggage was delayed. When she

received it, she says it had been damaged. The applicant claims \$1,590.40 in damages to repair her luggage.

3. The respondent says it delivered the applicant's luggage to her on December 31, 2022, but the applicant did not complain about any damage until January 10, 2023. The respondent says this means the applicant did not make her complaint within the necessary time period. The respondent asks me to dismiss the applicant's claim.
4. The applicant is self-represented. The respondent is represented by an employee.
5. For the reasons that follow, I dismiss the applicant's claim.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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.
8. 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.
9. 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.

## ISSUE

10. The issue in this dispute is whether the applicant is entitled to be compensated by the respondent for damaged luggage.

## EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant must prove her 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.
12. In December 2022, the applicant flew on the respondent’s airline from Vancouver to London, England. The parties do not agree on the flight’s date. The applicant says she arrived on December 24 while the respondent says she arrived on December 21. The applicant’s itinerary is not in evidence. I note the applicant’s arrival date is not relevant to my decision.
13. In either event, it is undisputed that the applicant’s checked luggage was delayed in transit. The parties agree that the respondent delivered the applicant’s luggage to her on December 31, 2022.
14. The applicant says when she received her luggage, her bags were in bad condition. She provided photos that show damage to external pockets and black staining on exterior surfaces. Other photos show minor scuffs on a rubber or plastic foot and exterior surfaces of her luggage.
15. The parties agree that the applicant first complained to the respondent about the damage on January 10, 2023. The parties exchanged emails in an attempt to resolve matters, but they were unsuccessful.

### ***Applicable Law: The Montreal Convention***

16. As the applicant’s flight was international, she is subject to the *Convention for the Unification of Certain Rules for International Carriage by Air*, commonly known as the

*Montreal Convention*. The *Montreal Convention* is an international treaty that establishes airline liability for lost, delayed, or damaged luggage that is transported internationally. It is part of Canadian law under the federal *Carriage by Air Act*.<sup>1</sup> The *Montreal Convention* limits the scope and type of claim a person can make against an airline carrier, like the respondent. It also places obligations, including time limits, on those who want to make certain claims against carriers, including about damaged luggage.

17. Article 31(2) of the *Montreal Convention* says once a person discovers their luggage is damaged, they must complain “forthwith” (without delay) to the carrier, in writing. The latest a person can complain is within 7 days of receiving the checked baggage. The only exception to that deadline is where the carrier has committed fraud. The applicant does not allege the respondent committed fraud.
18. In this case, the applicant undisputedly did not raise her complaint until 10 days after receiving her luggage. She therefore missed the deadline set out in the *Montreal Convention*. The deadline is mandatory, and I do not have discretion to overlook or extend it.
19. While the applicant says she did not know she needed to file within 7 days, I find that does not relieve her from the time limit. Further, while she says she did not wish to return to the London airport to file a claim, I note she had no apparent obligation to do so. The *Montreal Convention* only requires that her complaint be in writing.
20. So, I find the applicant did not raise her complaint in time, and I dismiss her claim.
21. 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 the applicant’s claim for CRT fees. The respondent did not pay any CRT fees or claim any dispute-related expenses.

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<sup>1</sup> See: *Thibodeau v. Air Canada*, 2014 SCC 67.

## **ORDER**

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

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Christopher C. Rivers, Tribunal Member