

SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Akakabota v. Air Canada*, 2024 NSSM 10

Date: 20240305
Docket: 526937
Registry: Digby

Between:

Mudiaga Akakabota

Claimant

v.

Air Canada

Defendant

Adjudicator: Eric Slone

Heard: February 26, 2024

Decision: March 5, 2024

Counsel: Claimant (self-represented)
Liza J. Myers, counsel for the Defendant

By the Court:

[1] The Claimant is a Nigerian citizen and a permanent resident of Canada. While Canadian citizens do not need a visa to visit the United Kingdom, citizens from some other countries (including Nigeria) do require a visa.

[2] The Claimant is an experienced traveller and has been to the UK many times. He is familiar with UK visa requirements.

[3] On March 19, 2023, the Claimant embarked on what he expected would be an uneventful short visit to London. The visit to London turned out to be shorter than expected and quite eventful, though not in a good way.

[4] His flight itinerary had him boarding an Air Canada flight in Halifax to Toronto, and then boarding another Air Canada flight to London, arriving March 20, 2023.

[5] At Heathrow Airport the Claimant presented his travel documents. The border agent noted that his UK visa commenced on March 31, 2023, some 11 days later. He was denied entry and directed to leave the country.

[6] The Claimant said that he had not noticed that his visa only commenced on March 31. He had intended to apply for a visa to cover his planned trip.

[7] The Claimant says that Air Canada was negligent in allowing him to board his flights in Canada without verifying that he had a valid visa to enter his destination.

[8] Getting back to Halifax was a challenge. His return ticket on Air Canada for March 26, 2023, was of no particular value. There were some flights back to Canada available that day for an exorbitant cost, in the range of \$8,000.00. In an effort to save money, the Claimant booked himself on a British Airways flight to Nigeria, where he stayed for a few days and then boarded a Lufthansa flight bound for Montreal via Frankfurt. From there he flew Air Canada back to Halifax.

[9] He seeks damages totalling \$24,000.00, consisting of the cost of all of his airfares, some hotel and other expenses, and compensation for his trouble and inconvenience.

Air Canada's position

[10] Air Canada pleads that it is the passenger's responsibility to determine

which travel documents are appropriate for their travel.

[11] Air Canada says that it is not liable under the terms of the contract of carriage. It says that by purchasing tickets with Air Canada, the Claimant entered into a Contract of Carriage, which incorporates the terms and conditions contained in the General Conditions of Carriage as well as Air Canada's International tariff. Air Canada submits that the Claimant is bound by these terms and conditions. Specifically, Rule 65 of the tariff provides that each passenger desiring transportation across any international boundary will be responsible for obtaining all necessary travel documents and for complying with all government travel requirements. Rule 65 further provides that a passenger must present all exit, entry and other documents required by law, and that the carrier is not liable to the passenger for loss or expense due to the passenger's failure to comply with this provision.

[12] Moreover, it says, the circumstances referred to in the Claim occurred while on a journey of international carriage. Accordingly, the rights and obligations of the parties are governed by the Convention for the Unification of Certain Rules of International Carriage by Air, which is commonly referred to as the Montreal Convention. The Montreal Convention is an international treaty incorporated into the laws of Canada by the *Carriage by Air Act*.

[13] Article 29 of the Montreal Convention indicates that in the carriage of passengers, any action for damages, however founded, can only be brought subject to the conditions and such limits of liability as are set out in the Convention and that in any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

Discussion and findings

[14] I take notice of the fact that airlines, including Air Canada, routinely ask for information including passport numbers when booking tickets. They also require photo ID upon boarding the aircraft.

[15] An alert agent in Toronto or Halifax might have looked more closely at the Claimant's documents and might have noticed the discrepancy between the travel date and the visa start date. But they did not. We do not even know if the Air Canada agents looked at the UK visa, but only at his Canadian permanent resident card and/or his Nigerian passport.

[16] Was that negligent?

[17] Negligence can be said to occur where one person owes another a duty of care, and that person does or fails to do something that a reasonable person would, or would not do, and which causes another person damage, injury or loss as a result. There was no evidence before me as to what other airlines do, or what Air Canada has done under other circumstances. The Claimant has failed to prove that a reasonable airline might have done things differently.

[18] But even on a practical basis, the ability of someone to gain entry into a foreign country is not a simple question answered by one document.

[19] The Claimant could have been booked on a flight from Heathrow to somewhere else where a visa is not required (such as Nigeria). In fact, the Claimant was able to fly to Nigeria without ever “entering” the UK. Air Canada would not necessarily have known if the Claimant was merely using Heathrow as a springboard to somewhere else on a different carrier.

[20] Air Canada cannot be expected to know and police the immigration requirements of every country to which it flies and cannot be expected to consider each traveller’s individual circumstance.

[21] For example, a Canadian citizen who has a criminal record for serious offences may possess a valid passport, but still needs to obtain a waiver to enter the United States and many other countries. One cannot expect Air Canada to inquire into that person’s eligibility for entry. Most people would probably consider it intrusive for Air Canada to inquire into whether its passenger has a criminal record or holds some other status that may make them ineligible to enter the country.

[22] As such, I am unable to find that it was unreasonable for Air Canada to leave it to the passenger (here the Claimant) to ensure that he had all of the proper travel authorizations. As a matter of contract, Air Canada appears to have covered itself by placing the obligation on the passenger. I need not concern myself as to whether Air Canada can contract out of its own negligence, since I have failed to find any negligence.

ORDER

[23] In the result, Air Canada did not breach its contract with the Claimant and was not negligent in the handling of the Claimant’s travel, and the claim against it should be dismissed.

