Court of King's Bench of Alberta

Citation: Hachem v Air Canada Airlines, 2025 ABKB 23

Date: 20250114
Docket: 2403 08007
Registry: Edmonton

2025 ABKB 23 (CanLII)

Between:

Samir Abou Hachem

Plaintiff

- and -

Air Canada Airlines

Defendant

Oral Reasons for Decision
of the
Honourable Justice N.E. Devlin

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[1] Mr. Abou Hachem has sued Air Canada for just over $9400 in relation to two pieces of luggage that he checked-in on an overseas flight returning to Canada and which never arrived. Air Canada has paid him just over $2300 and defends the claim on the basis that that exceeds their liability as set out in the contract of carriage as well as governed by law under the "Montreal Convention" (the Convention for the Unification of Certain Rules for International Carriage by Air, 2242 U.N.T.S. 309), as incorporated into Canadian law by the Carriage by Air Act, R.S.C. 1985, c. C-26.

[2] Notwithstanding attempts to mediate this matter, it went to trial on April the 9th, 2024, in the Alberta Court of Justice Civil Division. On that day, Mr. Abou Hachem was not able to attend. His son came in his stead and reported that his father was in hospital. At the time no

documentation was forthcoming, but Judge Sharek accepted that this was the case and adjourned the matter.

[3] However, he awarded $800 in costs thrown away, being the scheduled tariff costs, to Air Canada, payable forthwith. Mr. Abou Hachem has appealed that costs award to this Court.

[4] Air Canada resists the appeal on the basis that there is no reversible error disclosed in the reasons and that the decision was well within what is reasonable for this discretionary call by the trial judge.

[5] I begin with a consideration of the standard of review. In order for me to interfere with a decision on costs by a trial judge in the Alberta Court of Justice, I must be satisfied that there is either a palpable and overriding error on one of the factual underpinnings of the costs decision or that the judge otherwise misdirected himself about the guiding legal principles. Finally, I can consider whether the decision is in itself simply unreasonable under the circumstances.

[6] In his decision, Justice Sharek relied on two cases: Incandescent Revolution Manufacturing Co. v. Gerling Global General Insurance, 1989 CanLII 3385 (AB KB), a decision of Justice Veit, and Goddard v Day, 2000 ABQB 799, a decision of Justice Ritter (as he then was). Justice Sharek cited those cases for “the proposition that notwithstanding the fault, the lack of fault on the part of a party requesting an adjournment of a trial, thrown away costs are to be awarded.”

[7] Having reviewed both of those cases, I am satisfied that this is a slight overstatement of the principle they stand for. In Incandescent, the party who ultimately sought the adjournment had decided to proceed notwithstanding the known ill health of the key witness. That ill health precipitated into an adjournment when that witness became too unwell to continue. Thus, while there was no ‘fault’ underlying the adjournment in that case, there was a considered tactical decision that led to the adjournment.

[8] In Goddard v Day, Mr. Day, who sought the adjournment, was not physically available for trial because he needed to be on the campaign trail as the leader of a federal party in an unforeseen election. In that instance there was again an element of deliberate choice. Those cases are thus distinguishable from the present situation. On the facts the trial judge based his decision on, namely Mr. Abou Hachem having suffered sudden medical incapacitation, there was no choice or decision that led to the result. It was truly a matter of external happenstance.

[9] I give close consideration to whether the overstatement of this supposed principle – that costs are to be awarded as opposed to may be awarded in a true ‘no fault’ scenario – would be a basis for interference. This leads me to consider the reasonableness of the decision on broader grounds.

[10] First of all, it is very clear that this decision was well within the acceptable range of things the judge could do on costs. At a minimum, he was likely to put the costs for this matter in the cause, which means that, if the matter went to trial at the end of the day, the judge could have taken them into account when figuring out who owed whom what in costs. Thus, if Mr. Abou Hachem lost the case, he might well have been liable at the end of the day for the same $800.

[11] Awarding the costs on the spot, while not as mandatory or as ordinary-course as the trial judge appears to have presumed, was nonetheless within the reasonable range of options for him.

2025 ABKB 23 (CanLII)

[12] It is also clear that the trial judge took into account two other considerations, the first being that the costs incurred for preparation of this trial, given the subject matter and the party defending it, would clearly and significantly have exceeded the $800 that the tariff costs provided.

[13] Second, I also believe that he took into account the merits of the underlying claim. He reviewed those in some detail in his reasons. While it would have been preferable for him to have expressly relied on that as a basis for costs, this Court should give a broad and generous reading to oral reasons given in interlocutory decisions made by justices of the Court of Justice in civil cases. That accords with the role of that court and the manner in which those hearings are meant to proceed.

[14] In this case, Mr. Abou Hachem faces what appears to be an almost insurmountable uphill battle. His claim would appear to be barred both by the terms of the contract he had with Air Canada and more particularly, by the onus of international law that established how much financial liability an air carrier has for lost luggage.

[15] While I do not underestimate for a moment the intensity of the frustration, and perhaps even justifiable anger, he has experienced at the way in which luggage that has been misdirected is sometimes treated within our very busy air transport network, that does not increase the probability of a successful outcome at the end of the day.

[16] To dispose of this matter, I take note of a number of points of principle. First of all, costs thrown away due to an adjournment for a truly unforeseen incapacitating event on short notice will not necessarily be awarded and will not necessarily be awarded on the spot. However, awarding those costs, as they were awarded here, is within the reasonable range of outcomes if the judge otherwise takes into account the relevant facts. Here those circumstances are that the impact on the defendant of the adjournment was clearly significant and truly not of their own making in any way and related to a case in which it is entirely unclear that it is fair for them to be incurring any costs to defend it whatsoever.

[17] While I would not have made the same award, preferring instead to award costs in the cause, that is not the standard of review. There are no factual misapprehensions here. Justice Sharek understood and accepted that Mr. Abou Hachem was unavailable for reasons that imparted no fault to him. Indeed, he was somewhat generous in accepting that given the absence of any documentation at the time. The subsequent provision of medical documents confirms that he was right to accept that and proceed on that basis. He made no mistake there.

[18] While he appears to have limited himself a little too much in terms of his reading of some of the relevant authorities, he did not make an unreasonable decision at the end of the day. I am not permitted in law to interfere with that outcome and the appeal is accordingly dismissed.

[19] I am sorry, Mr. Abou Hachem, I understand your frustrations but the costs award will stand in this case.

2025 ABKB 23 (CanLII)

Heard on the 7th day of November, 2024.
Dated at the City of Edmonton, Alberta this 14th day of January 2025

N.E. Devlin
J.C.K.B.A.

Appearances:

Samir Abou Hachem
for the Self-Represented Litigant

A. Macdonald
for the Defendant

2025 ABKB 23 (CanLII)