

Citation: *Sifton Air v. Kerr*, 2004 YKSM 4

Date: 20040126
Docket: 03-S0065
Registry: Whitehorse

IN THE SMALL CLAIMS COURT OF YUKON

Before: His Honour Chief Judge Lilles

Sifton Air

Plaintiff

v.

Jonathan Kerr

Defendant

Appearances:
Erick Oles
Jonathan Kerr

Appearing for Sifton Air
Appearing on his own behalf

REASONS FOR JUDGMENT

[1] The defendant, Jonathan Kerr, organized a rafting trip down the Tatshenshini River, ending at Dry Bay, Alaska. Mr. Kerr made arrangements with Sifton Air, whose main base is in Haines Junction, to fly out the 11 members of his party, rafts and associated equipment on July 24, 2002. Sifton Air provided a quote of \$3,275.00 plus G.S.T. which is the basis of the contract between the plaintiff and the defendant. This contract document is brief, and I will set it out in its entirety.

This is our quote for a Drybay (sic) pick-up on July 24th/02 for 11 people, 2 rafts and miscellaneous gear.

Returning to Whitehorse: \$3,625.00 plus GST.
Returning to Haines Junction: \$3,275.00 plus GST.

You will contact Canadian Customs with the list of passengers etc... We will look after US and CDN

Custom clearances for all flights. Please fax me a copy of all passenger (sic) for our manifest.

[2] The return to Haines Junction was agreed to. The date of the return flight is specified as July 24, 2002. The contract is silent with respect to other contingencies, such as the obligations of the parties in the event that the pick up cannot take place on the date set out in the contract due to poor weather.

[3] On July 24, 2002, Sifton Air attempted to pick up the Kerr party, but had to turn back approximately eight miles from Dry Bay. Through Sifton Air's contact in Dry Bay, a Mr. Pellett, the Kerr party was advised that no further flights would be attempted that day. Mr. Kerr was able to contact Mr. Oles, the manager of Sifton Air, by satellite phone around 8:30 p.m. on the evening of July 24, 2002. Mr. Oles advised him that it was very unlikely that the pick up could occur on the 25th because of the weather forecast and that a pick up on the 26th was more likely. Mr. Kerr advised Mr. Oles that he had spoken to Air North about alternate transportation. Mr. Oles stated that he was not very happy about this development, because of the costs he had already incurred. Mr. Kerr agreed to call again on July 25th.

[4] Mr. Kerr and the members of this rafting party were very concerned about the timing of their pick up from Dry Bay, as several members of their party were from Ontario and Vancouver and they had flights to catch. As a result, Mr. Kerr contacted Air North on the 24th when it became apparent that Sifton Air would not be able to fly in that day. Air North asked Mr. Kerr to provide frequent weather reports and as a result, numerous calls were placed to Air North on July 25th. According to Mr. Kerr, Air North seemed much more interested in helping them get out of Dry Bay.

[5] Mr. Kerr called Sifton Air around 7:00 p.m. on July 25th and left a message on their answering machine to the following effect: "I do not need your services. Do not come to Dry Bay. I will contact you if I need your services". Two members

of Mr. Kerr's party overheard this message and testified to similar effect. The message was received by Sifton Air's pilot in Haines Junction, but he was not called as a witness. I accept Mr. Kerr's version of this event.

[6] Mr. Kerr contracted with Air North to pick his party up from Dry Bay around noon on July 26th. Air North sent in a larger plane which was shared by another rafting group. As a result, Mr. Kerr's cost for the pick up from Dry Bay was several hundred dollars less than that quoted by Sifton Air. When Mr. Kerr arrived in Whitehorse on the afternoon of the 26th, he called Sifton Air as a courtesy and advised Sifton Air of their return.

[7] Obviously disappointed because he was not given opportunity to fly the Kerr party to Haines Junction on the 26th, Mr. Oles submitted a bill for \$2,628.99 to Mr. Kerr, representing the cost of "ferrying" the airplane that was to be used to pick up the Kerr party from Dawson City to Haines Junction and back to Dawson City. Together, with interest, the claim is for \$3,000.00.

[8] Mr. Kerr filed letters from Alcan Air and Air North regarding the "practice in the trade". I will set out, in full, the statement from Air North, which is consistent with the one from Alcan Air. Neither were challenged by Mr. Oles on behalf of Sifton Air. I find that the following represents "trade practice" for air charter contracts in the Yukon. In the absence of any agreement to the contrary, this "trade practice" forms part of the contract between Sifton Air and Mr. Kerr:

- 1) If a customer books a charter out of our YXY base, then it is our responsibility to position the aircraft to our base to start the charter unless the customer has agreed to some other arrangement.

- 2) If we elect to depart and cannot complete the trip due to [weather], then that is our responsibility. If the customer asks us to depart when we have advised them that the [weather] is questionable, then the customer pays for the flying if we do not complete the trip.

3) If we cannot fly on the agreed upon day, then the customer is perfectly free to make other arrangements and has no financial obligation to us whatsoever.

4) We do not normally invoice separately for the cost of making customs arrangements or pre-flight tasks. We do invoice, and include in our quote, any out of pocket costs incurred during the charter flight. These items could include ground handling costs at the destination or crew hotel, taxi, and meals on an overnight charter. These would all be pre-quoted.

Conclusion

[9] The contract between Sifton Air and Jonathan Kerr was to pick Kerr's party up from Dry Bay and bring 11 people and equipment to Haines Junction. Although it was open to Sifton Air to include the cost of "ferrying" the plane from Dawson City to Haines Junction, it did not do so. Moreover, Mr. Oles, on behalf of Sifton Air, acknowledged that if the pick up had occurred as originally planned, there would have been no charge for bringing the plane to Haines Junction.

[10] I conclude that Air North's policy, as set out below, represents "trade practice" in the air charter business in the Yukon:

If a customer books a charter out of our YXY base, then it is our responsibility to position the aircraft to our base to start the charter unless the customer has agreed to some other arrangement.

[11] Sifton Air's claim for damages is based on the costs incurred in "ferrying" the plane from Dawson City to Haines Junction and back again. For the reasons indicated, that claim must fail. The claim is dismissed. In the circumstances, I make no order for costs.

[12] Although it is not necessary for me to do so, I note that the "practice of the trade" is that, absent any agreement to the contrary, if the plane is unable to fly

on the day agreed upon, the customer is perfectly free to make other arrangements. Sifton Air was unable to pick up Mr. Kerr's party on July 24th. I am satisfied that Mr. Kerr advised Sifton Air on July 25th that he would be making other arrangements. Sifton Air was aware of these other arrangements and made no attempt to pick Mr. Kerr's party up from Dry Bay on July 26th. Mr. Kerr did not breach his contract with Sifton Air by booking his party on a flight out of Dry Bay with the other carrier, Air North.

Lilles, C.J.T.C.