



Civil Resolution Tribunal

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File: AB-2022-008664

Type: Motor Vehicle Injury

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Palmer v. ICBC*, 2023 BCCRT 698

Default decision – non-compliance

B E T W E E N :

JUNE VIVIAN PALMER

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin, Vice Chair

INTRODUCTION

1. This final decision of the Civil Resolution Tribunal (CRT) has been made without the participation of the applicant, June Vivian Palmer, due to their non-compliance with the CRT's mandatory directions as required, as discussed below.
2. The applicant says they were on a bus when the driver slammed on the brakes, causing the applicant's body to hit the bars. The applicant says they injured their ribs, forearms and legs. They claim \$2,000 in income replacement benefits plus an undisclosed amount for permanent impairment.
3. The respondent, Insurance Corporation of British Columbia (ICBC), is an insurer that administers accident benefits under Part 10 of the *Insurance (Vehicle) Act*. ICBC says that the applicant has not applied to ICBC for accident benefits.
4. The applicant is self-represented. The respondent is represented by an employee.

JURISDICTION AND PROCEDURE

5. Section 36 of the *Civil Resolution Tribunal Act* (CRTA) applies if a party to a dispute fails to comply with the CRTA or its regulations. It also applies if a party fails to comply with CRT rules in relation to the case management phase of the dispute, including specified time limits, or an order of the CRT made during the case management phase. After giving notice to the non-compliant party, the case manager may refer the dispute to a CRT member for resolution and the CRT member may:
 - a. Hear the dispute in accordance with any applicable rules,
 - b. Make an order dismissing a claim in the dispute made by the non-compliant party, or
 - c. Refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.

6. A CRT case manager referred the applicant's non-compliance with the CRT's rules to me for a decision as to whether I ought to hear the dispute, refuse to resolve it, or dismiss it.
7. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the CRTA. 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, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
8. Where permitted under section 118 of the CRTA, the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUES

9. The issues are:
 - a. Is the applicant non-compliant with the CRTA and the CRT's rules?
 - b. If so, should I dismiss or refuse to resolve this dispute without the applicant's further participation?

EVIDENCE AND ANALYSIS

Non-compliance

10. For the following reasons, I find the applicant is non-compliant in this dispute, having failed to participate in the case management phase, as required by sections 25 and 32 of the CRTA, and CRT rules 1.3(1), 1.9 and 5.1. This is despite multiple attempts by the case manager to contact the applicant with a request for a reply.
11. The case manager provided details of the applicant's non-compliance, as follows:

- a. In a March 1, 2023 email to both parties, the case manager explained the CRT facilitation process. She reminded all parties they were expected to follow the directions and timelines the case manager set, to check their emails daily, and to respond to all email requests within 48 hours unless otherwise stated. The case manager told the parties she would call them both at 2 pm on March 14, 2023 to discuss potentially resolving the dispute.
- b. The applicant responded to the email within a few hours. They advised they might not be able to attend the March 14, 2023 teleconference due to work. The applicant was unsure whether they wanted to continue with their dispute.
- c. In a March 13, 2023 email, the case manager shared with the applicant the respondent's understanding that the applicant wanted to close this dispute. The case manager asked the applicant to advise whether or not they were withdrawing their dispute by 9 am on March 15, 2023.
- d. On March 15, 2023, the case manager called the applicant, but they did not answer. The outgoing message said that the "customer" was not available.
- e. On April 12, 2023, the case manager again called the applicant, who did not answer. The case manager received the same outgoing message.
- f. On April 20, 2023, the case manager again called the applicant, who did not answer. There was no room on the applicant's voicemail for the case manager to leave a message.
- g. In a May 25, 2023 email the case manager reminded the applicant that they were expected to comply with the case manager's directions and deadlines. The case manager referred to section 36 of the CRTA and warned the applicant that, if they did not respond, they could be found non-compliant. The case manager explained that meant a tribunal member may dismiss or refuse to resolve the applicant's claim, without the applicant's further participation. The case manager told the applicant to respond to the email by 9 am on May 29, 2023.

- h. In a June 12, 2023 email, the case manager gave the applicant a final warning that they could be found non-complaint under CRTA section 36 if they failed to respond. The case manager asked the applicant to reply to the email advising whether or not they wanted to withdraw their dispute.
 - i. On June 13, 2023, the case manager mailed the applicant the same final warning message set out in the June 12, 2023 email.
 - j. Although neither the June 12 email nor June 13 mailed letter contained a deadline for the applicant's reply, I am satisfied that a reasonable amount of time has passed without any reply from the applicant.
- 12. Based on the above, I find the applicant is non-compliant with the CRTA and the CRT's rules for failing to respond to the case manager's requests for contact. As noted above, the applicant was warned, in writing, about the risks of failing to respond to the case manager, as requested.

Should the CRT continue without the applicant's further participation?

- 13. The applicant submitted their application for dispute resolution on November 10, 2022, with their mailing address, email address and telephone number to be used for this dispute. I find the case manager's emails, telephone calls, and mailed letter were sent to the contact information provided by the applicant in their Dispute Notice. Further, I find the case manager used the correct email address, as the applicant did initially respond through that email address. I find the case manager made a reasonable number of contact attempts, but the applicant failed to respond after March 14, 2023. Given the case manager's subsequent multiple attempts at contact, I find the applicant likely knew about the case manager's contact attempts and failed to respond.
- 14. Rule 1.4(2) states that if a party is non-compliant, the CRT may:
 - a. Decide the dispute relying only on the information and evidence that was provided in compliance with the CRTA, a rule or an order,

- b. Conclude that the non-compliant party has not provided information or evidence because the information or evidence would have been unfavourable to that party's position, and make a finding of fact based on that conclusion,
 - c. Dismiss the claims brought by a party that did not comply with the CRTA, a rule or an order, and
 - d. Require the non-compliant party to pay to another party any fees and other reasonable expenses that arose because of a party's non-compliance with the CRTA, a rule or an order.
15. Rule 1.4(3) says that to determine how to proceed when a party is non-compliant, the CRT will consider:
- a. Whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute,
 - b. The stage in the facilitation process at which the non-compliance occurs,
 - c. The nature and extent of the non-compliance,
 - d. The relative prejudice to the parties of the CRT's order addressing the non-compliance, and
 - e. The effect of the non-compliance on the CRT's resources and mandate.
16. Based on the evidence described above, I find that the applicant had proper notice of the case manager's attempts to contact them. I further find the applicant knew that their dispute could be dismissed if they failed to respond to the case manager. I am also satisfied the dispute only affects the named parties, and I see no prejudice to the respondents in making an order dismissing the applicant's dispute.
17. If I were to refuse to resolve the claim, there would be no finality to this dispute. This is because it would be open to the applicant to make a further request for CRT resolution, subject to any limitation period. I find that in refusing to resolve, there

would be no finality and no consequence to the applicant for failing to participate, which would be unfair to the respondent.

18. The applicant's non-compliance here occurred early in the tribunal decision process, and the parties have not provided any evidence or submissions.
19. The CRT's resources are valuable. I find that it would be wasteful for the CRT to continue applying its resources on a dispute where, through a failure to respond as required, the applicant shows it does not want the CRT's assistance in resolving its claim.
20. Although not binding on me, I agree with and apply the former CRT Chair's reasoning in *Grand-Clement v. The Owners, Strata Plan KAS 2467*, 2017 BCCRT 45, that it is problematic to force an unwilling applicant to pursue a dispute with the CRT. I agree that to do so would go against the CRT's mandate and impair the fairness of the process by creating an imbalance of the CRT's fact finding and decision-making functions.
21. In weighing all the factors, I find the applicant's claim, and this dispute, should be dismissed.
22. 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 the successful party, I find the respondent is entitled to reimbursement of the \$25 it paid in CRT fees. The respondent claimed no dispute-related expenses.

ORDERS

23. I dismiss the applicant's claim.
24. Within 30 days of this decision, the applicant must pay the respondent \$25 in CRT fees.

25. The respondent is also entitled to post-judgment interest under the *Court Order Interest Act*.
26. Under sections 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court or the British Columbia Provincial Court if it is under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in. Under section 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of that court.

Sherelle Goodwin, Vice Chair