



Civil Resolution Tribunal

Date Issued: April 4, 2018

File: SC-2017-004597

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Unger v. Sutco Contracting Ltd.*, 2018 BCCRT 109

B E T W E E N :

Matthew Unger

APPLICANT

A N D :

Sutco Contracting Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Vivienne H. Stewart

INTRODUCTION

1. The applicant, Matthew Unger, a semi-truck driver, was dismissed by the respondent Sutco Contracting Ltd. ("Sutco") after just over four months on the job. Mr. Unger says that Sutco owes him money for the cost of retrieving his personal vehicle from Sutco's Salmo, BC location and dental expenses.

2. Sutco says that it does not owe Mr. Unger anything.
3. Both Mr. Unger and Sutco represented themselves.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.
6. The tribunal 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. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

8. Mr. Unger did not raise an issue relating to his dismissal or his entitlements under the *Employment Standards Act*, R.S.B.C. 1996, c. 113 (the *ESA*). I find that the *ESA* does not apply to this case and therefore there is no issue that the tribunal can resolve this dispute.

ISSUES

9. The issues in this dispute are:
 - a. Should Sutco pay for Mr. Unger's expenses to retrieve his vehicle after Sutco dismissed him?
 - b. Should Sutco pay for the costs of Mr. Unger's partner's dental services provided to her after the date that Sutco dismissed Mr. Unger?

EVIDENCE AND ANALYSIS

10. Mr. Unger lives in Calgary, Alberta. He began working for Sutco, a BC company, on April 4, 2017. Mr. Unger did not have a written employment agreement with Sutco. Mr. Unger drove his own vehicle from Calgary to Sutco's location in Salmo, BC for training. He then began driving a semi-truck for Sutco. He left his personal vehicle parked at Sutco's Salmo location.
11. The parties disagree about whether or not Sutco knew that Mr. Unger had left his personal vehicle parked at Sutco's Salmo location for the entire time that Mr. Unger worked for Sutco.
12. Mr. Unger was involved in an incident at a Commercial Vehicle Scale in Castlegar, BC on August 16, 2017 (the "CVS incident"). It was serious enough that Sutco decided they had to investigate. On Friday, August 18, 2017, Mr. Unger drove his truck to Sutco's repair shop in Salmo for scheduled repairs. Sutco decided to send Mr. Unger home to Calgary for the weekend while his truck was being repaired and to complete the investigation into the CVS incident.

13. The parties disagree about whether or not Sutco knew that Mr. Unger's personal vehicle was parked at Salmo. The evidence shows that a Sutco employee saw Mr. Unger trying to start his vehicle on the afternoon of August 18, 2017. However, this was after Sutco had already made the travel plans for him to return to Calgary. Sutco says it was too late to change those plans. Mr. Unger thought it was a "nice gesture" by Sutco and took advantage of it.
14. The parties agree that the last day that Mr. Unger drove for Sutco was August 18, 2017.

Vehicle Retrieval Expenses

15. For Mr. Unger's return to Calgary, Sutco paid for a taxi to take him to Castlegar. Sutco also paid for his hotel room and flight back to Calgary. Sutco also gave Mr. Unger \$50 cash for food and a taxi to the airport.
16. Sutco completed the CVS incident investigation and decided to terminate Mr. Unger's employment. The parties agree that the dismissal happened on Wednesday, August 23, 2017. As already noted, this dispute is not about wrongful dismissal.
17. On August 24, 2017, Mr. Unger and a Sutco employee spoke on the phone. Mr. Unger asked Sutco to fly him back to Salmo to retrieve his vehicle. Sutco refused to fly him back but offered to pay \$114.30 for a one-way bus ticket instead. The bus trip takes about 10 hours. Sutco says that Mr. Unger refused to accept this offer. Mr. Unger says that the offer was never made to him.
18. Mr. Unger says that he spent \$361.00 to have his partner drive him to Salmo to retrieve his vehicle and then return to Calgary. Mr. Unger's receipts show that this round trip took about three days from August 27 to 29, 2017.
19. I find that it is unlikely that Sutco would have told Mr. Unger to drive his personal vehicle back to Calgary on August 18, 2017 unless Sutco had already decided to dismiss him. However, Sutco had not finished their investigation into the CVS

incident when they paid to send Mr. Unger home to Calgary on August 18, 2017. It is therefore quite possible that Sutco could have decided not to dismiss Mr. Unger once they had finished the investigation. In that case, Sutco would have had to pay to bring Mr. Unger from Calgary so that he could go back to work.

20. I find that Sutco did not decide to dismiss Mr. Unger until August 23, 2017. Therefore, even if Sutco had known that Mr. Unger's personal vehicle was still in Salmo on August 18, 2017, Sutco would still have paid to send him home for the weekend.
21. I also find that If Mr. Unger had known that Sutco was going to dismiss him over the CVS incident, he would have told Sutco on August 18, 2017 that he had his own vehicle there and he would drive it home.
22. Sutco did not have to fly Mr. Unger to Calgary for the weekend. Mr. Unger says he thought it was a "nice gesture". It was not part of Mr. Unger's employment agreement with Sutco.
23. In making the decision to fly Mr. Unger home on August 18, 2017, I find that Sutco promised Mr. Unger that they would pay to bring him back to work once the truck was repaired and the investigation was finished. Sutco's actions led Mr. Unger to believe and to expect that Sutco would pay to bring him back to Salmo. This was reasonable.
24. However, once Sutco had dismissed Mr. Unger, the situation changed. In law, this is a "master and servant" case where Sutco and Mr. Unger have to follow what they agreed in the verbal employment agreement (see *Ridge v. Baldwin*, [1964] A.C. 40, [1963] 2 All E.R. 66 at 71). Sutco's promise to Mr. Unger on August 18, 2017 was a gratuitous promise but Mr. Unger relied on it when he left his vehicle in Salmo and flew back to Calgary. A 'gratuitous promise' is a promise where the party making the promise (Sutco) is receiving nothing in return (from Mr. Unger).
25. After Sutco dismissed Mr. Unger, it refused to pay for a plane ticket for Mr. Unger to return to Salmo to retrieve his vehicle. However, Sutco did offer to pay for a

one-way bus ticket from Calgary to Salmo in the amount of \$114.30. Mr. Unger denies that this offer was made to him. While there is no written documentation of the offer, I prefer Sutco's evidence on this point as the more reliable and I find that Sutco did in fact make the offer. I also find that Mr. Unger should have accepted the offer. Once Sutco dismissed Mr. Unger, Sutco could choose how to bring Mr. Unger back to retrieve his vehicle. Sutco chose the bus.

26. Sutco must pay \$114.30 to Mr. Unger.

Health Benefits

27. As a full-time employee, Mr. Unger was able to receive health benefits under Sutco's group health insurance plan with the BC Trucking Association after three months on the job (the "BCTA Plan").
28. The BCTA Plan's Employee Benefits Handbook says that a person's benefits will stop on the day that he is no longer an employee. A person stops being an employee on the day that he is dismissed (Handbook, page I, pages 33-34). The employee's dependent's benefits stop on the same date. In this case, "dependent" includes Mr. Unger's partner.
29. Sutco dismissed Mr. Unger on August 23, 2017. As of that day, Mr. Unger was no longer an employee of Sutco and no longer had health benefits.
30. Mr. Unger's evidence included receipts for dental services provided to his partner on August 29 and 30, 2017.
31. Mr. Unger says that employees of Sutco told him that his health benefits would continue until the end of August 2017. Sutco denies that anyone said this to Mr. Unger. Sutco points to the clear wording of the BCTA Plan. Sutco says no one would have told Mr. Unger that his health benefits would continue after the day he was dismissed, since they knew this was not true.

32. I agree with Sutco. I find that no one made statements to Mr. Unger about his health benefits continuing after Sutco dismissed him.
33. Mr. Unger's health benefits ended on August 23, 2017. His claim for the dental expenses of his partner in the amount of \$437.38 is dismissed.
34. Mr. Unger has claimed for \$125.00 in CRT fees plus \$7.55 for the cost of sending his notice of the dispute to Sutco. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. However, the parties have had divided success in this case. I order Sutco to pay half of Mr. Unger's tribunal fees in the amount of \$62.50 and half of his dispute-related expenses in the amount of \$3.78.
35. Since Mr. Unger spent more than \$114.30 for the travel back to Salmo to retrieve his personal vehicle, I also order pre-judgment interest on this amount under the *Court Order Interest Act* calculated from August 27, 2017, the day that Mr. Unger left Calgary to drive to Salmo.

ORDERS

36. I order that, within 10 days of this decision, Sutco must pay Mr. Unger a total of \$181.21 broken down as follows:
 - a. \$114.30 to Mr. Unger as partial reimbursement of his travel expenses to retrieve his vehicle;
 - b. \$66.28 to Mr. Unger as reimbursement of half of his tribunal fees and dispute-related expenses; and
 - c. \$.63 in pre-judgment interest under the *Court Order Interest Act* as calculated on \$114.30 from August 27, 2017 to April 4, 2018.
37. I dismiss Mr. Unger's claim for the dental expenses.

38. Mr. Unger is entitled to post-judgment interest, as applicable, on the amount to be paid by Sutco.
39. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
40. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Vivienne H. Stewart, Tribunal Member