



Civil Resolution Tribunal

Date Issued: May 25, 2018

File: SC-2017-005716

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dirks v. Van Beek*, 2018 BCCRT 211

B E T W E E N :

Teresa Dirks

APPLICANT

A N D :

Kayla Van Beek

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, Teresa Dirks, seeks payment of \$855 for 85.5 hours of child care work she says she performed for the respondent.
2. The respondent denies the claims. She says she did not agree to pay the amount claimed by the applicant, and the applicant did not work all of the claimed hours. She says their agreement was that all of the applicant's wages would be paid through the British Columbia Child Care Subsidy program (subsidy), and the applicant refused to sign the papers to collect the subsidy.
3. Both parties are self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the 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: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.
8. Although this dispute relates to wage payments, I find that the Employment Standards Act (ESA) does not apply. This is because the Employment Standards Regulation states that the ESA does not apply to a “sitter”, defined as a person employed in a private residence solely to provide the service of attending to a child.

ISSUES

9. The issues in this dispute are:
 - a. Is the respondent required to pay the applicant \$855 for child care work performed?
 - b. Is the respondent required to reimburse the applicant for tribunal fees?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. The parties agree that the respondent performed child care work looking after the applicant’s daughter between June 2, 2017 and July 14, 2017.

Wage Agreement and Subsidy

12. The respondent says she was not responsible to pay the applicant anything for child care work, as the applicant’s entire wage was to come from the subsidy. She says this is indicated on the subsidy documents, which say that the “parent portion” is \$0.00.

13. In May 2017, the applicant and the respondent both signed a form entitled “Child Care Subsidy Child Care Arrangement”. The applicant was identified on the form as the child care provider. This form was submitted to the government, which responded with July 13, 2017 and August 23, 2017 letters to the applicant and respondent setting out the amount of the subsidy granted.
14. The July 13, 2017 letter said the subsidy amount was \$159.00 for 10 full days of child care in June 2017, and \$222.60 for 14 full days of child care in July 2017. The August 23, 2017 letter provides slightly contradictory information, and says the subsidy amount was \$95.40 for 6 full days of child care in July 2017. The August 23, 2017 letter also states as follows:

Subsidy may not cover the full cost of care. Parents are responsible for paying their care providers the difference.
15. Based on this evidence, I do not accept the respondent’s argument that the parties agreed the subsidy would necessarily cover the applicant’s entire wage. The August 23, 2017 letter specifies that the subsidy may not cover the full cost of care, and both letters indicate that the subsidy would only have paid the applicant \$15.90 for each full day of child care. Also, the Child Care Subsidy Child Care Arrangement form the parties signed in May 2017 states that the applicant’s rate for child care was \$20.76 per day. Thus, I find that the respondent had no basis to assume that the applicant would work for only \$15.90 per day.
16. For this reason, I find that the respondent was obligated to pay the applicant for child care work performed beyond the subsidy amount.
17. The applicant says the respondent altered the subsidy form after she signed it. Since the respondent signed the form 13 days after the applicant, and the rate appears to be written in the respondent’s handwriting, this is possible. However, the respondent says she never agreed to pay the \$10 per hour rate set out in the applicant’s July 27, 2017 invoice. The first reference to that rate is in a July 19,

2017 text message the applicant sent the respondent after they had been arguing about whether the applicant would provide child care that day. For that reason, I do not accept that the parties had any agreement that the applicant would be paid \$10 per hour.

18. In a subsequent text message sent later on July 19, 2017, the respondent wrote, "I SAID I it's \$27 a day I discussed everything with you...".¹ In another text message, the respondent wrote that she said she would give the applicant \$100 "on top". This establishes that she did agree to pay more than the \$20.76 rate set out on the subsidy form.
19. Based on the evidence before me, it appears that the parties may not have reached a specific agreement about the applicant's wage rate, and may have been operating without a "meeting of the minds" on this issue. In any event, I find that the applicant has not provided sufficient evidence to establish on the balance of probabilities that the respondent ever agreed to pay her \$10 per hour for child care.
20. For these reasons, and on a judgement basis, I find that the applicant is entitled to the rate of \$27 per day, as set out in the respondent's text message, minus the subsidy amount.
21. The respondent says the applicant refused to sign the forms necessary to claim the subsidy, so she was unable to collect it. The applicant has not disputed that assertion, so I accept it. I find that the respondent must pay the respondent \$11.10 for each full day of child care work performed (\$27 per day minus the \$15.90 subsidy).

Days Worked

22. Both parties provided extensive and conflicting evidence regarding which days and hours the applicant worked. The applicant provided calendars indicating that

¹ All quotes reproduced as written.

she provided full days of child care on June 2, 5, 9, 16, 19, 21, 23, and 28, and on July 14, 2017. The calendar also indicates that the applicant performed a half day of child care on June 12, 2017. The text messages between the parties confirm that the applicant worked these days, so she is owed payment for a total of 9.5 days.

23. In summary, I order that the respondent pay the applicant for 9.5 days at the rate of \$11.10 per day, for a total of \$105.45.
24. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. As the applicant was partially successful in this dispute, I order that the respondent pay the applicant \$125 as reimbursement for tribunal fees. There were no dispute-related expenses claimed.
25. The applicant is also entitled to pre-judgment and post-judgment interest under the Court Order Interest Act (COIA), as set out below in my order.

ORDERS

26. I order that, within 30 days of this decision, the respondent must pay the applicant a total of \$231.29, broken down as follows:
 - a. \$105.45 for child care performed, plus \$0.84 in pre-judgment interest under the COIA, and
 - b. \$125 as reimbursement of tribunal fees.
27. The applicant is entitled to post-judgment interest under the COIA.
28. 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.

29. 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.

Kate Campbell, Tribunal Member