



# Civil Resolution Tribunal

Date Issued: June 13, 2018

File: SC-2017-004700

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cao v. Dawson Truck Repairs Ltd.*, 2018 BCCRT 252

**B E T W E E N :**

Jun Ai Cao

**APPLICANT**

**A N D :**

Dawson Truck Repairs Ltd.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

### **INTRODUCTION**

1. The applicant Jun Ai Cao drives a 2008 Hino, a commercial 5-ton truck. This dispute is about whether the respondent Dawson Truck Repairs Ltd. breached the parties' contract by repeatedly failing to adequately or properly repair the truck. The parties are self-represented.

## **JURISDICTION AND PROCEDURE**

2. 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.
3. 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. None of the parties requested an oral hearing.
4. 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.
5. 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.

## **ISSUES**

6. The issues in this dispute are:
  - a. Did the respondent fail to properly repair the applicant's truck in September 2015 and since?
  - b. If so, what is the appropriate remedy?

## EVIDENCE AND ANALYSIS

7. 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.
8. On September 11, 2015 the applicant asked the respondent to repair his truck. Based on the associated invoice, this was to weld the broken power tailgate and install new rubber bumpers. The applicant paid the respondent's invoice in full, without complaint.
9. The applicant says that the repair was only good for 1 to 3 months. The respondent agrees it re-welded the applicant's tailgate "numerous" times, but there are no specific dates before me, save for October 11 and December 22, 2016 and January 2017. The applicant says that the respondent's September 11, 2015 repair created 3 problems.
10. The first problem described was that the steel trusses, on both sides of the tailgate platform, were slanted inwards which shortened the distance between 2 bolt position holes for an "ICC bar installation". The applicant says to solve this problem, the respondent just enlarged one hole on the ICC bar, but did not make the steel trusses vertical as they should be. The applicant does not provide any expert evidence that the respondent's method of repair was incorrect or inconsistent with the terms of their repair contract.
11. The second problem described was that because the inward slanted steel trusses limited the room between the steel trusses and the route of the power tailgate, to avoid blocking the power tailgate the respondent incorrectly installed both rubber bumpers outward toward the end, which caused the bumpers to become quickly damaged and broken away in one year. The respondent denies this, as set out below.
12. The third problem described is that the driver's side truss or support would break every 1 to 3 months. The applicant says that every time after it broke the

respondent just welded the broken parts together (free of charge, which the respondent says was done as a courtesy), to make it good for another 1 to 3 months. The applicant says this pattern continued until October 11, 2016 when the support broke again and the right side rubber bumper had been completely gone for over a month. The respondent repaired the support again and replaced the rubbers, but the applicant says the rubbers were too small and did not protect the truck as bumpers. However, the applicant paid this October 2016 invoice, without complaint.

13. On December 22, 2016, the respondent repaired the support again, but sent the applicant a \$63.52 bill dated December 23, 2016 that the applicant did not pay because the support broke again in January 2017. The respondent says that in exchange for reversing this December 23, 2016 invoice the applicant agreed he would no longer ask the respondent to fix his truck. In May 2017, the applicant says he had the truck repaired so that the steel trusses are vertically aligned, which fixed the problems.
14. The applicant seeks a total of \$1,888.19 in damages, inclusive of lost wages in having to deal with getting the truck repaired by the respondent. Other than the lost wages claims, the applicant claims reimbursement of 2 invoices:
  - a. \$862.02 – for the September 11, 2015 invoice payment, because the applicant says he needs to have another shop “redo it all”. This invoice billed for “repair and weld supports for power tailgate” and “install new dock bumpers”.
  - b. \$161.49 – for the October 11, 2016 invoice payment, because the applicant says the respondent installed the wrong bumpers that provide no protection. This invoice billed for “replace rear dock bumpers and weld cracks in supports”.
15. The respondent provided detail of its position in its response to the applicant’s complaint to the Better Business Bureau. There, the respondent said that when the

applicant came into its shop on October 11, 2016, it advised him that he needed to exercise caution when backing the truck up to loading docks. The respondent says the applicant said the bumpers were there to absorb impact, and the respondent told him if he continued to back the truck in too hard the welds will eventually break. It is undisputed that the applicant did not complain about the respondent's work on October 11, 2016 or otherwise, until he refused to pay the December 23, 2016 bill. The respondent says the same exchange about being careful backing up occurred when the respondent repaired the tailgate dock supports on December 22, 2016, when the cracks had appeared in the same spot.

16. The crux of this dispute is that the respondent says the applicant's steel trusses were already slanted inwards from damage caused by the applicant backing into a dock too forcefully. In other words, the respondent says the trusses were already broken when the applicant brought the truck in on September 11, 2015. The respondent similarly says that the need for repeated welds was due to the applicant backing into a dock too hard. In short, the respondent denies causing the trusses to slant inwards. The applicant's submission in this proceeding is that "after" the September 11, 2015 repair the 3 problems arose. I find the respondent's description more likely.
17. The applicant has not explained why he needed the September 11, 2015 repairs or how the damage occurred. I accept that the trusses were already broken rather than the respondent causing them to slant inwards. The issue then appears to be whether the respondent ought to have straightened the trusses in September 2015. I find the applicant has not proved the respondent had this obligation, noting that he submits the respondent caused the inward slant rather than failing to fix it. The September 2015 invoice was for welding the supports, which the respondent did. I find the weight of the evidence favours the respondent's position, including that the applicant never complained about the respondent's work between September 2015 and late December 2016. If the applicant had felt it was the respondent's responsibility to have set the trusses vertically, I would have expected him to raise the issue earlier, despite his submission to the contrary.

Similarly, if the applicant had been concerned about the number of times the respondent needed to re-weld the supports, and the need to do so was the respondent's fault, I would have expected the applicant to raise a concern earlier. Instead, the applicant only expressed concern when he was billed on December 23, 2016 and when the respondent refused to keep re-welding the truck.

18. The applicant provided an email thread with the company he drives for, that there had been no customer complaints about his backing up too hard, although there was a "note" about the company's dock. I find the lack of complaints is not determinative.
19. As noted above, the applicant bears the burden of proof. He has not provided any expert evidence, such as from the repair shop that ultimately straightened the supports, that the respondent ought to have conducted their repairs any differently. Nor has the applicant provided any evidence that the truck's problems were the result of the respondent's improper repair rather than his backing into docks too forcefully. I find the weight of the evidence favours the respondent's position, rather than the applicant's.
20. The respondent says it installed the dock bumpers in the correct place on the tailgate. The respondent says that if there is tailgate damage already, it will cause the bumpers to not sit as flush as if the truck was new and free of damage. The respondent says it is clear from the applicant's photos that there was damage to the tailgate. The respondent says the bumpers it installed were standard issue for 5-ton trucks like the applicant's. The respondent says the strength of the dock bumpers will also be compromised by driver abuse. The respondent notes the applicant's own photos show how hard the bumpers are being pushed into the dock, and says that they are meant to be a guide and not abused. As with my conclusion above about the trusses, I find the applicant has not provided sufficient evidence to support his claim that the wrong bumpers were installed or that bumpers used were installed incorrectly.

21. In summary, I find the respondent did not breach its contract with the applicant. I therefore do not need to address in detail the applicant's claims for damages. In accordance with the tribunal's rules, as the applicant was unsuccessful I dismiss his claim for reimbursement of tribunal fees and dispute-related expenses.

**ORDER**

22. I dismiss the applicant's claims and this dispute.

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Shelley Lopez, Vice Chair