



Civil Resolution Tribunal

Date Issued: June 14, 2018

File: SC-2017-004128

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hutskal v. Vedder Transport Ltd*, 2018 BCCRT 257

B E T W E E N :

Bradley Hutskal

APPLICANT

A N D :

Vedder Transport Ltd

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant Bradley Hutskal, an independent contractor working as an owner/operator truck driver, signed a contract with the respondent Vedder Transport Ltd. The applicant claims \$4,562.01 for an insurance charge-back the

respondent made on his final pay statement, which the applicant says the respondent was not entitled to make under their contract. 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 issue in this dispute is whether the parties' contract on its termination permitted the respondent to pro-rata chargeback the applicant for insurance the respondent had paid in advance for the applicant's commercial truck.

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. When the applicant filed the application for dispute resolution, it was on the basis that he signed the parties' contract under duress. At that time, he stated that the respondent acted unfairly by paying its own company drivers for things, such as loading and unloading time, which it refused to pay owner operators like the applicant.
9. Based on the tribunal decision plan before me, the applicant abandoned that duress claim and instead advances a new claim for decision, as detailed below. Generally speaking, the dispute is now about whether the respondent was entitled to deduct an "insurance" charge from the applicant's final pay. The monetary value of the applicant's claim, \$4,562.01, did not change.
10. In the applicant's final pay statement, the respondent noted \$8,325.96 as a deductible expense for combined licensing and insurance. The applicant says he earned \$9,626.50 in his final month and after all applicable deductions the remainder owed to him was \$4,562.01 and yet he got nothing. While no counterclaim was filed, the respondent says the applicant owes it money for the balance of the insurance deductible and other expenses.

11. The applicant's issue is that "insurance" was not a deductible expense in the parties' agreement, and that only "licensing" was deductible. The respondent says insurance and licensing are considered the same thing because in British Columbia you cannot have one without the other. The applicant does not dispute this is factually accurate, but instead relies upon the fact that the contract did not specify this to be the case.
12. The applicant says the job advertisement stated the respondent would pay insurance costs. The advertisement included the respondent's offer of "Paid Licensing, Insurance, and Pro-Rate", which the applicant says meant the respondent would pay insurance costs. I find the ad reasonably meant that the respondent would cover the licensing and insurance costs, but that it would pro-rate such coverage if needed. The issue of pro-rating is central to this dispute, as discussed below.
13. The material point is that the respondent pre-pays for insurance and licensing for all trucks, which I find is consistent with its advertisement and the parties' contract. The respondent's licensing year is April 1 to March 31. The issue here is whether the respondent can charge-back any of the insurance because the applicant quit after 3 months of work.
14. The total cost of the applicant's combined licensing and insurance on April 6, 2017 was \$11,101.28, for the licensing year of April 1, 2017 to March 31, 2018. I infer this means the respondent bought insurance premiums on a fleet plan for all of its trucks. There is no evidence before me of any breakdown as between licensing and insurance, but I infer the licensing portion is relatively nominal as compared to the insurance portion.
15. As noted by the applicant, the contract's Schedule C does not mention the word "insurance", only "licensing". Schedule C sets out varying percentages of owner responsibility for "licensing", depending on how long the owner/operator driver worked with the respondent.

16. I agree with the respondent that the 75% portion, or \$8,325.96, that was deducted on his final payment is in accordance with Schedule C of the contract that the applicant signed and initialed. I note that the 75% repayment by the owner/operator applies if they work 0 to 6 months. Here, the applicant only worked for the respondent for just under 3 months, with June 30, 2017 as his final pay statement. Thus, the applicant's 75% responsibility for the licensing year reflects the amount of time he actually worked with the respondent. This 75% chargeback to the owner is consistent with the advertisement that refers to "Paid Licensing, Insurance, and Pro-Rate".
17. As referenced above, the crux of the respondent's position is that it pre-pays the licensing and insurance for the *entire* licensing year. If an owner terminates the contract during the licensing year, the respondent says it is entitled to a pro-rated repayment accordingly. I agree that this is what Schedule C addresses, even though it uses only the word 'licensing' and not "insurance". As noted above, the applicant's initial application for dispute resolution made no reference to the issues about licensing vs. insurance. I find this fact suggests the applicant had no expectation that he would be entitled to insurance coverage after he terminated his contract.
18. Moreover, to accept the applicant's position would be to accept that he is entitled to free insurance coverage on his truck for the 9 months after he ended his contract with the respondent. Such a conclusion would not be reasonable or consistent with the parties' contract. In other words, the award the applicant seeks would be an unjust enrichment or windfall. I find the applicant is not entitled to any reimbursement from the respondent. As the respondent made no counterclaim, I make no further comment about money the respondent says the applicant owes.
19. 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

20. I dismiss the applicant's claims and therefore this dispute.

Shelley Lopez, Vice Chair