



Civil Resolution Tribunal

Date Issued: September 24, 2018

File: SC-2018-001549

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bellagamba v. International Tentnology Corp.*,
2018 BCCRT 549

B E T W E E N :

Mariella Venier Bellagamba

APPLICANT

A N D :

International Tentnology Corp.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about an employee's contractual entitlement to severance pay. The applicant, Mariella Venier Bellagamba, says her now former employer, the respondent International Tentnology Corp., ultimately paid her 2 weeks' severance as required under the *Employment Standards Act* (ESA), but has failed to pay an additional 2 weeks as required under the employment agreement. The applicant is self-represented and the respondent is represented by Suzanne Warner, an employee or principal.

JURISDICTION AND PROCEDURE

2. These are the tribunal's formal written reasons. 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 as I find I can fairly resolve the issues based on the documentary evidence before me.
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. I note that the parties' employment agreement states that all disputes arising out of it will be referred to and finally resolved by arbitration. The tribunal is not arbitration. However, since neither party relied on this clause, I have proceeded to

resolve the dispute and provide this decision. Further, I find the tribunal, rather than the Employment Standards Branch (ESB), has jurisdiction over this dispute because the applicant has already received the maximum statutory entitlement to severance, as provided in section 63 of the ESA. In other words, the claimed remedy in this dispute arises solely from the parties' private employment contract, rather than under the ESA.

6. Under the Act and 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.

ISSUE

7. The issue in this dispute is whether the respondent owes the applicant an additional 2 weeks' severance pay under the parties' employment agreement.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicants bear 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.
9. The parties' February 10, 2016 non-union employment contract set out a 3 month probation period. It also provided that the applicant would receive 4 weeks' severance pay upon termination, if she had provided "uninterrupted" service for 1 year. It is undisputed that after some back and forth between the parties, the respondent employer paid the applicant 2 weeks' severance, which is the maximum amount available under section 63(2) of the ESA. The additional 2 weeks' severance at issue in this dispute is therefore based on the applicant's contractual entitlement, outside the ESA.

10. At this point, I note that there is no evidence before me to suggest the applicant was terminated for just cause. The issue here is whether the respondent provided adequate notice or pay in lieu of notice, under the parties' contract.
11. The respondent's position is two-fold. First, it says the applicant's employment service was not "uninterrupted" because the applicant had 2 probations:
 - a. Probation – February 18 to May 18, 2016. The applicant then provided regular service from May 19, 2016 to April 20, 2017, which the respondent says was only 11 months, and not the full year that would entitle the applicant to the additional 2 weeks' severance at issue.
 - b. Probation – April 21 to July 21, 2017. The applicant then provided regular service from July 22 to August 4, 2017. The respondent says the applicant was laid off on August 12, 2017, 13 days after the second probation ended.
12. I do not agree with the respondent on this issue. While a probationary period can impact an employer's obligation to give notice, I do not agree that it means the applicant employee's service is "interrupted" by the probationary period. The fact here is that the applicant worked continuously for the respondent from February 18, 2016 through August 12, 2017, about 18 months, which is well over the minimum 1 year period set out in the parties' agreement.
13. The respondent's second argument is that the applicant was laid off, rather than terminated. The respondent says that at the layoff meeting the applicant accepted the layoff and did not have any questions or raise any grievances until her complaint 3 months later to the ESB. The respondent says the termination clause in the contract was not effective as this was a layoff, not a termination. Here, the respondent points to its August 4, 2017 email to the applicant, in which it thanked her and wrote:

I am sorry that the current business climate has forced us to make these layoffs but [it] is the nature of the event business.

14. Also on August 4, 2017, the applicant sent emails to the respondent's employees, and to Ms. Warner, to say she appreciated working with everyone, and to say good-bye. The applicant also wrote, "I will be changing paths but I would like to thank Suzanne and [name] for the opportunity of this amazing work experience". On August 9, 2017, the respondent provided the applicant with a positive letter of reference.
15. The respondent says according to the ESB, if there is no layoff clause in the employment contract, the layoff is effective if the employee agrees to it. The respondent says the applicant agreed to the layoff, because she did not raise any concerns for 3 months. In reply, the applicant says she was terminated, and points to the fact that she received the 2 weeks' severance under the ESA.
16. The parties' employment agreement does not have a lay-off clause. It also does not define what "termination" means, but it does distinguish between termination for just cause and termination with notice.
17. Based on the evidence before me, I accept that the respondent laid off the applicant, for its own financial reasons, rather than firing her. This conclusion is also supported by the Record of Employment the respondent completed, which stated the reason for its issuance was "shortage of work / end of contract or season". I find the applicant did not object to the layoff and implicitly agreed with it.
18. However, I do not agree with the respondent that this means the employment agreement's notice provision under the "termination" heading does not apply. As noted above, the 2 weeks' severance at issue is based on the parties' contract rather than an entitlement under the ESA. However, the ESA provides useful guidance. It defines "temporary layoff" as being 1) an employee with a right of recall, or 2) a layoff of up to 13 weeks in any period of 20 consecutive weeks. There is no evidence before me that the applicant had a right of recall. The applicant was laid off for more than 13 weeks. The ESA defines "termination of employment" as including a layoff other than a temporary layoff. Further, section 63(5) of the ESA says that in determining the termination date under section 63,

an employee who is laid off for more than a temporary layoff (as here), is deemed to have been terminated at the beginning of the layoff.

19. Thus, using the ESA's definitions and under section 63, the respondent terminated the applicant's employment on August 12, 2017. As such, I find that under the employment agreement, the applicant is entitled to the additional 2 weeks' severance pay. The applicant claims \$1,730 for those 2 weeks, which figure the respondent did not dispute (although as noted the respondent disputed the entitlement). Based on the salary and related documentation before me, I accept that \$1,730 is accurate. I order the respondent to pay the applicant that amount, plus pre-judgment interest under the *Court Order Interest Act* (COIA) on that \$1,730, from August 12, 2017.
20. As the applicant was successful, in accordance with the Act and the tribunal's rules, I find she is also entitled to reimbursement of \$125 in tribunal fees.

ORDERS

21. Within 14 days, I order the respondent to pay the applicant a total of \$1,875.92, comprised of:
 - a. \$1,730 for 2 weeks' severance under the parties' employment contract,
 - b. \$20.92 in pre-judgment interest under the COIA, and
 - c. \$125 in tribunal fees.
22. The applicant is entitled to post-judgment interest, as applicable.
23. 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.

24. 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 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.

Shelley Lopez, Vice Chair