



# Civil Resolution Tribunal

Date Issued: October 23, 2018

File: SC-2018-000097

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kahlon v. Safeway Trucking Ltd.*, 2018 BCCRT 641

B E T W E E N :

Vikramjit Kahlon

**APPLICANT**

A N D :

SAFEWAY TRUCKING LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell

## INTRODUCTION

- 1) This final decision of the Civil Resolution Tribunal (tribunal) has been made without the participation of the respondent, due to the respondent's non-compliance with the tribunal's directions as required, as discussed below.

- 2) The applicant, Vikramjit Kahlon, worked for the respondent, SAFEWAY TRUCKING LTD. The applicant says the respondent failed to pay him for work performed from March 27 to April 17, 2017. He claims \$2,500 for 100 hours of work at \$25 per hour.
- 3) The applicant is self-represented. The respondent, while it participated, was represented by an Jag Graya, an employee.

## **JURISDICTION AND PROCEDURE**

- 4) Section 36 of the *Civil Resolution Tribunal Act (Act)* applies if a party to a dispute fails to comply with the Act or its regulations. It also applies if a party fails to comply with tribunal rules in relation to the case management phase of the dispute, including specified time limits, or an order of the tribunal made during the case management phase. After giving notice to the non-compliant party, the case manager (facilitator) may refer the dispute to the tribunal for resolution and the tribunal may:
  - a. hear the dispute in accordance with any applicable rules.
  - b. make an order dismissing a claim in the dispute made by the non-compliant party, or
  - c. refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
- 5) These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 3.1 of the 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.

- 6) 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.
- 7) For the reasons that follow, I have allowed the applicant's claims.

## **ISSUES**

- 8) The issues in this dispute are:
  - 1) Should I hear the applicant's claim without the respondent's further participation, given the respondent's non-compliance?
  - 2) Is the applicant entitled to \$2,500 for work performed?

## **EVIDENCE AND ANALYSIS**

### ***Non-Compliance***

- 9) My June 25, 2018 summary decision to hear the dispute without the respondent's participation due to the respondent's non-compliance was previously communicated to the parties by email through the tribunal facilitator (TF). The details supporting that decision are set out below.
- 10) The respondent is the non-compliant party in this dispute and has failed to participate in the case management phase, as required by sections 25 and 32 of the Act and tribunal rules 94 to 96, despite multiple attempts by the TF to contact its representative, Mr. Graya, with a request for a reply.
- 11) The respondent filed a Dispute Response on February 27, 2018. The TF set up a facilitation teleconference to be held on April 25. Mr. Graya replied to the TF's email and said he had to reschedule that date due to a family emergency. The TF rescheduled the teleconference for June 19. Mr. Graya sent an April 27, 2018 email confirming his attendance, and the TF sent a reminder email on June 15,

and also emailed Mr. Graya after the teleconference had started, but Mr. Graya did not call in to the teleconference. After that, the TF made the following attempts to contact the respondent, with no response:

- a. *June 19, 2018 email:* The TF noted Mr. Graya's failure to call in for the teleconference without notice, and instructed him to reply by June 21.
- b. *June 21, 2018 email:* The TF asked Mr. Graya to respond, and warned him that if he failed to do so the dispute could be decided without his further participation.
- c. *June 21, 2018 voicemail:* The TF left a message for Mr. Graya, asking him to respond by the end of the day.
- d. *June 22, 2018 email:* The TF instructed Mr. Graya to respond by the end of the *day*, and repeated the warning that if he failed to comply the dispute could be decided without his participation.
- e. *June 22, 2018 voicemail:* The TF instructed the respondent to respond by the end of that day.

***Should the tribunal hear the applicant's dispute without the respondent's participation?***

- 12) As referenced above, the respondent filed a Dispute Response. The respondent has provided no explanation about why it failed to communicate with the tribunal as required. I find the tribunal staff made a reasonable number of attempts to contact the respondent. The respondent was informed in writing at the beginning the facilitation process that it must actively participate in the dispute resolution process and respond to the tribunal's emails. Given that Mr. Graya replied to the TF's initial emails and confirmed participation in the June 19 teleconference, I find it is more likely than not that the respondent knew about the TF's contact attempts and failed to respond.

- 13) The tribunal's rules are silent on how it should address non-compliance issues. I find that in exercising its discretion, the tribunal must consider the following factors:
  - a. whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute;
  - b. the stage in the facilitation process at which the non-compliance occurs;
  - c. the nature and extent of the non-compliance;
  - d. the relative prejudice to the parties of the tribunal's order addressing the non-compliance; and
  - e. the effect of the non-compliance on the tribunal's resources and mandate.
- 14) First, this dispute does not affect persons other than the named parties.
- 15) Second, the non-compliance here occurred early in the facilitation process, and the respondent has provided no evidence or submissions. The respondent effectively abandoned the process after providing a response.
- 16) Third, given the TF's attempts at contact and the respondent's failure to respond despite written warning of the consequences, I find the nature and extent of the non-compliance is significant.
- 17) Fourth, I see no prejudice to the applicant in hearing the dispute without the respondent's participation. The prejudice to the respondent of proceeding to hear the dispute is outweighed by the circumstances of its non-compliance. If I refused to proceed to hear the dispute, the applicant would be left without a remedy, which would be unfair to him.
- 18) Finally, the tribunal's resources are valuable. Its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party refuses to participate. I find that it would be wasteful

for the tribunal to continue applying its resources on this dispute, such as by making further attempts to seek participation from the respondent.

- 19) In weighing all of the factors, I find the applicant's claim should be heard. In deciding to hear the applicant's dispute I have put significant weight on the following factors:
- a. the extent of the non-compliance is significant;
  - b. the applicant is not prejudiced; and
  - c. the need to conserve the tribunal's resources.

***\$2,500 for Work Performed***

- 20) Having decided to hear the dispute without the respondent's participation, I will now address the merits of the dispute.
- 21) The applicant claims \$2,500 for truck driving work performed from March 27 to April 17, 2017.
- 22) In the Dispute Response, Mr. Graya stated as follows:
- The applicant is not entitled to pay because was volunteering to learn the job with a relative, who was an independent owner/operator. He was never hired by the respondent, and did not provide the necessary documentation in order to work.
  - The respondent only has independent operators, and has no driver employees. If an independent owner hires a driver, that owner is responsible to pay the driver.
  - Independent owners get paid per trip, not hourly.
  - No local driver can work 100 hours in 2 weeks.

- The applicant caused significant damage to a container, for which the respondent was billed about \$1,500.
- 23) Where a respondent filed a Dispute Response but has since failed to comply with the tribunal's directions as required, as is the case here, an adverse inference may be drawn against that respondent. This means that if the person or organization refuses to participate, it is generally assumed that the applicant's position is correct. This is similar to when a respondent fails to provide any response at all to the dispute and is in default, so the respondent's liability is assumed.
- 24) Based on this adverse inference, I find the applicant is contractually entitled to \$2,500 for truck driving work. While the submissions Mr. Graya set out in the Dispute Response may have some merit, the respondent effectively waived its right to pursue those defenses through its non-compliance with the tribunal's directions. I also note that the applicant provided copies of log book entries, daily work records, port entry records, and records of loads picked up and delivered. I find this evidence supports his claim.
- 25) Based on the evidence provided by the applicant, and the adverse inference against the respondent, I find that the applicant is entitled to \$2,500 for truck driving work performed. The applicant is also entitled to pre-judgment interest on this amount, from April 18, 2017, pursuant to the *Court Order Interest Act* (COIA).
- 26) 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. The applicant's fees were waived and he did not claim dispute-related expenses, so I do not order reimbursement.

## **ORDERS**

- 27) I order that within 30 days of this decision, the respondent pay the applicant a total of \$2,538.49, broken down as:

- a) \$2,500 for work performed, and
  - b) \$38.49 in pre-judgment interest under the COIA.
- 28) The applicant is also entitled to post-judgment interest under the COIA.
- 29) 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.
- 30) 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.

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Kate Campbell, Tribunal Member