



Civil Resolution Tribunal

Date Issued: November 15, 2018

File: SC-2018-000707

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *YAVARI v. SIDHU*, 2018 BCCRT 731

B E T W E E N :

AZAD YAVARI

APPLICANT

A N D :

BOB SIDHU

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about car repairs. The applicant, AZAD YAVARI, hired the respondent, BOB SIDHU, to fix his car's transmission. The applicant says the respondent overcharged him, failed to fix the car, and made the transmission worse. The applicant seeks reimbursement of the \$1,900.01 repair bill, plus \$300 for

damage to the car. The applicant also seeks an apology to his children, plus \$400 for his own time spent dealing with the car.

2. The respondent says that it was necessary to rebuild the car's transmission to in order to fix it. The respondent says the work was completed correctly, the car was fixed, and the bill was in line with the estimate.
3. The parties are self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue. 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.

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.

ISSUES

7. The issues in this dispute are:
 - a) Is the applicant entitled to a reimbursement of \$1,900.01 paid for car repairs?
 - b) Is the applicant entitled to \$300 for transmission damage?
 - c) Is the applicant entitled to \$400 for his own time spent dealing with the car?
 - d) Should the tribunal order the respondent to apologize to the respondent's children?

EVIDENCE AND ANALYSIS

8. 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.

Transmission Repairs

9. The applicant says that on September 5, 2016, he left his car at the respondent's shop to have the transmission repaired, as it was not shifting from 2nd to 3rd gear. The applicant says he was quoted a price of \$300 for the repair, including price, and was told he would have the vehicle back the following day. The applicant says the respondent then did not complete the repairs until September 13, 2016 and charged \$1,900.01, which he did not authorize.

10. The respondent disputes the applicant's evidence. The respondent says he provided the applicant with a written estimate on September 6, 2016, stating that the transmission would be removed and replaced for a total price of \$1,996.95, including parts and labour.
11. The applicant says he never saw the written estimate, never agreed to it, and that his signature was forged. I accept that the applicant did not sign the estimate, and instead find that the respondent wrote the applicant's name on the estimate (but did not forge his signature). Based on the evidence before me, I find that the applicant verbally agreed in advance to the respondent's quoted price. First, the respondent's invoice includes documentation that the applicant agreed to it in person at 1:45 pm on September 6, 2016. I find this notation credible, given the overall context of the communications between the parties, including the telephone messages provided by the applicant. Also, the estimate shows several substantial discounts, including a \$350 discount on labour, a \$225 discount on parts, and a \$79.95 discount on a transmission scan. The respondent says he offered these discounts due to negotiations with the applicant, who claimed personal hardship. I conclude that the respondent would not plausibly have offered these large discounts unless the parties had discussed the overall cost of the repairs before the transmission was rebuilt.
12. The applicant says it was not necessary to remove and rebuild the entire transmission, and the respondent only needed to install a part. However, the applicant is not an expert mechanic. I therefore place no weight on his opinion about how the transmission should have been fixed. The applicant provided a parts list from an auto supply store and an invoice from a repair shop for transmission work performed a few days before he brought the car to the respondent. That repair invoice states that the first shop opened the transmission, cleaned the solenoid and did "diagnosis". However, there is no indication of what the diagnosed transmission problem was. For that reason, I find this evidence does not establish that the respondent overcharged for his transmission repairs. I find the applicant has not proved the respondent's work was inadequate or unnecessary.

13. The applicant also says the respondent damaged the transmission. He says that less than 24 hours after he picked up the car, it would not shift into 4th gear. I find that the applicant has not proven this claim. First, in April 2017 the respondent complained to the Better Business Bureau (BBB) about the respondent's repairs. The applicant wrote that the respondent's bill was too high, the repairs took too long, and the respondent yelled at him and used abusive language when he picked up the car. However, no subsequent transmission problems, including problems with 4th gear, are mentioned in the applicant's detailed written complaint, including in his requested resolution. I find that if the repair had been faulty, or if there had been problems with 4th gear immediately after the repair, the applicant would have mentioned this in his BBB complaint.
14. The applicant provided a copy of a document from another repair shop, Wilf's Transmissions, stating that the car had no 4th gear. The document says that further diagnostic time was required to determine the cause of the fault, and that it was "possibly caused by failed part or previous transmission overhaul." This document is undated, but says the car's odometer reading was 113,226 kilometers. The work order and invoice from the respondent's shop show that the car's odometer read 106,398 kilometers. The fact that the car was driven 6,828 kilometers before the applicant sought further repairs does not support the conclusion that the 4th gear failed to work within 24 hours of leaving the respondent's shop. Also, the statement that the failed 4th gear was possibly due to the previous transmission overhaul is speculative, and the document specifically says that further diagnosis was required to know the true cause of the fault. The applicant did not provide evidence showing the outcome of this further diagnosis.
15. Finally, there is no evidence before me indicating that the applicant ever had the 4th gear repaired.
16. For all of these reasons, I find the applicant is not entitled to a refund of the \$1,900.01 repair bill, or the claimed \$300 for further transmission repairs.

Apology

17. The applicant seeks an order that the respondent apologize to his children. He says that when he picked up his car, the respondent raised his voice, used abusive language, and terrified the children. In his submissions to the tribunal, the applicant says the respondent shoved him. However, in his earlier complaint to the BBB, the applicant wrote that the respondent “nudged his hip”.
18. I am more persuaded by the version of events set out in the BBB complaint, as it was written by the applicant closer to the time of the events in question. In any event, I do not order an apology. The tribunal generally does not order apologies because forced apologies are not productive or helpful. Also, the children are not parties to this dispute.

\$400 for Time Spent on Car

19. The applicant claims \$400 for his own time spent dealing with the car. The applicant has not explained how he arrived at this figure. In any event, the tribunal typically does not award a party expenses for their own time in dealing with a dispute, consistent with the tribunal’s practice of not generally awarding legal fees. I therefore do not order these expenses.

\$937.31 to Respondent

20. The respondent seeks \$937.31 from the applicant as compensation for discounts he provided on the repairs and parts, which he now wishes to revoke. I do not order the requested \$937.31. First, the respondent did not provide a Dispute Notice to the applicant setting out the counterclaim. Second, even if he had filed a counterclaim, I would not order the \$937.31 because it was not part of the contract between the parties. As set out in his invoice, the respondent agreed to do the work for \$1,900.01, which included several discounts. The applicant paid that amount when he picked up his car. While the respondent may regret offering the discounts, he

cannot retroactively change the terms of the contract. For that reason, the respondent is not entitled to \$937.31.

21. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I dismiss his claim for reimbursement of tribunal fees. The respondent did not pay any fees and there were no dispute-related expenses claimed by either party.

ORDER

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

Kate Campbell, Tribunal Member