



Civil Resolution Tribunal

Date Issued: December 3, 2018

File: SC-2017-005781

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *ORCA AIRWAYS LTD v. Adam*,
2018 BCCRT 788

B E T W E E N :

ORCA AIRWAYS LTD

APPLICANT

A N D :

ARIANNE Adam

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about flight training expenses. The applicant, ORCA AIRWAYS LTD, says it provided flight training to the respondent, ARIANNE Adam, under an

employment contract that required the employee to reimburse the employer if the employee left the position within a year. The applicant claims \$3,000 for reimbursement of flight training costs.

2. The respondent admits she left the position within a year and admits she signed the training agreement (bond) the day the applicant hired her. However, the respondent says the applicant did not provide an “implied safe work environment”, which led to her decision to leave the company before the year was up.

JURISDICTION AND PROCEDURE

3. 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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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.
5. 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 issue in this dispute is whether the respondent must repay the applicant \$3,000 for flight training.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have reviewed all of the evidence and submissions provided, I have only addressed it below as necessary to explain my decision.
9. Based on the evidence before me, the applicant hired the respondent on April 13, 2017. As referenced above, it is undisputed that the respondent signed a “training bond” on that date, which required her to repay the applicant the flight training expenses if she left their employment within a year. The respondent’s last day of work for the applicant was September 7, 2017, about 5 months after she started.
10. It is also undisputed that the flight training expenses cost at least \$3,000, which is the amount claimed in this dispute. I say “at least” because the spreadsheet provided by the applicant shows the respondent owed \$4,458 for flight training expenses. There is no explanation before me as to why the applicant reduced its claim to \$3,000.
11. I find that under the training bond she is required to repay the applicant the claimed \$3,000, given the undisputed facts set out above.
12. However, the respondent’s defence is that the applicant did not provide a safe work environment. The respondent provided evidence about equipment (a rotting O2 mask and another mask missing), and an oil leak that posed a fire hazard. The respondent also provided a statement from a Transport Canada inspector who

provided a general overview of how the regulation process works, and in particular that a decision to suspend an airline's operating certificate is the most severe and stems from safety concerns. The respondent also provided a published article stating that the applicant's operating certificate was suspended in March 2018 due to safety concerns. I accept that the respondent's safety concerns in the summer and fall of 2017 were part of the overall safety issues that led to the applicant's suspension. Nothing turns on the fact that the applicant started doing business under the name BarXH, and here I do not accept the applicant's submission that its operating certificate was only suspended due to the merger.

13. On balance, I accept that the respondent reasonably had safety concerns about the applicant's operation of its airline. I also accept that the respondent's safety concerns reasonably led her to end her employment with the applicant. I agree with the respondent that it was an implied term of the parties' employment agreement that the applicant would provide a safe work environment. I find the applicant breached that implied term of the parties' employment contract. Here, I note the applicant did not provide a reply submission, despite having the opportunity to do so.
14. The fundamental issue in this dispute is therefore whether the respondent is still bound by the training bond, given she ended her employment early because of safety concerns.
15. On the one hand, the respondent received the benefit of the flight training, regardless of the fact she ended her employment early. On the other hand, I find that if the safety concerns had not been present, the respondent would have continued her employment with the applicant for the full year. Had that happened, the respondent would not have been required to repay the training bond. In other words, I find it was the applicant's breach of the parties' employment contract that led to the respondent leaving her employment within a year. As such, I find the respondent is not responsible to repay for the claimed flight training expenses. The applicant's claims are dismissed.

16. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful I find it is not entitled to reimbursement of tribunal fees.

ORDER

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

Shelley Lopez, Vice Chair