



Civil Resolution Tribunal

Date Issued: December 14, 2018

File: SC-2017-007381

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tiara Food and Beverage Concepts Ltd. v. Fletcher*, 2018 BCCRT 847

B E T W E E N :

Tiara Food and Beverage Concepts Ltd.

APPLICANT

A N D :

Andrew Fletcher

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Michael J. Kleisinger

INTRODUCTION

1. The applicant, Tiara Food and Beverage Concepts Ltd., says that the respondent, Andrew Fletcher, stole \$4,200 during the 6 months he worked at the applicant's restaurant.

2. As discussed below, I dismiss this dispute because the applicant has failed to provide sufficient evidence to support its serious allegations.
3. The parties represent themselves, with an employee representing the applicant.

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. In *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the court recognized the tribunal's process, and found that oral hearings are not necessarily required when credibility is in issue. Some of the evidence in this dispute amounts to a "he said, he said" scenario as to what occurred and did not occur during the respondent's employment. Credibility of interested witness, particularly where there is a conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence.
6. In this dispute, I was properly able to assess and weigh the documentary evidence and submissions provided, especially given that the applicant failed to provide corroborative evidence to support its allegations. Bearing in mind that the tribunal's mandate includes proportionality and the speedy resolution of disputes, I found that an oral hearing was not necessary.
7. 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.

8. 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, and order any other terms or conditions the tribunal considers appropriate.

ISSUES

9. The issue in this dispute is whether the applicant has proven that the respondent stole money from it.

DISCUSSION AND DECISION

10. The applicant operates a restaurant and bar in Vancouver. Between May and November 2017, the applicant worked for the applicant as a bar manager.
11. The applicant says that the respondent had some managerial duties, enjoyed unsupervised work and had unlimited access to point of service functions. The applicant alleges that during an audit, it learned of accounting irregularities. The applicant terminated the respondent's employment after alleging that the respondent misappropriated money. The applicant says that the respondent stole \$4,200.00 in cash from it during his employment and seeks an order for that amount.
12. The respondent denies doing anything wrong. He says that he worked hard for the applicant and was taken by surprise when the applicant fired him. The respondent says that the applicant brought this dispute in retaliation to the respondent's complaint to the Employment Standards Branch.
13. The applicant bears the burden of proving its claim on a balance of probabilities. During the facilitation process, the tribunal facilitator informs parties that, if they seek a decision from the tribunal, they must obtain and provide all relevant evidence. If a party fails to provide evidence, it does so at its peril.

14. For reasons unknown to me, the applicant provided no evidence for the tribunal to review, other than reproducing in its submission a list of numbers for certain months. It says the list of numbers proves the alleged theft. I am unable to draw any conclusions from the list of numbers. The applicant has not provided any evidence, from a loss prevention specialist or otherwise, to support its allegations. Instead, the applicant relies solely on its bald allegations that the respondent stole from it. The respondent, on the other hand, provided a detailed response denying the allegations. The applicant chose not to reply to the respondent's response, although it had the opportunity to do so. Without any evidence, the applicant cannot meet its burden, and its claims must fail.
15. Given my findings above, and in accordance with the Act and the tribunal's rules, I find the applicant is not entitled to reimbursement of tribunal fees.

ORDER

16. I dismiss this dispute.

Michael J. Kleisinger, Tribunal Member