



Civil Resolution Tribunal

Date Issued: December 28, 2018

File: SC-2018-003415

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Northern Thunderbird Air INC. v. Anderson*, 2018 BCCRT 915

B E T W E E N :

Northern Thunderbird Air INC.

APPLICANT

A N D :

Brooklyn Anderson

RESPONDENT

A N D :

Northern Thunderbird Air INC.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about flight training expenses and alleged unpaid wages. The applicant, Northern Thunderbird Air INC. (Northern), says it provided flight training to the respondent, Brooklyn Anderson, under an agreed training bond valued at \$10,000. The bond required Mr. Anderson to work 24 months in order to not have to repay any of the training. Before 24 months, the bond provided that Mr. Anderson would be credited for 1/24th of the bond debt for every completed calendar month of service.
2. Northern says Mr. Anderson started work on October 3, 2016. Mr. Anderson resigned on October 2, 2017, and his last day worked was October 16, 2017. Mr. Anderson paid \$1,500 towards the \$5,000 owing under the training bond. Therefore, in this dispute Northern claims \$3,500, as the amount owing under the bond.
3. Mr. Anderson counterclaims for \$5,000, the tribunal's \$5,000 maximum under its small claims jurisdiction. This represents a refund of the \$1,500 he paid towards the training bond, plus \$4,636.67 in unpaid "before tax" wages for a) his training period before October 3, 2016, and b) for increased Captain pay between May 12 and August 15, 2017. Mr. Anderson also wants an order that Northern provide him with his "training file".
4. Northern is represented by Mike Harris, an employee or principal. Mr. Anderson is self-represented.

JURISDICTION AND PROCEDURE

5. 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.

6. 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.
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, or order any other terms or conditions the tribunal considers appropriate.
9. As referenced above, a portion of Mr. Anderson's counterclaim is for unpaid wages. As tribunal staff has explained to Mr. Anderson, the tribunal has no jurisdiction to award entitlements available under the *Employment Standards Act* (ESA). My ability to grant an order for unpaid wages must rest entirely what is provided in the parties' employment contract.
10. Next, to the extent Mr. Anderson alleges Northern has made defamatory comments about him, I make no findings about that because defamation is expressly outside the tribunal's jurisdiction.

ISSUE

11. The issues in this dispute are to what extent, if any, a) Mr. Anderson owes Northern \$3,500 for the outstanding training bond balance, and b) Northern owes Mr. Anderson compensation for unpaid wages plus a \$1,500 refund paid towards the bond debt.

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. This means Northern must prove its claims about the outstanding training bond, and Mr. Anderson must prove his claims about unpaid wages and his entitlement to a refund of the \$1,500 paid towards the training bond. I have only addressed the evidence and submissions below as necessary to explain my decision.
13. Northern says a “training bond” is a common contract throughout the Canadian aviation, used by “non-major” airlines as a condition of employment for aspiring pilots. Northern says the bond is necessary due to the extraordinary time and financial costs associated with pilot training that are borne by small air operators, and the significant financial strain caused when pilot employees use their training as leverage to then leave and get a better employment deal elsewhere, with employers who will not have to bear the training expense. I accept this evidence.
14. As noted above, the ESA does not apply to this dispute. It is undisputed that on September 21, 2016 the applicant signed the training bond agreement along with a “promissory note” to repay the \$10,000 bond. The training bond states the bond debt is to be forgiven 1/24th for every completed month of employment. Mr. Anderson completed only 12 months of employment, quitting in October 2017, which left \$5,000 owing under the bond’s terms.
15. The parties signed a separate employment agreement on September 21, 2016, which among other things noted: a) Mr. Anderson was hired as a First Officer, b) the

\$2,600 per month starting salary, and c) a “probation/employment” state date of “date of successful PPC”. A “PPC” is a Pilot Proficiency Check, which according to a Transport Canada Flight Test Report, Mr. Anderson completed on October 3, 2016. This PPC was for Mr. Anderson’s role as First Officer.

16. I find that on October 31, 2017 Mr. Anderson paid \$1,500 towards the \$5,000 bond debt, and that \$1,500 is partly the subject of Mr. Anderson’s counterclaim. To the extent Mr. Anderson alleges the \$1,500 was paid for his training files and not towards the training bond, I reject that submission. It is simply not consistent with Mr. Anderson’s emails at the time, and the fact that Mr. Anderson wrote on the cheque “training bond payment”.
17. Mr. Anderson submits that the parties’ contract is “illegal by design based off the Canada Labour Code and the British Columbia Labour Code as well”. Mr. Anderson says the contract is illegal “by setting a contract that penalizes employees via monetary means from exercising rights and freedoms” afforded by the labour codes. Mr. Anderson alleges the training bond is an unfair labour practice, and, that it is designed to taken Northern “at its word” that the training bond is worth \$10,000. Mr. Anderson says the training bond was only presented to him on his 1st day of employment, and was not part of Northern’s earlier “letter of offer”, which was contained in an August 30, 2016 email. I note the emails exchanged on August 30, 2016 referred to Northern sorting out “employment paperwork” and assigning flight courses. Further, a September 15, 2016 email exchange referred to the contract of employment and training bond being dealt with “in hard copy on day one”, which referred to Mr. Anderson’s training that started September 21, 2016.
18. In these circumstances, while I acknowledge Mr. Anderson’s move from another town, I do not agree with Mr. Anderson that Northern unfairly produced the training bond on September 21, 2016. Nothing required Mr. Anderson to sign it, as I find he could have refused and not worked for Northern. I also find that Northern does not have to prove the training bond is in fact worth \$10,000. I find that that is the amount the parties agreed to on September 21, 2016. I do not agree that the

amount is so high that is it unreasonable or unconscionable, as Mr. Anderson argues.

19. I also do not agree with Mr. Anderson that the training bond offends the *Canada Labour Code* or that it or his employment agreement were unfair. The *Code* provision cited by Mr. Anderson, section 94(3)(b) and (c), refers to a prohibition on imposing a financial penalty where an employee is asked to do another employees' work during a strike. Those circumstances do not apply here. In any event, I do not agree the training bond is a penalty. Rather, I find it reflects the parties' reasonable agreement about training expenses. Mr. Anderson's entitlement to wages is not impacted by the training bond. The cases cited by Mr. Anderson are not helpful. I agree with Northern that the training bond is not an illegal contract, which is consistent with the court's decisions in *171817 Canada Inc. v. Foris*, 1998 CanLII 6955 (NWT SC), and *Langford v. Carson Air*, 2015 BCSC 1458.
20. Northern paid Mr. Anderson a \$2,600 base salary per month, until July 16, 2017 when Northern gave him an "unscheduled incentive" raise to \$3,900 per month. This monthly salary translates to \$31,200 and \$46,800 per year, respectively. Northern says it gave the raise to motivate Mr. Anderson to complete his promotion to Captain as quickly as possible. Northern says further salary increases were discussed when Mr. Anderson completed his promotion to Captain, but that never happened. Despite providing additional training without a bond, Northern says Mr. Anderson quit before ever completing a Captain's mission. It is undisputed that Mr. Anderson never flew a Captain's mission.
21. Mr. Anderson argues that his annual salary of \$34,154.77 was unfair because it was below the Vancouver poverty line of \$40,000. I find Mr. Anderson has not proved unfair wages, bearing in mind he agreed to the salary and the training bond. In any event, it does not matter if the wage was unfair, if it was legal and consistent with the parties' contract as I find it was. I also note the salary met the minimum wage requirements set by statute. The fact that Mr. Anderson left Northern for employment with a \$70,000 per year salary does not mean Northern's wages were

unfair. Rather, I find that this salary jump supports Northern's position that once trained, a pilot is better positioned to receive a higher salary elsewhere from an airline that does not have to support the training expense.

22. I agree with Northern that during his employment, and for at least several months after he left Northern's employment in October 2017, Mr. Anderson never disputed his liability under the training bond, and in fact indicated he would pay it. In particular, on October 2, 2017, in his resignation email Mr. Anderson wrote he was quitting with "deep regret" but in the pursuit of greater financial security. Mr. Anderson's other emails around the time of his resignation state that he loved flying with Northern. I prefer that contemporaneous evidence over Mr. Anderson's submissions for this dispute that he quit because he felt "disenfranchised and downright disrespected". Mr. Anderson did not object to paying the training bond until January 21, 2018, when he said he only owed \$1,500. Mr. Anderson further wrote, "if the company wants to pursue the training bond I have signed I would like to arrange a suitable payment option to honor my contractual obligations". I also reject Mr. Anderson's allegation that Northern engaged in "illegal scheduling changes", which I find is not supported by the evidence before me. These circumstances support Northern's position that the training bond and employment agreement were fair and reasonable at the time the parties entered into the agreements.

23. Given my conclusions above, I find Northern is entitled to the \$3,500 claimed, as I find it is owed under the training bond. For the same reasons, I dismiss Mr. Anderson's counterclaim for the \$1,500 he had paid towards the training bond.

24. I turn then to Mr. Anderson's claim for unpaid wages. Mr. Anderson did not raise this claim with Northern until April 23, 2018. Given my conclusions below, I do not need to address in any detail the issue of the tribunal's monetary jurisdiction limit of \$5,000.

25. First, Mr. Anderson says he is entitled to be paid for the period worked between September 21, 2016 and October 2, 2016. He claims \$1,300 "before tax" for this

period, during which Mr. Anderson started his training/ground school. Mr. Anderson also claims \$346.67 for 4 days of training between September 6 and 10, 2016.

26. I dismiss the \$1,300 and \$346.67 unpaid wages claims, because the parties' employment agreement provided Mr. Anderson's start date was on the completion of the PPC, which as noted above was October 3, 2016. Again, I have no jurisdiction to award Mr. Anderson statutory entitlements to wages under the ESA. The parties' contract did not provide for payment of wages during Mr. Anderson's training period before the PPC on October 3, 2016. This conclusion is also consistent with the court's decision in *Langford*.
27. Second, Mr. Anderson seeks a Captain's salary from May 12, 2017, when he completed his PPC for a Captain position, to August 15, 2017. Mr. Anderson claims \$2,990 for this period, during which he says Northern unfairly paid him only a First Officer's salary. Northern says Mr. Anderson is not entitled to a Captain's salary during that timeframe, because he never flew a plane as its Captain. Rather, he flew as a training Captain with another Captain providing supervision. I find that on balance Mr. Anderson has not proved he completed his promotion to Captain such that he would be entitled to a Captain's salary for the period at issue. In particular, the difficulty for Mr. Anderson is that there was no agreement about when he would be entitled to earn the Captain's salary. Further, I am unable to conclude Mr. Anderson has proved he is entitled to a Captain's salary in the circumstances before me. I dismiss Mr. Anderson's claim for unpaid wages relating to a Captain's salary, and thus dismiss entirely his claim for unpaid wages.
28. Mr. Anderson also asks for an order that Northern provide him with his "training file". Northern says it did not do so in October 2017 because the file was archived offsite and it was unclear what Mr. Anderson wanted, and he had provided short notice.
29. In any event, Northern says it is not required to provide training files to departing pilots though in the past it has done so in unique circumstances. Northern says retrieving and copying the entire file is not a simple task. Northern says Mr.

Anderson can obtain proof of his aircraft qualification directly from a Transport Canada office. This is not disputed.

30. Despite Northern repeatedly stating it is not clear what Mr. Anderson wants from his “training files”, Mr. Anderson has not made any submission about it, other than to request an order for his “training file”. Mr. Anderson clearly obtained new employment without the training file. He has not pointed to any agreement that Northern is required to provide his “training file”. I dismiss this claim.
31. In summary, Northern is entitled to an order for \$3,500 for the outstanding training bond debt. It is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA), from October 17, 2017, the day after Mr. Anderson’s last day of employment. Mr. Anderson’s counterclaims are dismissed.
32. Northern was successful. In accordance with the Act and tribunal rules, I find it is entitled to reimbursement of the \$175 it paid in tribunal fees.
33. As Mr. Anderson was unsuccessful in his counterclaim, I find he is not entitled to reimbursement of either his \$125 in tribunal fees or the \$495 claimed in legal fees as a dispute-related expense. I note I would not have allowed this claim in any event, as the claim is for future legal fees and because the tribunal’s rules say legal fees are payable only in extraordinary cases. This is not an extraordinary case.

ORDERS

34. Within 14 days of this decision, I order Mr. Anderson to pay Northern a total of \$3,726.10, broken down as follows:
 - a. \$3,500 for the training bond debt,
 - b. \$51.10 in pre-judgment interest under the COIA, and
 - c. \$175 in tribunal fees.

35. Mr. Anderson's counterclaims are dismissed. Northern is entitled to post-judgment interest as applicable.
36. 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.
37. 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.

Shelley Lopez, Vice Chair