



Civil Resolution Tribunal

Date Issued: January 11, 2019

File: SC-2018-004980

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dimitrov v. Hyack Swim Club*, 2019 BCCRT 50

B E T W E E N :

Latchezar Dimitrov

APPLICANT

A N D :

Hyack Swim Club

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant Latchezar Dimitrov's son swam with the respondent Hyack Swim Club for 5 years and left the club in June 2018. The applicant wants the respondent to reimburse him \$354 for monthly swimming fees and \$247.15 for extra charges for a swim trip. The applicant also wants the respondent to reverse a charge on his account for \$2,800 for the repayment of funding the applicant's son received during

the 2017/2018 swim season. The respondent says all its charges to the applicant are in accordance with its policies.

2. The applicant is self-represented. The respondent is represented by a principal.

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 118 of the *Civil Resolution Tribunal 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. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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 issues in this dispute are:

- a. Is the respondent required to reimburse the applicant \$354 for the applicant's son's June 2018 swim fees?
- b. Is the respondent required to reimburse the applicant \$247.15 for extra charges for a swim trip?
- c. Is the respondent required to reverse the \$2,800 charge on the applicant's account for use of the travel fund?

EVIDENCE AND ANALYSIS

8. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means the tribunal must find it is more likely than not that the applicant's position is correct.
9. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.

Is the respondent required to reimburse the applicant \$354 for the applicant's son's June 2018 fees?

10. It is undisputed that a swim year runs from September to August. On June 13, 2018 the applicant notified the respondent that his son would no longer swim with the respondent. On June 15, 2018 the respondent sent an invoice to the applicant with a \$354 charge for his son's monthly fees for June 2018.
11. The respondent's handbook says that swimmers leaving the club mid-month will be charged the next month's fees. The applicant says he could not find the handbook on the respondent's website, and that none of the respondent's policies were provided to his family prior to this dispute. However, the respondent also submitted its 2017-2018 registration package, which says the respondent would not give refunds for training fees after June 1, 2018. The applicant does not deny receiving this document. Based on the plain wording of the handbook, which is consistent

with the plain wording of the registration package, I find the applicant is not entitled to reimbursement of his son's June fees.

12. The applicant says he should be refunded the \$354 fee because his son was effectively forced to leave the team in June 2018 because of his coach's bullying, but he provided no evidence from his son to support this allegation. Without more, I am unable to find the respondent's coach bullied the applicant's son, or that such alleged behavior entitles the applicant to a refund for his son's June 2018 swim fees.
13. The applicant also says he should be refunded the \$354 fee because he paid full fees for the month of September 2017, but the swim sessions did not start until September 11, 2017. However, the respondent's registration package for the 2017-2018 season clearly states the swim sessions would begin on September 11, 2017. There is no evidence the applicant did not have notice that the session started mid-September. Regardless, the applicant's claim is for reimbursement of the June 2018 fees, not the September 2017 fees. On balance, I find the respondent is not required to reimburse the applicant \$354 for his son's June 2018 fees.

Is the respondent required to reimburse the applicant \$247.15 for extra charges for a swim trip?

14. In the spring of 2018, as a member of the respondent's High Performance team, the applicant's son flew to Florida to attend a swim camp, then flew directly to Montreal for a swim meet, then travelled to Victoria for another swim meet. The respondent informed the applicant by email that the total cost of the trip would be \$3,750, plus extra expenses for meals, snacks, and a ticket to a Florida Panthers hockey game for a team excursion.
15. After the trip, the respondent charged the applicant \$3,997.15, which is \$247.15 more than the applicant expected. The respondent sent the applicant a breakdown of the extra charges which included \$161 for two massages the applicant's son

received in Montreal, \$80.97 for baggage fees, \$22.38 for the Florida Panthers game, and a credit of \$17.20 for a ferry fee, for a total of \$247.15.

16. The applicant agrees to the charge for the Florida Panthers game, but he says the respondent did not notify him about the massages or baggage fees before the trip. The respondent's email with the details of the trip does not mention these extra charges. However, the applicant does not deny that his son received 2 massages or incurred baggage fees on this trip. The respondent says it has never paid for its swimmers' massages. The respondent also says the High Performance team travels approximately 15 times per year and the swimmers know they are usually required to pay their own baggage fees. I note that another email from the respondent in evidence about a different trip specifically states that the baggage fee was included in the price of that trip, but the respondent's email for the Florida/Montreal/Victoria trip did not say anything about baggage fees.
17. On balance, I find the additional charges were reasonable in the circumstances, and I find the respondent is not required to reimburse the applicant \$247.15 or any other amount for these additional charges.

Is the respondent required to reverse the \$2,800 charge on the applicant's account?

18. On June 15, 2018, after the applicant's son quit the High Performance team, the respondent sent an invoice to the applicant with a \$2,800 charge for "Travel Support." The respondent says the applicant's son benefitted from funding throughout the 2017-2018 swim season in the amount of \$2,800. The respondent says that when the applicant's son quit before the end of the 2017-2018 swim year he became ineligible for this funding and the applicant is required to repay the amount of the funding in accordance with the respondent's policies. The applicant says it should not have to repay any amount based on the respondent's policies, and that \$2,800 is an arbitrary amount unsupported by evidence.

19. The respondent submitted its High Performance Assistance and Travel Fund policy which says that in order to receive assistance from these funds a member must fully commit to the entire competitive year of the group with which they are training. The policy says that athletes who become ineligible for support through the year will be billed back any funding they received during the year.
20. The applicant says he did not have access to any of the respondent's policies until the start of this dispute. However, I note the respondent's registration package specifically refers to the respondent's Travel Assistance Policy. Therefore, I find the applicant knew or ought to have known about the policy at the time he registered his son for the 2017/2018 swim season.
21. It is undisputed that the applicant's son quit before completing the 2017/2018 season. Based on the clear wording of the policy, I find the respondent is entitled to charge the applicant for any funding his son received in the 2017/2018 swim season from its travel fund or High Performance fund. There is no mention anywhere in the policy about an Olympic fund, and there is nothing in the evidence before me indicating the applicant is required to repay the funding his son received through this fund. Therefore, I find the applicant is not required to repay the respondent for any funding his son received through the Olympic fund.
22. The next question is the amount of funding the applicant received from the travel and High Performance funds during the 2017/2018 season. The respondent says the applicant's son received \$100 of funding for the Husky meet in November 2017, however its email to the applicant about this meet says the event was supported by the Olympic fund. Based on my finding above, I find the applicant is not required to repay this amount.
23. The respondent says the applicant's son received \$100 of funding for the OJI meet in December 2017, however the respondent's email to the applicant about this meet says the event was supported by both the travel and Olympic funds. Neither the email nor any other evidence before me specifies the amount each fund contributed to this event. In the absence of such evidence, I find the travel funds and Olympic

funds contributed equally, and that the applicant received \$50 of funding from the travel fund for this event.

24. The respondent says its evidence shows the applicant received \$2,200 for the month-long trip to Florida, Montreal and Victoria. I disagree. The respondent submitted a document showing that its swimmers who attended the Florida, Montreal and Victoria trips received a total of \$11,000 of funding from the club's various funds. The document shows that the High Performance fund contributed \$4,000 to the Florida portion of the trip, and \$500 to the Victoria portion. It shows that the travel fund contributed \$4,000 to the Montreal portion of the trip, and \$1,000 to the Victoria portion. The document shows that 5 swimmers, including the applicant's son, attended the entire trip, and that 3 swimmers attended only the Victoria portion.
25. Dividing these amounts by the number of swimmers at each event, I find that for the Florida portion of the trip the applicant's son received \$800 from the High Performance fund. For the Montreal portion of the trip I find the applicant's son received \$800 from the travel fund. For the Victoria portion of the trip I find the applicant received \$125 from the travel fund, and \$62.50 from the High Performance fund. Therefore, over the course of the 2017/2018 season, I find the applicant's son received \$975 from the travel fund and \$862.50 from the High Performance fund, for a total of \$1,837.50, which the applicant must repay. The respondent has already charged the applicant \$2,800 for repayment of funding, which I find to be an overcharge. Therefore, within 7 days of the date of this decision, I order the respondent to reduce the amount of the outstanding charges on the applicant's account to \$1,837.50. As there is no counterclaim before me, I decline to order the applicant to pay this amount to the respondent.
26. The applicant says his son raised funds for the respondent's Swim-a-thon in 2017 and implies that this amount should be offset against the charges owing on his account. However, the respondent's 2017/2018 registration package and policies are clear that for a swimmer to access funds raised in the Swim-a-thon, a swimmer

must commit to the entire swim season. It is undisputed that the applicant's son has not met this requirement, and I decline to offset any amounts he fundraised against the charges on the applicant's account.

27. 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. While the applicant was not entirely successful, he was required to bring this dispute to have the charges on his account with the respondent reduced by almost \$1,000. In the circumstances I find the applicant is entitled to \$87.50, which is half the amount of his tribunal fees. The applicant has not claimed any dispute-related expenses.

ORDERS

28. Within 14 days of the date of this order, I order the respondent to pay the applicant \$87.50 in tribunal fees.
29. The applicant is entitled to post-judgment interest as applicable.
30. Within 7 days of the date of this order, I order the respondent to reduce the charges on the applicant's account to \$1,837.50.
31. 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.
32. 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.

Sarah Orr, Tribunal Member