



Civil Resolution Tribunal

Date Issued: January 21, 2019

File: SC-2018-005037

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rehman v. 10-4 Security Services Inc.*, 2019 BCCRT 85

B E T W E E N :

Abdul Rehman

APPLICANT

A N D :

10-4 Security Services Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, Abdul Rehman, worked as a security guard for the respondent. The applicant says the respondent, 10-4 Security Services Inc., terminated his employment without cause or notice. He seeks \$1,940 as payment in lieu of 2

months' notice, plus reimbursement of \$156.79 for a radio he says the respondent required him to buy.

2. The respondent says the applicant quit voluntarily, and was not terminated, so he is not entitled to payment in lieu of notice. The respondent also says it did not ask the applicant to buy the radios, so he is not entitled to reimbursement.
3. The applicant is self-represented. The respondent is represented by Mohamed Abdi, a manager.

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 118 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.

6. 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.
7. 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.

Jurisdiction – Employment Standards Act

8. The tribunal has no jurisdiction over statutory entitlements available under the *Employment Standards Act* (ESA), as only the Employment Standards Branch (ESB) has that authority: see *Carruthers v. Anita Curry (Doing Business As Avenue Spaces)*, 2019 BCCRT 28. This means the tribunal has no jurisdiction over any severance pay entitlement arising under the ESA. However, in *Bellagamba v. International Tentnology Corp.*, 2018 BCCRT 549, a tribunal vice chair found the tribunal did have jurisdiction to order severance entitlements arising under the common law. While that decision is not binding upon me, I agree with it. For that reason, I find I have jurisdiction to consider the applicant's common law severance claim.

ISSUES

9. The issues in this dispute are:
 - a. Is the applicant entitled to pay in lieu of notice, and if so how much?
 - b. Is the applicant entitled to reimbursement of \$156.79 for a radio?

EVIDENCE AND ANALYSIS

10. 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.
11. The applicant claims 2 months' pay, totalling \$1,964, as payment in lieu of notice. He says he is entitled to this amount under common law, as his employment as a security guard was terminated without cause.
12. The evidence before me indicates that the applicant filed a claim with the ESB for statutory severance pay. The details of that claim are not before me, but the parties provided a copy of a signed settlement agreement, dated December 18, 2018. The settlement agreement says the respondent would pay the applicant \$445.86 as gross wages, which would fully and finally settle all matters under the ESA. Other documents in evidence confirm that the employer paid this amount to the applicant on December 21, 2018.
13. The respondent says the applicant's ESB claims overlap with his claims in this dispute, and amount to "double dipping". The respondent also says the settlement agreement brings closure to the applicant's claims in this dispute.
14. The applicant disagrees, and says the settlement only applies to the ESB complaint. I agree. While the claims likely have some overlapping content, the evidence before me does not indicate that they are identical, and the December 18, 2018 settlement agreement does not refer to the tribunal dispute. I therefore find this dispute was not settled. I address the applicant's entitlement to common law severance below.

Common Law Pay in Lieu of Notice

15. The applicant says the respondent fired him, but the respondent says the applicant quit. Based on the evidence before me in this dispute, I find the applicant has not met the burden of proving that the respondent fired him.

16. On Sunday June 17, 2018, the applicant was working an overnight shift scheduled to begin at midnight and end at 8:00 am. Around 2:47 am, he was bitten and/or scratched by a dog he encountered at an apartment building during his rounds. He texted his manager, Mr. Abdi, at 3:45 am. He reported the dog incident, and said he was going to the hospital emergency room. At 3:50 am, he texted that he would not be able to do his Sunday shift. WorkSafe BC records provided in evidence indicate that shift was scheduled to start at 10 pm on Sunday June 17.
17. Mr. Abdi immediately replied to the applicant's text, stating "Please do your shift". The applicant replied, "I can't", and said he was in the emergency waiting line. Mr. Abdi asked the applicant to please take his job seriously, and said "If you don't want to work, give me a proper notice and leave gracefully." The applicant replied, "Ambulance told me to go immediately to the hospital and get injection shot."
18. The last text in this exchange was sent at 3:56 am. The applicant did not provide hospital records, but a WorkSafe BC medical report shows that he visited a walk-in clinic on June 19, 2018, and was found "OK to continue his regular work." While the applicant says he was disabled from working his 10:00 pm shift on June 17, 2018, he provided no medical evidence to confirm that disability.
19. Phone records show that Mr. Abdi telephoned the applicant at 4:58 pm on June 17, and the parties had a 6 minute conversation. The applicant says Mr. Abdi fired him during the call. Mr. Abdi disagrees, and says the applicant informed him about his inability to work and meet his scheduled commitment, and "his decision to quit in a friendly way for the best interest of both parties."
20. Having considered all of the evidence before me, I find the applicant has not met the burden of proving that the respondent terminated his employment. Specifically, I find Mr. Abdi's account of the call is more consistent with the content of the parties' text messages. As outlined above, the applicant refused to work his scheduled shift on Sunday June 17, even before he had seen any treatment provider at the hospital. I place significant weight on that fact, particularly since he subsequently provided no medical information to show he was unable to work. When Mr. Abdi

asked him to do the shift, the applicant replied that he had to get a shot. Given that this exchange occurred around 4:00 am, while the applicant was already at the hospital, it does not explain why the applicant could not work 16 hours later. Rather, I find this text exchange supports the conclusion that the applicant effectively quit his job by refusing to work. I find it is most likely in the circumstances that he confirmed this intention to quit in the subsequent phone conversation with Mr. Abdi.

21. In making this finding, I place no weight on the statements provided by the respondent's witnesses other than Mr. Abdi. None of those witnesses heard the June 17 telephone conversation, so any information they have about it is hearsay. While hearsay is admissible as evidence in tribunal disputes, I find it is not persuasive in these circumstances. I base my findings solely on the evidence of the parties to the call and the other written documents in evidence.
22. On June 18, the applicant texted Mr. Abdi and asked if he had obtained video footage of the dog incident from the apartment managers. While this is not determinative, this text, and the applicant's subsequent texts to Mr. Abdi, do not suggest or refer to recent termination. Similarly, the WorkSafe BC records show that the applicant started a compensation claim on June 18, but his teleclaim application does not refer to having been terminated. A telephone memorandum indicates that Mr. Abdi told a WorkSafe client services representative on June 19 that the applicant had quit. I find that all of this evidence supports the conclusion that the applicant quit, and not that Mr. Abdi terminated him.
23. For these reasons, I find the applicant has not proven that he was terminated from his employment. I note that the settlement documents from the ESB complaint do not indicate any finding that the applicant was terminated, or that he was compensated for length of service. Rather, under the terms of the settlement he was paid "gross wages" for unspecified reasons. For the reasons set out above, I find the balance of the evidence before me in this dispute supports the conclusion that he quit. I therefore conclude that he is not entitled to payment in lieu of notice. I dismiss this claim.

Reimbursement for Radio

24. The applicant says Mr. Abdi required him and a coworker to buy radios. He requests reimbursement, and provided a receipt in the amount of \$156.79. Mr. Abdi says he asked coworker E to buy 2 radios because the old ones were lost due to E's negligence. Mr. Abdi says he never asked the applicant to buy any radios, and if he bought a radio in order to help E it was his own choice.
25. Again, I find the applicant has not met the burden of proving his claim. He has provided no evidence, such as a statement from E, to confirm his assertion that Mr. Abdi told the applicant to buy a radio.
26. Also, the receipt shows that the applicant bought the radio on May 8, 2017. This was over a year before his employment ended in June 2018. I find that if the applicant was entitled to reimbursement for the radio, he likely would have raised it with the respondent sometime in the year after he bought it. He has provided no evidence of a reimbursement claim, so I find he has not established that he is entitled to payment for the radio. I dismiss this claim.
27. 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

28. I dismiss the applicant's claims, and this dispute.

Kate Campbell, Tribunal Member

