



# Civil Resolution Tribunal

Date Issued: February 5, 2019

File: SC-2017-005689

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Albany Freightlines Ltd v. Breakaway Logistics Ltd.*, 2019 BCCRT 137

**B E T W E E N :**

Albany Freightlines Ltd

**APPLICANT**

**A N D :**

Breakaway Logistics Ltd.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

### INTRODUCTION

1. This is a dispute about trucking services. The applicant, Albany Freightlines Ltd<sup>1</sup>, wants the respondent, Breakaway Logistics Ltd., to reimburse a \$3,543.34 charge for trailer repairs and a \$260 charge for trailer retrieval. The applicant also wants the

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<sup>1</sup> I note the parties' names are set out exactly as they are in the Dispute Notice, including capitalization.

respondent to pay it \$180 for 4 hours of work. The respondent says the charges are justified and that the applicant did not complete the work for which it is claiming payment.

2. Both parties are represented by an employee or 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. Some of the evidence in this dispute amounts to a "they said, they said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor 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. 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 the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and 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 issues in this dispute are:
  - a. Is the respondent required to reimburse the applicant for its \$3,543.34 charge for trailer repairs?
  - b. Is the respondent required to reimburse the applicant for its \$260 charge for trailer retrieval and pay the applicant \$180 for 4 hours of work?

## **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. The respondent filed a Dispute Response and made submissions but chose not to provide evidence.
10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicant's claim.

***Is the respondent required to reimburse the applicant for its \$3,543.34 charge for trailer repairs?***

11. In 2017 the applicant provided trucking services to the respondent, some of which involved towing the respondent's trailer. It is undisputed that in June 2017 the

respondent's trailer caught fire and was damaged while the applicant's truck was towing it. The respondent arranged for the person driving the applicant's truck to tow the damaged trailer to a nearby mechanic in Hope. The respondent says that mechanic told them the truck had air leaks which resulted in low air pressure which caused the trailer brakes to drag and catch fire. The respondent says the mechanics in Hope completed repairs on the trailer on July 3, 2017. The respondent deducted the \$3,543.34 cost of the trailer repairs from the applicant's pay because it says the damage to the trailer was caused by mechanical problems with the applicant's truck. The respondent did not submit a statement or invoice from the mechanic.

12. The applicant denies its truck had mechanical issues and says the respondent had no legal basis to deduct \$3,543.34 from its pay. It says it has spent over \$20,000 on regular truck maintenance work. The applicant says it has all the mechanics' invoices for its truck, but these invoices are not in evidence.
13. The respondent says it was in communication with one of the applicant's drivers in June and July 2017 who said the applicant's truck had numerous air leaks and ongoing mechanical issues. The respondent says it has many text messages with this driver, but none of those messages are in evidence.
14. I find that neither of the parties has provided sufficient evidence to support their respective versions of events, despite both acknowledging that such evidence exists. However, since the applicant brought this dispute, it bears the burden of proving its claim, and I found that it has not done so. The respondent provided a detailed account of what it says occurred with the trailer, and while unproven, that account is reasonable in the circumstances. The applicant's account, while also reasonable, lacks sufficient detail and I am unable to find it is more likely than not that the applicant's version of events is correct. I dismiss this claim.

***Is the respondent required to reimburse the applicant for its \$260 charge for trailer retrieval and pay the applicant \$180 for 4 hours of work?***

15. The applicant says the respondent has not paid it \$180 for 4 hours of work it completed in Chilliwack on July 24, 2017 but provided no details of the work performed and no evidence to prove it completed work that day. The applicant says its truck broke down that day, but only briefly, and it returned to the road the same day. It says it spent \$6,000 on a truck inspection the day before but provided no supporting documentation.
16. The respondent says on July 24, 2017 it was driving one of its own trucks for the same customer as the applicant. The respondent says the applicant's truck broke down and was unable to get back on the road to deliver its trailer to the customer. The respondent says it sent its own truck to the applicant's truck to pick up the trailer to deliver it to the customer. The respondent says it did not pay the applicant for work that day because the applicant did not complete the job. The respondent says the \$260 charge the applicant is claiming is the respondent's charge for its time in retrieving the trailer.
17. Again, the applicant has the burden of proving its claim and I found it has not done so. I would expect the applicant to have some record of the work it says it performed on July 24, 2017, whether it be a work schedule, driver log, or text message. I would also expect the applicant to provide records of the inspection it claims to have undergone on July 23, 2017, which it has not done. The respondent's version of events, while unsubstantiated, is reasonable in the circumstances. I cannot say it is more likely that not that the applicant's version is correct, and I dismiss this claim.
18. 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. I see no reason in this case not to follow that general rule. The applicant was unsuccessful, so it is not entitled to reimbursement of

tribunal fees or dispute-related expenses. The respondent has not incurred tribunal fees or claimed any dispute-related expenses.

## **ORDER**

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

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Sarah Orr, Tribunal Member