



Civil Resolution Tribunal

Date Issued: February 27, 2019

File: SC-2018-002124

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0830724 BC Ltd v. Johnston*, 2019 BCCRT 233

B E T W E E N :

0830724 BC Ltd

APPLICANT

A N D :

Jason Johnston

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant 0830724 BC Ltd, which runs a submarine sandwich shop, says the respondent Jason Johnston stole food while employed by them. The applicant claims \$4,950.

2. The respondent denies violating the applicant's company policy and says he is not responsible for the claimed \$4,950.
3. The applicant is represented by principal or employee Shaun Myall. The respondent is self-represented.

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*. 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. 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.*
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 make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issue in this dispute is whether the respondent violated the applicant's company policy by stealing food and a uniform, and if so whether he should reimburse the respondent for the claimed amount.

EVIDENCE AND ANALYSIS

9. This is a civil claim where the applicant bears the burden of proof on a balance of probabilities. I refer to the evidence only to the extent needed to explain my decision.
10. In submissions, the parties raised several issues that are outside the scope of this dispute. I will not comment on those matters.

Claim for stolen food

11. The respondent worked for the applicant, part-time, from September 2016 to April 2017. He says he worked less than 200 hours total.
12. The respondent filed a complete copy of an Employment Standards Branch decision dated September 19, 2017. While the decision finds that the respondent sometimes ate 9-inch subs while on shift, it also finds that the applicant's manager permitted this behavior. The respondent does not dispute that he sometimes ate a 9-inch sub, but says he was never told this was contrary to company policy.
13. The only direct evidence about the respondent eating more than the food allowance per shift comes from Kerene Loewen, the applicant's co-owner. Ms. Loewen says that she noted and spoke with the respondent about "drinking fountain pop over the amount allowed" and "eating subs over the allowed size."
14. However, Ms. Loewen does not say how many submarine sandwiches the respondent ate. She does not say how much fountain pop the respondent drank.

15. I find that the applicant never communicated any written policies about food consumption to the respondent. I say this because of the Employment Standards Branch findings, as well as evidence from the applicant's employees that was unclear about whether only one fountain drink was allowed per shift, or unlimited fountain drinks, and was inconsistent about how extra food eaten above the limit was to be charged to employees.
16. One witness said extra food would be charged at 50% off. Another item of evidence from the applicant said extra food would be charged at 15% off. The applicant's submissions suggest, contrary to the written policy it filed in evidence, that any food eaten over the limit would result in termination and the employee having to pay it "lost revenue". The written policy the applicant otherwise relies upon said extra food could be eaten and charged to the employee. In short, the applicant's own evidence is unclear about the precise policy governing food and beverage consumption by employees. This makes it more likely than not that the policy was never communicated clearly to the respondent.
17. Based on this evidence, I reject the evidence from the other employees of the applicant who assert that there were written policies about food limits per shift. None of those employees had direct evidence about the respondent being informed about a written food policy.
18. For the same reasons, I reject the applicant's submission that the respondent was told, verbally, about the food policy. I find that the applicant's food policy, if it was explained to the respondent at all, was communicated verbally, inconsistently and differently by different people.
19. The applicant says the respondent owes it \$562.50 for "food shortages", being food the applicant ate while employed by it, over and above what employees are permitted to eat while working there.
20. The applicant then claims an additional "lost revenue" of \$3,937.50, which it says is the wholesale value of the food multiplied by 7 to show the retail price loss.

21. I note that even the written policy that the applicant attempted to rely on in this proceeding is inconsistent with its own submissions. The applicant submits employees were told that eating more than the food allocation per shift makes the employee responsible for “lost revenues”. The written policy filed by the applicant does not say that. As well, I find the lost revenue damages the applicant submits are grossly inconsistent with the amount of food the respondent could have eaten, given the small number of hours he spent working for the applicant.
22. For these reasons, I dismiss the applicant’s claims about food theft.

Claim for uniform

23. The respondent agrees that he did not return his work shirt to the applicant. He says that he withheld it because he had not received his final paycheck. The wages issues are not before me in this dispute.
24. The applicant says the uniform is valued at \$46. However, in a written policy filed by the applicant, there is an initial holdback of \$35 from the first paycheck for the cost of the uniform, which is then returned to the employee after six months of employment.
25. A different policy document says the cost of the uniform is \$150 dollars and will be charged to the employee if they do not return the uniform within 12 hours of the end of their employment.
26. Again, I find the applicant has not established its claim on a balance of probabilities. There is evidence that it may have deducted the respondent’s pay for the uniform, and, inconsistent evidence about the uniform’s value. I cannot order the respondent to re-pay the applicant given the inconsistencies in the applicant’s policies, which I have found were not communicated clearly to him. The respondent did not provide a copy of the policy documents signed and dated by the applicant, as it could do if it had a practice of informing each new employee of its policies on a routine basis.

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. I see no reason in this case not to follow that general rule. The respondent paid no tribunal fees so I make no order in this regard.

ORDER

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

Julie K. Gibson, Tribunal Member