



Civil Resolution Tribunal

Date Issued: March 15, 2019

File: SC-2018-002385

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kuan v. Kent Wiebe Law Corporation et al*, 2019 BCCRT 317

B E T W E E N :

Pei Chih Kuan

APPLICANT

A N D :

Kent Wiebe Law Corporation and Jeffery E. Wittmann Law Corporation

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about employment benefits. The applicant, Pei Chih Kuan, says she was employed by the respondents Kent Wiebe Law Corporation (Wiebe Law) and Jeffery E. Wittmann Law Corporation (Wittmann Law) in 2017. The applicant wants the respondents to pay her \$500 for 2 months of health insurance premiums,

\$100 for time spent and expense incurred to visit a Service Canada office, \$4,000 for emotional distress, and \$100 for time spent preparing documents for this dispute.

2. The respondents say they never employed the applicant, rather she was employed by DWDS Management Ltd. (DWDS), which is a holding company for their joint law firm Wiebe Wittmann El-Khatib LLP. They say the applicant already brought a complaint to the Employment Standards Branch and there is a settlement agreement in place which prevents the applicant from bringing this dispute.
3. The applicant is self-represented and each of the respondents is represented by a principal.

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 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.
8. I note that the Employment Standards Branch has exclusive jurisdiction over employee entitlements under the *Employment Standards Act*, and therefore the tribunal has no jurisdiction over such matters.

ISSUE

9. The issue in this dispute is whether the applicant is entitled to compensation from the respondents.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
11. 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 claims.
12. The parties disagree as to which party or parties employed the applicant. The applicant says she was employed by the respondents, but the respondents say she was employed by DWDS.
13. The applicant submitted a January 31, 2017 email she received from Jeffery E. Wittman (Mr. Wittmann) of Wittman Law in which he offered her a legal assistant position with "our firm," starting February 3, 2017. On February 1, 2017 he sent her another email which states, "please note our new firm name as of today," and indicates the new firm name is Wiebe Wittmann El-Khatib LLP (WWE).

14. The applicant also submitted emails she exchanged with Mr. Wittmann in July 2017 after her employment ended in which she refers to WWE as her employer. Both parties submitted their settlement agreement from the Employment Standards Branch which says the applicant's employer was WWE. The respondent submitted the applicant's record of employment which indicates that DWDS is her employer.
15. On balance, I find that neither of the respondents employed the applicant. There is no evidence to suggest the applicant was employed by Wiebe Law. The only evidence suggesting she was employed by Wittmann Law are the emails from Mr. Wittmann in January and February 2017, however I find those emails make it clear that the applicant was hired by the firm WWE, not Wittmann Law. I find the settlement agreement is strong evidence that the applicant's employer was WWE. While the respondents say DWDS was the applicant's employer, the only evidence of this is the record of employment, which the applicant did not receive until after her employment ended. I find the record of employment on its own is insufficient to establish an employment relationship. I find the applicant's employer was WWE.
16. Even if the respondents had employed the applicant, I find she has not substantiated her claims in this dispute, and I address each of them below.
17. The applicant wants the respondents to pay her \$500 for 2 months of health insurance premiums. The respondents say this claim formed part of the applicant's complaint to the Employment Standards Branch, and that it is covered by the settlement agreement in evidence and cannot be re-litigated in this dispute. However, the applicant's Employment Standards complaint form is not in evidence, and the settlement agreement does not specify that the applicant's claim for health insurance premiums is covered by the agreement. The settlement agreement says only that it is a "full and final settlement of all matters under the *Employment Standards Act*." However, the *Employment Standards Act* does not specifically entitle an employee to extended health benefits. In these circumstances, I find there is insufficient evidence to establish that the applicant's claim for health insurance premiums is covered by the settlement agreement, and as such I am not precluded

from resolving it on that basis. As the claim falls outside the *Employment Standards Act*, I find the tribunal has jurisdiction to resolve it.

18. However, in this context, insurance premiums the applicant is claiming are amounts her employer would pay an insurance company on her behalf. Such amounts would not be paid to the applicant. While it is undisputed that the applicant became eligible for extended health benefits after 3 months of employment, there is no evidence she incurred any damages or expenses entitling her to compensation from her employer in this regard. I dismiss this claim.
19. The applicant is also claiming \$100 in relation to a visit to a Service Canada office. Her Dispute Notice suggests this visit was to resolve an issue about whether she was laid off or fired, but that is not at issue in this dispute. She provided no other details about this visit or evidence to support the amount of the claim, and I dismiss it.
20. The applicant is also claiming \$4,000 for emotional distress. While I acknowledge that the end of an employment relationship can be upsetting and stressful, that alone is insufficient to establish a legal claim. Quite apart from my conclusion above that the respondents were not the applicant's employer, the applicant has not submitted any medical or other evidence to support a claim for emotional distress, and I dismiss this claim.
21. The applicant also claims \$100 for her time spent preparing documents for this dispute, however the tribunal does not generally award parties expenses for their own time spent on a dispute. This is consistent with the tribunal's practice of generally not awarding legal fees. I see no reason in this case to depart from the general practice, and therefore even if the applicant had otherwise been successful I find the applicant is not entitled to payment for her time spent on this dispute. I dismiss this claim.
22. Under section 49 of the Act, and tribunal rules, since the applicant was unsuccessful I find she is not entitled to reimbursement of her tribunal fees.

ORDER

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

Sarah Orr, Tribunal Member