



Civil Resolution Tribunal

Date Issued: March 15, 2019

File: SC-2018-004392

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rice v. Therrien*, 2019 BCCRT 324

B E T W E E N :

Frederick Rice

APPLICANT

A N D :

Stephanie Therrien

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about a claim for damages and disclosure of documents related to a pension plan.

2. The applicant, Frederick Rice, is a member of the Pulp and Paper Industry Pension Plan (Pension Plan or Plan). The respondent, Stephanie Therrien, is an employee of Morneau Shepell (MS). MS performs delegated administrative duties related to Pension Plan service provision, at the request of the Pension Plan's Board of Trustees.
3. The applicant collected benefits under the Pension Plan from 2006 until 2017, when his benefits were suspended. The applicant says the respondent purported to be the administrator of the Pension Plan, and that she unreasonably caused his benefits to cease. The applicant also says the respondent withheld information to which he is entitled. The applicant seeks \$5,000 in damages for emotional injury and financial loss, as well as punitive damages. He also seeks an order that the respondent provide "sufficient information to enable litigation to reinstate the applicant's pension benefits".
4. The respondent says the applicant's pension benefits were suspended in accordance with the Pension Plan's rules, and that she is not personally liable for any loss or injury.
5. The applicant is self-represented. The respondent is represented by a lawyer, Roslynn Kogan. As the applicant addressed the matter in his submissions, I acknowledge that Ms. Kogan is also employed by MS.

JURISDICTION AND PROCEDURE

6. 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.

7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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.
8. 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.
9. 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

10. The issues in this dispute are:
 - a. Is the respondent liable to the applicant for damages for injury and loss, and if so, what remedies are appropriate?
 - b. Is the applicant entitled to punitive damages?
 - c. Must the respondent disclose information about the Pension Plan to the applicant?

EVIDENCE AND ANALYSIS

11. 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.
12. The parties agree that the applicant's pension benefits were suspended in 2017. From the evidence, this suspension appears to have occurred shortly after the applicant received his monthly payment for May 2017.
13. After his benefits were suspended, the applicant sent an October 23, 2017 email request for information to the address "pulp@morneaushepell.com". The applicant requested the full legal name and registration number of the Pension Plan, the Plan's address for service, the legal name and contact information for the Plan's administrator, and information about the entitlements and obligations of retired Plan members.
14. The applicant did not receive a reply to his email, so on December 13, 2017 he sent a complaint by email to the Office of the Superintendent of Pensions (OSP). After some delays, the OSP replied, stating that the full legal name and contact information of the administrator of the Pension Plan was Ms. Stephanie Therrien, Client Service Manager, Morneau Shepell, 400-411 Dunsmuir Street Vancouver, BC. The OSP said the applicant should contact the Pension Plan administrator to obtain information about entitlements and obligations under the Plan.
15. The applicant again emailed "pulp@morneaushepell.com", and requested a response to his initial information request. An employee named RR replied, and attached a copy of the Pension Plan text. RR wrote that the full name of the Plan is "The Pulp and Paper Industry Pension Plan", and the contact person for the Plan was Stephanie Therrien, who was his supervisor. RR wrote that the address for the Plan is "Board of Trustees c/o Stephanie Therrien, 400-411 Dunsmuir Street, Vancouver BC".

16. In his email, RR also noted that the applicant's pension was suspended because he did not respond to audit letters mailed to him. RR attached a copy of the most recent audit letter, and said the applicant's pension would be retroactively reinstated as soon as they received a completed copy of the audit letter.
17. After further correspondence was exchanged, the respondent sent the applicant a letter dated July 20, 2018. The respondent answered some questions posed by the applicant, including whether she was the Pension Plan administrator, as defined in the *Pension Benefits Standards Act*. The respondent said she was not the administrator, that the Board of Trustees was responsible for the administration of the Plan, and that the Board of Trustees had appointed MS to administer the Plan on its behalf. The respondent also wrote that she was an employee of MS, and a manager on the team assigned to the administrator of the Plan. The respondent wrote that the applicant's pension would be retroactively reinstated once he provided a completed copy of the audit letter. The respondent said the audit letter was drafted by someone at MS, on instructions from the Board of Trustees.

Damages for Injury or Loss

18. In a written statement to the tribunal, the applicant says the respondent's failure to provide necessary information delayed his ability to initiate litigation to recover pension benefits and arrears by approximately 1 year. The applicant says this caused financial harm due to lost pension income, interest on the arrears, and loss of the opportunity to split pension income with wife. He claims compensation for this loss, plus compensation for 77 hours he spent on the matter.
19. The applicant also claims compensation for loss of enjoyment of his retirement, stress, emotional discomfort, and his wife's displeasure.
20. I find the applicant has not met the burden of proving these claims. Specifically, I find he has not established that the respondent is personally liable for these claimed losses and injuries.

21. The applicant says the respondent is personally liable because she is the manager of the team assigned to administer the Pension Plan. He says that because of this, she owes him a duty of care, as he is a Plan member. The applicant says the respondent's duty of care includes a duty to manage the administration of the Plan according to the Plan's terms and the applicable legislation.
22. The applicant says the respondent failed in this requirement because she did not reply to his October 23, 2017 email within 30 days, as required under section 43(3) of the *Pension Benefit Standards Regulation* (PBS Regulation).
23. Section 43(3) of the PBS Regulation says that information requested under section 37(4) of the *Pension Benefit Standards Act* must be provided within 30 days of receipt by the administrator. I accept that MS received the applicant's October 23, 2017 email and did not respond to it within 30 days. However, I find that the applicant has not established that the named respondent is personally at fault for this delay.
24. The applicant relies on *Sataur v. Starbucks Coffee Canada Inc.*, 2017 ONCA 1017 as authority for the proposition that an individual employee can be held personally liable for breaching a duty of care owed to a customer. That proposition is generally true. However, I find the applicant has not proved that the respondent was negligent.
25. An applicant bears the burden of proving a negligence claim on a balance of probabilities. The general elements of a negligence claim are: the respondent owes a duty of care, the respondent failed to meet a reasonable standard of care, it was reasonably foreseeable that the respondent's failure to meet that standard could cause the applicant's damages, and the failure caused the claimed damages.
26. As previously noted, the email in question was sent to "pulp@morneaushepell.com", and not to the respondent specifically. There is no evidence establishing that the respondent saw the email or was aware of the applicant's inquiries at any point in 2017. Although she is a manager, the respondent is not personally liable for the

actions of all the employees she supervises, such as those assigned with monitoring the “pulp@morneaushepell.com” email account.

27. I also find that it was not reasonably foreseeable that a failure to respond to an email inquiry could cause the claimed damages, including loss of pension benefits, income tax consequences, and emotional harm. Such consequences are not reasonably foreseeable results of a failure to reply to an email.
28. Finally, I find the applicant has not proved that the respondent’s actions caused his losses. His pension benefits were suspended before he sent the email in October 23, 2017. The evidence indicates that he knew why the benefits were suspended, which was because he had not returned the audit form. His objections to the audit form appear to be about the need to have a personal witness verify his identity. I find that this does not relate to the respondent, and she is therefore not liable for his lost pension income.
29. I also find that any failure by the respondent to respond to the applicant’s email inquiry did not prevent the applicant from initiating litigation against the Pension Plan or the Plan administrator. The March 1, 2017 letter from MP to the applicant clearly sets out the reasons for the suspension of benefits, provides the formal name of the Pension Plan, and identifies MP as the Plan administrator. The letter also provides the mailing address for the Pension Plan. Thus, the applicant already had the information necessary to launch litigation.
30. For these reasons, I dismiss the applicant’s claims for financial loss and emotional harm. I would not order damages for emotional harm in any event, as the applicant did not provide any evidence of such harm to him or his wife, such as a report from a mental health provider.
31. I would also not award compensation for the applicant’s own time spent on the dispute, consistent with the tribunal’s general practice of not awarding legal fees.

Punitive Damages

32. As I find the applicant has not established negligence by the respondent, I do not order punitive damages. Also, as set out in *Benda v. Cao et al*, 2018 BCCRT 323, punitive damages are reserved for malicious and high-handed conduct. I find the applicant has not proven such conduct by the respondent in this dispute. I therefore dismiss the applicant's claim for punitive damages.

Order for Information

33. The applicant requests that the tribunal order the respondent to provide "sufficient information to enable litigation to reinstate the applicant's pension benefits".

34. The applicant has not specified what information he seeks, beyond that already provided in the respondent's detailed letter of July 20, 2018. Also, I find that any such order would be properly made against the Pension Plan or the Plan administrator, who are not named as parties in this dispute. There is no evidence to suggest that the respondent personally holds information relevant to the suspension of the applicant's pension benefits.

35. For these reasons, I do not order any disclosure of information. I dismiss the applicant's claims, and this dispute.

36. 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 and dispute-related expenses.

ORDER

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

Kate Campbell, Tribunal Member