



Civil Resolution Tribunal

Date Issued: April 1, 2019

File: SC-2018-008117

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McCoy v. KennyCo Contracting Ltd.*, 2019 BCCRT 405

B E T W E E N :

Christopher McCoy

APPLICANT

A N D :

KennyCo Contracting Ltd.

RESPONDENT

A N D :

Christopher McCoy

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Christopher McCoy says he provided log hauling services to the respondent KennyCo Contracting Ltd. (KennyCo) but was not paid. He claims \$4,329.46 plus another \$400 for extra cargo, that he says KennyCo owes him.
2. In its counterclaim, KennyCo says Mr. McCoy damaged its truck's fuel tank and fuel cap. KennyCo also says Mr. McCoy failed to return a dirt bike, and the original key to the logging truck. KennyCo asks for damages to address these issues.
3. The applicant is self-represented. The respondent is represented by employee or principal Kenneth Ringland.

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. In some respects, this dispute amounts to a "he said, he said" scenario with both sides calling into question the credibility of the other. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
6. 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.

7. 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.
8. 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.

ISSUE

9. The issue in this dispute is whether KennyCo owes Mr. McCoy the claimed payments for services rendered. If so, the question in the counterclaim is whether KennyCo can offset that payment due to damages it says Mr. McCoy caused it.

EVIDENCE AND ANALYSIS

10. This is a civil claim in which the applicant, Mr. McCoy, bears the burden of proof on a balance of probabilities. KennyCo bears this burden in its counterclaim. I have reviewed all of the evidence and submissions but refer to them here only as necessary to explain my decision.
11. In September 2018, Mr. McCoy was a subcontractor providing log hauling services to KennyCo.

12. Mr. McCoy says he worked for KennyCo from September 15 to 30, 2018, but was not paid. He says he is owed \$4,329.46 for his delivery services. This evidence was undisputed, and I find that KennyCo owes Mr. McCoy \$4,329.46 for these services. I find that Mr. Coy could have expected to be paid by October 30, 2018 and will use this date to calculate pre-judgment interest.
13. Mr. McCoy also says KennyCo owes him a further \$400 for items he delivered that were not included in the load slips. By this I infer he means extra cargo for which delivery services were provided but went unpaid. Mr. McCoy provided no proof for this aspect of his claim, and therefore I dismiss it.
14. Turning to the counterclaim, KennyCo says it is holding back payments owing to Mr. McCoy because he:
 - a. damaged logging equipment,
 - b. used a fuel card when not authorized to do so,
 - c. failed to return the original key to the logging truck, and
 - d. failed to return a dirt bike.
15. KennyCo admits it did not discuss the damage to the logging truck with Mr. McCoy when it happened because he and his wife found dealing with Mr. McCoy stressful. Although KennyCo said it had extensive proof of Mr. McCoy's harassing behavior, it filed no evidence to demonstrate it.
16. I find that KennyCo has not proved its counterclaim for damage to logging equipment. Mr. McCoy denies damaging the truck. Although it filed invoices for certain repairs on a truck, KennyCo did not prove that the issues repaired were caused by Mr. McCoy.
17. Turning to the fuel issue, Mr. McCoy denies unauthorized fuel use. He says the high fuel burn noted for his truck was typical for a loaded logging truck in the summer, on the windy and partly uphill route he was asked to drive.

18. KennyCo filed a series of fuel invoices in evidence. However, I find it did not establish that the fuel was used for unauthorized purposes. Although some fill ups were noted on weekends, a schedule of driving routes, dates and times was not filed in evidence. As well, it was not possible, on the evidence, to discern how much fuel should be used for the KennyCo job route, versus whatever overage KennyCo says was improperly used by Mr. McCoy. KennyCo asserted that Mr. McCoy filled up his personal vehicle using its fuel card but provided insufficient evidence to establish this claim.
19. Mr. McCoy agrees that he initially kept a logging truck key and the fuel card, because he had not yet been paid. However, he says he later returned both items. This was not disputed, and I accept his evidence.
20. The remaining dispute about the logging truck key appears to be that although Mr. McCoy returned a key, it did not include a fob.
21. Mr. McCoy filed a statement from RS, a Service Writer at the truck centre where I infer the truck was sometimes stored, confirming that the key did not come with a fob. RS says that as a result the key had to be hid on the tank so that Mr. McCoy could access the truck early in the morning for work. Given this evidence, I find that KennyCo has not proven that it provided the fob to Mr. McCoy in the first place, and so it cannot successfully claim for its replacement.
22. KennyCo filed an invoice showing costs to re-key the truck. I accept that this may have occurred during the period when Mr. McCoy was withholding the key. However, I find that KennyCo should have mitigated its damages by making a further request for the key, at the time of paying Mr. McCoy for his work. For this reason, and because it wrongly withheld payment owing to Mr. McCoy, I dismiss this aspect of KennyCo's counterclaim.
23. I turn next to the dirt bike that Mr. McCoy admits he has. He says KennyCo owes him \$1,000 for repairs to the dirt bike. KennyCo says the dirt bike belongs to a person who is not a party to this dispute.

24. Since the burden is on KennyCo to establish its counterclaim on a balance of probabilities, and it filed no evidence regarding the dirt bike's ownership, repair status, value or on what basis it came to be in Mr. McCoy's possession, I dismiss this aspect of its counterclaim. Nothing in this decision prevents the dirt bike's owner from pursuing a claim should the owner decide to do so.
25. 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. Mr. McCoy was largely successful in his claims. I find he is entitled to reimbursement of \$175 in tribunal fees and \$38.70 in dispute-related expenses for registered mail delivery of the Dispute Notice, which I find reasonable. As KennyCo was not successful, it is not entitled to reimbursement of tribunal fees or expenses.

ORDERS

26. Within 30 days of the date of this order, I order KennyCo to pay Mr. McCoy a total of \$4,596.09, broken down as follows:
 - a. \$4,329.46 in payment for services rendered,
 - b. \$34.93 in pre-judgment interest under the *Court Order Interest Act* from October 30, 2018 to the date of this decision, and
 - c. \$231.70, for \$175 in tribunal fees and \$38.70 for dispute-related expenses.
27. Mr. McCoy is entitled to post-judgment interest, as applicable. The parties' remaining claims are dismissed.
28. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

29. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Julie K. Gibson, Tribunal Member