



Civil Resolution Tribunal

Date Issued: April 2, 2019

File: SC-2018-006888

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Open Horizon Developments Ltd v. Xcellence Concrete Pumping Ltd.*, 2019
BCCRT 416

B E T W E E N :

Open Horizon Developments Ltd

APPLICANT

A N D :

Xcellence Concrete Pumping Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about concrete pumping services. The applicant, Open Horizon Developments Ltd, says it was overcharged by the respondent, Xcellence Concrete

Pumping Ltd., for travel time that it did not agree to. The applicant claims reimbursement of \$420, being 1 hour of travel time for each day of the 3-day job. The applicant also wants a corrected invoice without “the extra charges”.

2. The respondent says the applicant did not hire it, as its contract was with the concrete placing company that provided the placing and finishing services. The respondent also says 2-hour travel time is reasonable because it takes an hour each way from the respondent’s location to the site.
3. The applicant is represented by Shahab Malek and the respondent by Brian Dutt, both of whom I infer are principals of the respective companies.

JURISDICTION AND PROCEDURE

4. These are the tribunal’s formal written reasons. 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.
5. 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.
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.

ISSUE

8. The issue in this dispute is whether the parties agreed to 1 or 2 hours of travel time per day, and if only 1 hour, whether the applicant is entitled to a \$420 refund for the difference.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicants bear the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. The 3-day concrete job was done on July 30, 31, and August 1, 2018. The applicant acknowledges it asked a 3rd party “concrete placing company” to order a concrete pour on the applicant’s behalf. In this, the applicant dealt with DF, the concrete placing company’s representative. The concrete placing company and DF are not parties to this dispute.
11. The respondent says for the 3-day job in question, it was hired by DF, over the phone. DF said to bill the customer directly. The applicant’s credit card was pre-authorized through DF making arrangements to have the applicant provide it to Mr. Dutt’s spouse. However, at the time it was hired, the respondent says it was not aware that the customer was the applicant, which the respondent had worked with directly 2 years prior in September 2016. Nothing turns on this.

12. The applicant says it was not aware of the respondent's 1-hour travel time each way, and that it questioned that charge after the 1st day's pour. As referenced above, this was a 3-day job.
13. The applicant acknowledges that he proceeded with the job on the 2nd day because he believed the respondent would reverse the 1-hour "each way" travel time charge. The applicant says he had used the respondent in the past and was not charged more than 1-hour total travel time.
14. The respondent denies ever being informed there was any concern about its invoice during the 3-day pump job. The respondent says it charged the applicant based on its standard rates when booked through DF. Further, the respondent says the 2-hour travel time per day is justified and based on the fact that it takes an hour each way to travel from the respondent's Surrey site to the job's North Vancouver location. The respondent says it provided DF its rate sheet, which expressly states that for all jobs in North and West Vancouver there is a 2-hour travel time.
15. I find the parties' contract was arranged by DF on the applicant's behalf. As noted, DF is not a party to this dispute. The applicant provided no evidence from DF about the terms DF agreed to on the applicant's behalf. The fact that the respondent had 2 years prior charged the applicant only 1-hour travel time is not determinative. I find for this 2018 job, the respondent advised DF there was a 2-hour travel time charge per day, which given the distance I find was reasonable. Again, the applicant has provided no evidence that DF did not agree to that travel charge, which as noted above is clearly set out on the respondent's rate sheet that it says it gave to DF.
16. The fact that the applicant was not aware of the respondent's travel time rate is an issue between the applicant and DF and DF's company. While the applicant says he sent the respondent emails questioning the charge, those emails are all after August 1, 2018, the last day of the 3-day job. There is no evidence before me that the applicant contacted the respondent directly during the 3-day job to question the travel charge. The applicant has not proved the contract did not allow for a 2-hour per day travel charge, such that he should be entitled to a \$420 refund as claimed.

17. In light of these conclusions, I find the applicant's claims must be dismissed. The applicant was unsuccessful in this dispute. Under the Act and rules, I therefore find he is not entitled to reimbursement of tribunal fees.

ORDER

18. I order the applicant's claims and this dispute dismissed.

Shelley Lopez, Vice Chair