



Civil Resolution Tribunal

Date Issued: May 10, 2019

File: SC-2018-006110

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cheema v. Centurion Trucking Inc.*, 2019 BCCRT 562

BETWEEN:

Sandeep Cheema

APPLICANT

AND:

Centurion Trucking Inc.

RESPONDENT

AND:

Sandeep Cheema

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about trucking fees the applicant, Sandeep Cheema, says the respondent, Centurion Trucking Inc. (Centurion), owes him as a long haul subcontractor / owner operator. Mr. Cheema says Centurion owes him \$4,900: \$4,000 for customs fees, \$500 for cargo insurance, and \$400 “Prorate Fees”.
2. In its counterclaim, Centurion says it paid fees “up front” on Mr. Cheema’s behalf, and it only deducted a portion of the fees (\$1,500) from its payments to Mr. Cheema. Centurion says it paid \$7,671 in annual cargo insurance for the truck and only deducted \$1,500, so it is owed \$6,171. In this dispute, Centurion reduced its claim to \$4,937, being 80% of the outstanding amount.
3. The applicant is represented by a family member. The respondent is represented by Daman Grewall, who I infer is an employee or 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* (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 9.3(2), 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 is whether either party is entitled to reimbursement for fees related to the applicant subcontractor's trucking services.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears 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 parties agree that Mr. Cheema worked for Centurion as a subcontracted owner/operator long haul trucker, rather than as an employee. While Mr. Cheema indicates his claim arose in August 2017, it is unclear when he was working for Centurion. This dispute turns on the parties' contract or agreement about who had to pay certain fees.
11. As noted above, Mr. Cheema claims \$4,000 for "custom fees", \$500 for "cargo insurance", and \$400 for "prorate fees". He says those amounts were deducted from payments to him as a long haul driver for Centurion. As discussed further below, at least some of these sums were penalties or fines, which each party says is the other's responsibility to pay. Centurion claims \$4,937 for unpaid cargo insurance.

\$4,000 custom fees

12. The evidence shows the \$4,000 “custom fee” was a penalty assessed at the Canadian border by the Canada Border Services Agency (CBSA). The CBSA “issuing officer report” shows that on May 20, 2017 Mr. Cheema arrived at the border with incorrect information about his load, because the required pre-arrival and pre-load data was not provided. Mr. Cheema says Centurion is responsible for this \$4,000 penalty because they “clear the loads”, and that as the driver Mr. Cheema took all normal steps necessary. Mr. Cheema says there have been no issues in the past.
13. Centurion says as a self-employed driver Mr. Cheema is responsible for following the rules and regulations set by Canadian Border Services, and in particular with respect to the proper documentation required at the border. Centurion says the \$4,000 penalty was issued against Mr. Cheema’s truck’s plate number. It is undisputed Mr. Cheema owns the truck.
14. Centurion also says that because Mr. Cheema was a sub-contractor, any fines and penalties issued under his vehicle are his responsibility to pay as the vehicle’s owner. Centurion relies on a copy of its company policy to this effect. Centurion uses the analogy of car rental, where the driver is charged with fines or tolls incurred.
15. Centurion provided a 1-page “procedure for Canadian bound shipments”, which I infer is the policy document it says it gave to all drivers. The document sets out a procedure to have the shipment clear the border, which is consistent with excerpts from the border rules that Centurion provided. In particular, it shows the driver must pre-clear their load before reaching the border.
16. Centurion also provided an excerpt from its policy that states drivers are solely responsible for violations and tickets. Again, Mr. Cheema did not argue that he had not ever received this policy document.
17. On balance, I find Mr. Cheema has not proved that Centurion is liable for the \$4,000 CBSA penalty. While Mr. Cheema stated Centurion “clears the loads”, he provided

no evidence to support that and the evidence from Centurion says otherwise. I dismiss this claim.

\$500 cargo insurance and \$400 prorated fees

18. The parties appear to agree that Centurion deducted some cargo insurance, \$750 for the months February, March, and April 2017, from what I infer was Mr. Cheema's final payment on April 1. \$500 of that deduction is what Mr. Cheema claims in this dispute, and the balance of the annual cargo insurance is the subject of Centurion's counterclaim, discussed below.

19. Similarly, for the same 3 months Centurion deducted \$600 in "pro rates" and Mr. Cheema claims \$400.

20. Mr. Cheema says these amounts cannot be deducted because he was not driving in "those months". However, there is no evidence before me as to what "those months" were or when Mr. Cheema terminated his contractor relationship with Centurion.

21. Mr. Cheema says cargo insurance covers the company for freight damage when a driver is driving. Mr. Cheema says when he was not in town, Centurion's loads were still being delivered by another driver, and presumably Centurion was also charging that other driver fees too, as 'double dipping'. I find this is speculation, as there is no evidence to support this assertion before me.

22. Centurion says these fees are paid up front and charged back to the operator throughout the year. Centurion says that unlike insurance through the Insurance Corporation of British Columbia (ICBC), which can be reduced or refunded based on coverages, the cargo and "pro rates" cannot be. Centurion says each owner operator contractor is responsible for their operating costs, as shown on Centurion's invoices to Mr. Cheema.

23. Centurion provided a 1-page "commercial policy declarations" sheet from its insurer Burns & Wilcox Canada, for the policy period of March 23, 2017 to March 23, 2018. The coverage was for the category "truckman hauling for others". The sheet sets out

the total insurance for Centurion's fleet, and does not provide a break-down per truck. It does set out limits and deductibles for general liability, personal injury, contractor's equipment, and "motor truck cargo". There is no reference to refunds or pro-rating if insurance for a particular truck were cancelled mid-year.

24. On balance, Mr. Cheema has not shown that Centurion cannot obtain a refund from the entire year's cargo insurance that Centurion paid up front on Mr. Cheema's behalf. There is no contract or agreement in evidence before me, and also nothing to show that Mr. Cheema would be entitled to not pay for months he was not driving. Similarly, Mr. Cheema has not shown that under his sub-contractor agreement with Centurion that he is not responsible for the annual fee, regardless of when he terminated the relationship.

25. I say the same about the "pro rates", which I also note neither party particularly explained what it was for.

26. Given my conclusions above, I also dismiss Mr. Cheema's claims for \$900 for cargo insurance and pro rates refunds.

Counterclaim - \$4,937 in unpaid cargo insurance

27. As noted above, Centurion says the cargo insurance is the owner operator's responsibility, as with all expenses like other insurance, fuel, and fuel tax. All of these charges appear on Mr. Cheema's monthly statements, although I only have one April 1 (presumably 2017) statement in evidence.

28. I accept Centurion's undisputed evidence that it provides drivers like Mr. Cheema with a fuel card, insurance and operating instructions and then deducts the costs from the driver's statements. Similarly, I accept that Centurion pays the cargo insurance up front and deducts monthly, so the operator does not incur the full cost at once. Again, Centurion says the cargo insurance cannot be refunded or reduced.

29. As referenced above, Mr. Cheema denies any agreement that he would continue to pay cargo insurance for periods when he was no longer driving for the company.

30. The difficulty for Centurion is that in its counterclaim for the cargo insurance balance, it bears the burden of proof. Centurion did not explain how it arrived at its calculation, other than to say \$7,671 was the annual charge, and that it had already deducted \$1,500, which left a \$6,171 balance. Yet, there is nothing before me that shows \$7,671 was the annual charge. The “Apr 1” statement shows \$750 was the cargo insurance charge for 3 months, which pro-rated to a year, would equal \$3,000. There is no explanation for the discrepancy.

31. Further, while I concluded above that Mr. Cheema has not proved he is entitled to a refund of the cargo insurance that was deducted, I find Centurion has not proved it is entitled to payment of the balance. Neither party provided a contract or relevant company policy document. I dismiss Centurion’s counterclaim.

32. In accordance with the Act and the tribunal’s rules, as neither party was successful, I find each party must bear their own tribunal fees.

ORDERS

33. I dismiss Mr. Cheema’s claims. I also dismiss Centurion’s counterclaims.

Shelley Lopez, Vice Chair