



Civil Resolution Tribunal

Date Issued: May 13, 2019

File: SC-2018-008498

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Price-Williams v. LEAGHA SERVICE DEPOT LTD.*, 2019 BCCRT 569

B E T W E E N :

Anthony Price-Williams

APPLICANT

A N D :

LEAGHA SERVICE DEPOT LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about vehicle repairs.
2. The applicant, Anthony Price-Williams, took his pickup truck to the respondent, LEAGHA SERVICE DEPOT LTD., for brake service. The applicant says he asked

for a complete brake maintenance, including replacement of front brake rotors and pads, rear brake drums and shoes, and both parking brake cables. The applicant says immediately after the respondent's work, the brakes made a noise whenever the wheels turned left. The applicant says he took the truck back to the respondent the next business day, and was told he now needed a new front left wheel bearing, at a cost of \$450. The applicant declined this work, and says another mechanic looked at the truck and determined it needed new rear brake drums.

3. The applicant seeks payment of \$368.77 for the rear brake drum repairs, plus \$61.86 in travel costs.
4. The respondent denies the applicant's claims. It says the applicant did not return the day after the repairs, and did not come back to have the noise checked until about 7 months later. The respondent says its mechanic told the applicant the noise might be from the front left wheel bearings, but the applicant declined to have the mechanic put the truck on the hoist to check. The respondent says the applicant did not give it the opportunity to check the problem and fix it, but left instead.
5. The applicant is self-represented. The respondent is represented by JC, a principal or employee.

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. Some of the

evidence in this dispute amounts to a “he said, he said” scenario. Credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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 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

10. The issue in this dispute is whether the respondent’s brake work was faulty, and if so, what remedy is appropriate.

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 respondent says that on January 12, 2018, its mechanic replaced the following parts on the brake system of the applicant's truck: front pads and rotors, rear shoes and drums, and both parking brake cables. This work is itemized on the respondent's January 12, 2018 invoice, with a total price of \$1,127.94.
13. The applicant says that immediately after these repairs, the truck made a noise when turning left. The applicant says he brought the truck back to the respondent on the next working day, which the respondent disputes. I address that factual dispute below.
14. The invoices provided in evidence indicate that in August 2018, the applicant took his truck to the garage at Canadian Tire (CT). The CT invoices show that on August 1, 2018, a CT mechanic test drove and inspected the truck, and identified the noise as coming from the right rear wheel. The invoice said the truck was safe to drive, but further diagnostics were required. The bill for this inspection was \$123.15.
15. The applicant brought his truck back to CT on August 4, 2018. That invoice says the noise was traced to the right rear brake drum scraping against the backing plate, which occurred when the weight of the truck shifted during left turns. The invoice says the mechanic tried to machine the rear backing plate to prevent the drum from scraping. This did not eliminate the noise, and the mechanic wrote that they felt uncomfortable machining the backing plate further "because a suitable set of drums should not cause this issue." The bill for this work was \$61.58.
16. The applicant visited CT again on September 5, 2018. The invoice shows that the mechanic replaced both brake drums. The mechanic noted that both drums had to be replaced in order to have warranty coverage. The bill for this work was \$164.60.
17. The respondent does not dispute the opinions from the CT mechanic. However, it says that when the respondent brought his truck back, he refused to allow the respondent's mechanic to put his truck on the hoist to inspect the brakes. The respondent says that because the applicant refused this reasonable inspection, he

made it impossible for the respondent to fix the problem, or offer warranty service, even though the parts were still under warranty.

18. The applicant disagrees. He says the mechanic insisted the problem was unrelated to the brake work, and instead was due to a problem with the front left wheel bearing. The applicant says the respondent refused to look at the brakes, and instead gave him a quote for \$459 for the wheel bearing repair. The applicant says he tried to persuade the respondent's manager that they should inspect the brakes as the possible source of the noise, but the manager refused and walked away.
19. I place significant weight on the CT invoices, as they set out the opinion of an expert mechanic who examined and tested the truck about the cause of the truck's noise. Based on those invoices, I accept that the noise was caused by the rear brake drum installed by the respondent scraping on the backing plate. Also, as previously noted, the respondent did not dispute this evidence.
20. I also accept the respondent's evidence that he brought his truck back to the respondent in January 2018. The parties agree that on the return visit, the respondent's mechanic suggested the noise could be due to the right front wheel bearing. The applicant provided a copy of a February 10, 2018 estimate from CT for the cost of repairing a right front wheel bearing. This tends to support his account of the timeline, rather than the respondent's.
21. While the respondent provided written statements from 3 employees confirming its version of events, I place limited weight on these statements. They were written months after the events in question, and none of the witnesses were able to identify the day or even the month when the alleged exchange took place, even though they claim to remember what the applicant said. Also, the similar wording of the 3 statements suggests the witnesses conferred before writing their statements.
22. Based on the preponderance of evidence, I find that the respondent's brake service was faulty, and that it did not take proper steps to fix the problem. The CT mechanic's opinion, as set out on the invoices, confirms that the brake drums were

either incorrect, or installed incorrectly in relation to the backing plate. While the respondent says it offered to put the truck on the hoist to inspect it, I am not persuaded by that evidence. In particular, I find the witness statements to that effect unconvincing, for the reasons set out above. Also, the fact that the respondent provided a contemporaneous estimate for a wheel bearing replacement tends to support the applicant's version of events, given that the noise turned out to be unrelated to the wheel bearing.

23. For all these reasons, I find the respondent must reimburse the applicant for the CT diagnosis and repairs, which total \$349.33. The applicant is entitled to pre-judgment interest on this sum under the *Court Order Interest Act* (COIA), from September 6, 2018.
24. As the applicant was largely successful in this dispute, in accordance with the Act and the tribunal's rules I find it is entitled to reimbursement of \$125 in tribunal fees. The applicant claims \$30.34 for a corporate registry search. I find that expense reasonable in the circumstances, so I order reimbursement of it as a dispute-related expense.
25. The applicant also claims mileage for his trips to CT for repairs, and mileage related to filing this dispute. I decline to order those expenses, as the applicant has not provided confirmation of the distances travelled. Also, the tribunal does not typically reimburse mileage claims as dispute-related expenses, and I find these expenditures are not damages that reasonably and foreseeably arise from the respondent's negligent service.

ORDERS

26. I order that within 30 days of this decision, the respondent pay the applicant a total of \$508.85, broken down as follows:
 - a. \$349.33 for brake repairs,
 - b. \$4.07 in pre-judgment interest under the COIA, and

c. \$155.45 as reimbursement of tribunal fees and dispute-related expenses.

27. The applicant is entitled to post-judgment interest under the COIA, as applicable.

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.

Kate Campbell, Tribunal Member