



Civil Resolution Tribunal

Date Issued: June 7, 2019

File: SC-2018-007463

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *SO 316 Beauty & Wellness Ltd v. Roberts*, 2019 BCCRT 699

B E T W E E N :

SO 316 Beauty & Wellness Ltd

APPLICANT

A N D :

Nicole Roberts

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, SO 316 Beauty & Wellness Ltd, operates a beauty salon. The respondent, Nicole Roberts, was employed by the applicant.

2. The respondent is self-represented in this dispute, and the applicant is represented by Kimberly Gibson, its principal.
3. Ms. Gibson says the applicant paid tuition so the respondent could attend a course to become an eyelash technician, and the respondent left her job 3 months after completing the course. Ms. Gibson says the parties had a verbal agreement that if the respondent stopped working at the salon within 2 years, the respondent would repay the tuition.
4. The applicant seeks reimbursement of the \$1,522.50 tuition payment.
5. The respondent denies the applicant's claim. She says Ms. Gibson offered to pay the tuition, and there was no verbal or written agreement about staying at the salon, or about tuition repayment.

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.
10. The issue in this dispute relates to employment. The tribunal has no jurisdiction to award entitlements available under the *Employment Standards Act* (ESA). However, I find I have jurisdiction over this dispute because the applicant's tuition repayment claim is based on an alleged contract between the parties, and is not governed by the ESA. Also, the applicant, as an employer, has no access to recourse with the Employment Standards Branch.

ISSUE

11. The issue in this dispute is whether the respondent must repay the applicant for \$1,522.50 in tuition.

EVIDENCE AND ANALYSIS

12. 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.

13. The parties agree that the respondent attended the eyelash course, and that the applicant paid \$1,522.50 in tuition in August 2017. The parties also agree that the respondent resigned from her employment with the applicant effective January 3, 2018, a few months after finishing the eyelash course.
14. Ms. Gibson, on behalf of the applicant, says she and the respondent had a verbal agreement that in exchange for tuition and materials costs, the respondent would provide her services at the applicant's salon for 2 years, and in the event that she left her employment within 2 years, she would repay the tuition. Ms. Gibson says the respondent agreed to these terms, but when she resigned she refused to repay.
15. The respondent says there was no such agreement, verbal or otherwise. She says Ms. Gibson asked her if she was interested in becoming an eyelash technician, and offered to pay for the course. The respondent says there was no discussion about repayment, in part or in full, if she left at any time.
16. While verbal agreements are still enforceable, the reality is that they are typically much harder to prove than written agreements. Based on the evidence before me in this dispute, I find the applicant has not proved on a balance of probabilities that the respondent agreed to repay the tuition if she left her employment.
17. In a contract dispute like this one, the party claiming enforcement of the contract must prove that the parties had a "meeting of the minds" about the key terms of the contract. I find the applicant has not provided such proof. She admits there was no correspondence or document confirming the respondent's agreement to that arrangement. While the applicant may have thought the respondent understood she was expected to repay the tuition, there is no evidence to confirm that was what the respondent ever knew that, or specifically agreed to it.
18. Also, I find there are some contingencies that are unexplained by the alleged agreement between the parties. For example, what would happen if the respondent was fired? Or, what would happen if she failed the course? I find that this lack of

specificity supports the conclusion that there was no agreement between the parties.

19. The applicant relies on written statements from employees MC and DR. I am unpersuaded by these statements, in part because I find MC and DR are not neutral witnesses. Rather, since they are both employed by the applicant. For that reason, I place less weight on their evidence than I otherwise might. Also, I find that neither MC nor DR have direct knowledge about what the respondent agreed to.
20. MC says that Ms. Gibson approached her and the respondent about additional training to expand the salon's services. MC says "it was agreed" that Ms. Gibson would pay for the training, and it was agreed that they would continue to work at the salon for 2 years after the training was finished. MC says she was not sure if she would be living in that community for the next 2 years, so she brought up the idea that should they wish to leave the studio before that, they would simply pay back the training course.
21. While I find that MC's statement outlines her agreement with Ms. Gibson, it does not confirm that the respondent ever agreed to these terms. MC does not provide evidence about whether the respondent was present for the repayment conversation between Ms. Gibson and MC, or whether the respondent ever agreed to that term. I find that MC's evidence does not establish what was discussed or agreed to between the respondent and Ms. Gibson. Therefore, I find it does not prove that the verbal agreement between the applicant and respondent contained any repayment requirement.
22. Similarly, I find that DR's statement does not prove that the respondent ever agreed to repay any tuition if she left her employment within 2 years. While DR says there was a verbal agreement between Ms. Gibson and the respondent, she does not say how she knows that. DR sets out the terms of the alleged agreement in her statement, but she does not say she heard any conversation where the respondent was presented with, or agreed to, these terms. DR also does not say she heard the

respondent subsequently confirm any repayment agreement. Since I cannot identify the source of DR's knowledge about the alleged agreement, I am not persuaded by her evidence.

23. For these reasons, I find the applicant has not established that the parties had a verbal agreement obligating the respondent to repay any tuition. I therefore dismiss the applicant's claim, and this dispute.

24. The applicant was unsuccessful in this dispute. In accordance with the Act and the tribunal's rules I find it is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

25. I order that the applicant's claim, and this dispute, are dismissed.

Kate Campbell, Tribunal Member