



# Civil Resolution Tribunal

Date Issued: June 17, 2019

File: SC-2019-002566

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *REDJEPOV v. CHEETAH TRANSPORT LTD.*, 2019 BCCRT 739

**B E T W E E N :**

MIKE REDJEPOV

**APPLICANT**

**A N D :**

CHEETAH TRANSPORT LTD.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Lynn Scrivener

### **INTRODUCTION**

1. The applicant, MIKE REDJEPOV, says that he worked for the respondent, CHEETAH TRANSPORT LTD., and did not receive the total amount owing to him on his last pay cheque. He seeks an order that the respondent pay him the missing \$1,500. The respondent says that it withheld money from the applicant's pay to cover a property damage claim, and denies that it owes him \$1,500.

2. The applicant is self-represented. The respondent is represented by an employee.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
5. 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.
6. Under tribunal rule 9.3(2), 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**

7. The issue in this dispute is whether the respondent must pay \$1,500 to the applicant.

## **EVIDENCE AND ANALYSIS**

8. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. The parties have provided submissions and evidence in support of their respective positions. While I have considered all of this information, I will refer to only that which is necessary to provide context to my decision.
9. The applicant contracted with the respondent to perform transport driving services. The applicant says he was sent to handle a load on his own, but that the job would have been appropriate for 2 or 3 people. A piece of equipment from the load was damaged during transport. There does not appear to be a dispute that the damage resulted from the manner in which the applicant secured the load.
10. The applicant says that the respondent told him that he was responsible for the cost of the damage to the equipment. The applicant disagrees with this position, as he says he was told during the application process that he did not need to have his own insurance as the company had coverage. The applicant states that the company should ask drivers to have their own insurance so that everyone is protected.
11. According to the respondent, it carries insurance for claims larger than \$2,500. The respondent says that its agreement with the applicant clearly sets out his responsibility for claims. The respondent explained that it held back \$1,500 from the applicant's pay until the amount of the damage could be determined. Once the claim was finalized at \$1,407.84, the respondent says it sent a cheque to the applicant in the amount of \$92.16, the difference between the holdback and the claim's final amount. The applicant confirmed that he received the cheque for \$92.16, but seeks the remaining \$1,407.84.

12. The January 22, 2019 agreement between the parties identifies the applicant as an independent contractor rather than an employee. The agreement sets out the responsibilities of the respondent and the applicant as a contractor, and states at item 11 that the respondent is responsible for “Cargo insurance”. Item 10 sets out a list of items for which the applicant bears responsibility, and specifically identifies a “2500.00 deductible for any Cargo Damage claims if processed through The Company’s Cargo Insurance Policy. If the insurance company does not honor (i.e. The claim is less than \$2500.00 or if there is no declared value and the weight is less than \$2.00 per hundred weight than what the claim is worth) the full amount will be the responsibility of The Contractor”. The written agreement does not contain any comment about whether the applicant should or should not obtain his own insurance.
13. I acknowledge the applicant’s submission that an employee of the respondent told him that he did not need his own insurance. However, I find that he has a contractual responsibility for the respondent’s insurance deductible or the value of the claim if the damage is assessed at less than the deductible amount.
14. Under the terms of his agreement with the respondent, the applicant is responsible for the \$1,407.84 in repair costs. He is not entitled to payment of the amount withheld from his pay by the respondent. Accordingly, I dismiss the applicant’s claim.
15. 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. As the applicant was not successful, I dismiss this portion of his claim.

## **ORDER**

16. I dismiss the applicant's claims and this dispute.

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Lynn Scrivener, Tribunal Member