



Civil Resolution Tribunal

Date Issued: June 19, 2019

File: SC-2019-000549

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *FRASER v. MATRIX LOGISTICS SERVICES LIMITED*, 2019 BCCRT 745

BETWEEN:

ROBERT FRASER

APPLICANT

AND:

MATRIX LOGISTICS SERVICES LIMITED

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about payment of a contractual retention bonus and severance package. The applicant, ROBERT FRASER, says that the respondent, MATRIX LOGICSTICS SERVICES LIMITED, promised him a retention bonus and severance package which it did not pay. He seeks payment of \$4,142.47. The respondent denies that it owes the applicant the amount claimed.
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.
7. The Employment Standards Branch has exclusive jurisdiction over employee entitlements under the *Employment Standards Act*. The applicant's statutory entitlements have been dealt with in separate proceedings. As this dispute concerns his possible contractual entitlements, I am satisfied that the tribunal has the jurisdiction to consider this matter under its small claims jurisdiction.

ISSUE

8. The issue in this dispute is whether the respondent owes the applicant \$4,142.47 for a promised retention bonus and severance package.

EVIDENCE AND ANALYSIS

9. 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.
10. The applicant commenced employment with the respondent in 2015. In November of 2016, the respondent advised that the facility at which the applicant worked would be closing on September 1, 2017. In a January 17, 2017 letter, the respondent notified the applicant of a retention bonus opportunity of \$1,000 in excess of other compensation. The letter stated that this opportunity would be available to those employees who met or exceeded performance and attendance requirements and who were actively employed by the respondent until September 1, 2017.
11. In a March 21, 2017 letter, the respondent advised that it may provide the applicant with a severance package of \$3,142.47. The letter specifically stated that "you must

meet performance and attendance expectations, and be actively employed at Matrix on September 1, 2017” in order to receive this package.

12. On May 29, 2017, the respondent terminated the applicant’s employment on a without-cause basis. The applicant says he did not receive the payments of \$1,000 and \$3,142.47 as he had been promised. According to the applicant, he declined many other employment opportunities that he would have accepted if not for the amounts promised by the respondent. The applicant’s view is that the respondent did not intend to pay him the offered amounts, and was simply stringing him along.
13. The respondent denies that it promised the applicant a payment of \$4,142.47, and says that it does not owe him this amount. The respondent says it paid the applicant the severance to which he was entitled under the *Employment Standards Act*, and submits that he has no further entitlements.
14. The January 17 and March 21, 2017 letters identified opportunities for payment, but I find that they did not amount to a promise to pay. Both letters specifically state that the payment of the identified amounts was conditional upon the applicant meeting attendance and productivity standards, and being an active employee at the time of the facility’s closure on September 1, 2017.
15. The evidence before me suggests that the applicant had issues with both attendance and productivity. He received a Corrective Action Notice – Attendance on September 7, 2016 and January 3, 2017 for failing to meet attendance requirements. He also received a Corrective Action Notice – Behavioural on February 17, 2017 and April 28, 2017 for failing to meet productivity standards. Each form identified a plan for improvement of performance. These forms were signed by the applicant, and establish that he was aware of the respondent’s attendance and performance standards and the fact that he was not meeting those standards.
16. The applicant points out that the respondent offered to retain his services after 3 of these 4 Corrective Action Notices were issued. I do not find that the timing of the

respondent's letters is determinative of the matter. By failing to meet his prescribed attendance and performance standards and by failing to be the respondent's active employee on September 1, 2017, I am satisfied that the applicant did not meet the conditions for payment of the amounts described in the January 17 and March 21, 2017 letters.

17. I find that, in these circumstances, the applicant did not have an entitlement to the \$4,142.47 he seeks. Accordingly, I dismiss his claim.
18. 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. I see no reason in this case not to follow that general rule. As the applicant was unsuccessful, I dismiss his claims for reimbursement of tribunal fees and dispute-related expenses. I find that the respondent is entitled to reimbursement of \$25.00 in tribunal fees. The respondent did not make a claim for dispute-related expenses.

ORDERS

19. The applicant's claims, and this dispute, are dismissed.
20. Within 30 days, I order the applicant to pay the respondent a total of \$25.00 as reimbursement for tribunal fees.
21. 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.
22. 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.

Lynn Scrivener, Tribunal Member