Civil Resolution Tribunal

Date Issued: July 11, 2019

File: SC-2019-000858

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Speed Up Education Inc. v. Wang,* 2019 BCCRT 838

B E T W E E N :

SPEED UP EDUCATION INC.

APPLICANT

A N D :

XINGXING WANG

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a notice requirement under an employment contract for university level tutoring services. The applicant employer, Speed Up Education Inc.,

says the respondent employee, Xingxing Wang, failed to provide the 120 days' notice the applicant says the contract required.

2. The respondent says she was abused and harassed at work and had to quit without notice. She also says the contract left blank the number of days' notice that was required and so zero notice was required, which the applicant denies.

3. The applicant is self-represented. The respondent is represented by Kevin Zhou, who I infer is an employee or a 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. Some of the evidence in this dispute amounts to a "he said, she said" scenario as to what occurred and did not occur during the respondent's employment. Credibility of interested witness, particularly where there is a conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be 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.

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.

8. I note the respondent employee says that the applicant employer owes her outstanding wages, overtime, and vacation pay, which the applicant denies. While the respondent did not file a counterclaim, the tribunal has no jurisdiction over an employee's claim for statutory entitlements to wages, as provided under the *Employment Standards Act* (ESA). That is within the exclusive jurisdiction of the Employment Standards Branch, and I note the evidence before me is that as of March 28, 2019 the respondent is pursuing that remedy. Nothing in this decision addresses any statutory entitlements the respondent may have under the ESA. I have also not addressed any contractual entitlements the respondent may have, given she did not file a counterclaim and given the evidence she is pursuing her remedies through the ESB. My decision in this dispute addresses only the applicant's entitlement to damages based on the respondent's failure to give notice allegedly required under the contract.

ISSUE

9. The issue in this dispute is whether the respondent employee was contractually bound to give her employer 120 days' notice before quitting her tutoring job, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the burden of proof is on the applicant to prove her claims on a balance of probabilities. Although I have reviewed all of the parties' evidence and submissions, I have only referenced what I find necessary to give context to my decision.

11. On September 18, 2018, the parties signed a lengthy employment agreement. While the respondent says she was "forced" to sign it because she would not get the job if she did not, I find there is no evidence she signed the agreement under duress. She made a choice to agree to this contract in order to obtain the job. Financial pressure related to securing employment does not mean the respondent employer exerted unfair or unreasonable pressure.

12. There are 2 issues in this dispute: 1) whether under the parties' contract the respondent was required to provide 120 days' notice, and 2) whether the applicant breached the agreement such that the respondent would not be required to give notice in any event.

13. I will deal with the notice requirement first. The copy of the agreement in evidence is partly in English and partly in Chinese. I cannot read the Chinese, but on its face the contract states the Chinese is a translation of the English version. However, the blank fillable portions of the contract's standard form were completed only in Chinese, except for where numbers were used which I can read. The agreement in English states that where there is ambiguity or inconsistency, the Chinese version governs.

14. The contract contains detailed termination provisions. Key to this dispute is section 3.3 titled 'Termination by Employee'. On the "soft copy" provided by the applicant, signed by both parties at the end, the fillable 'number of days' notice' line of section 3.3 in the English portion of the agreement is blank, but the Chinese translation appears to have "120" handwritten in it. On this copy of the agreement, only the

respondent initialed the bottom right of each page, including the page section 3.3 is on.

15. Section 3.3 further says in English that if proper notice is not given, the employer has the right to pursue the employee for damages, "including without limitation loss of clients, damage to image or finance"). Section 3.5 in English says that the parties agree that the termination provisions are fair and reasonable and that the other terms in the agreement were negotiated. The respondent initialed this page also.

16. The respondent produced another version of the parties' contract, in which the "120" days in the Chinese portion of section 3.3 is left blank. The respondent says the applicant added the '120' to their version later, for this dispute. The applicant submits the respondent doctored her version.

17. I find I am unable to prefer one party's version over the other's in terms of which contract is the one the parties actually signed. While the parties each point to alleged inconsistencies and falsehoods in the other's evidence overall, I find there is nothing before me on which I can resolve the issue of which copy/version of the agreement is the valid one.

18. The applicant knew from the outset of this proceeding that the respondent took the position that the contract she signed did not have '120 days' filled in for the notice period. I acknowledge the applicant's submission that it is unlikely an employer would leave the form blank, but mistakes happen and, in some cases, perhaps no agreement was reached. Based on the evidence before me, I find the weight of the evidence does not allow me to conclude that the respondent agreed to provide 120 days' notice, which I note is a lengthy period of time. For example, there is no expert analysis before me about the original contract, such as from a handwriting analyst giving an opinion as to the date the original document was created. In these circumstances there is essentially an evidentiary tie. The applicant bears the burden of proving it is more likely than not that their version is correct, and I find they have not done so.

19. As I have not found 120 days' notice (or any notice) was required, I find the applicant is not entitled to damages for failure to provide notice.

20. In summary, I find the applicant has not proved the respondent breached the parties' contract and so I dismiss its damages claims. Given this conclusion, I do not need to address the applicant's claimed damages or the respondent's evidence about the applicant's alleged unfair treatment and whether that was a breach of the parties' contract.

21. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful, in all of the circumstances in this dispute I find the applicant is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

22. I order the applicant's claims and this dispute dismissed.

Shelley Lopez, Vice Chair