Civil Resolution Tribunal

Date Issued: July 11, 2019

File: SC-2019-001033

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Park v. Global Lounge OP YVR, ULC.,* 2019 BCCRT 839

B E T W E E N :

JAMES PARK

APPLICANT

A N D :

Global Lounge OP YVR, ULC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about alleged damages arising from a settlement agreement related to the applicant's employment with the respondent. The applicant, James Park, says the respondent, Global Lounge OP YVR, ULC., improperly referred to the

settlement as severance pay in his Record of Employment, which caused Service Canada to collect a $1,213 'overpayment' from him.

2. The applicant claims reimbursement of that $1,213 from the respondent, though initially the applicant claimed $2,000 in damages based on inconvenience, in part because the respondent was 6 days late in making the settlement payment. The applicant withdrew his claim for the $1,960 that was withheld from the $9,800 settlement to pay taxes.

3. The respondent admits it was delayed in making the required payment, but says it was not for any improper motive. The respondent denies the applicant suffered any damages due to the 6-day delay and says that "inconvenience" is not compensable in any event. The respondent says it properly described the settlement as severance and Service Canada's decisions to collect overpayments is not in its control.

4. The applicant is self-represented. The respondent is represented by Lillian Dirube, who I infer is an employee or principal. For the reasons that follow, I dismiss the applicant's claims.

JURISDICTION AND PROCEDURE

5. 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.

6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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.

7. 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.

8. 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

9. The issue in this dispute is to what extent, if any, the applicant is entitled to damages flowing from the respondent employer's handling of the parties' settlement agreement.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the burden of proof is on the applicant to prove his 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. The basic underlying facts are that the respondent employed the applicant for 26 days in early 2018. The applicant pursued a discriminatory action complaint through WorkSafeBC which resulted in the parties' settlement agreement in October 2018. As part of that agreement, the respondent was to pay the applicant $9,800 by

October 5, 2018. The respondent admits the payment was unintentionally delayed and it was not made until October 11, 2018.

12. Originally, the applicant claimed $2,000 in damages due to alleged inconvenience because of the 6-day delay. In arguments, the applicant did not mention the delay and instead focused on the $1,213 claim based on the amount Service Canada claimed back from him as an overpayment.

13. In these circumstances, I find there is no compensation warranted for the 6-day delay, and no damages were proven. In any event, as the settlement agreement was not a 'peace of mind' contract, I agree with the respondent that no damages would be payable for mere inconvenience.

14. I also will not address the applicant's comments in the body of his arguments that the settlement payment should not have had tax withheld, given he expressly withdrew that claim.

15. I turn then to the central claim in this dispute, the $1,213 claim related to Service Canada's overpayment.

16. The applicant says the respondent should not have characterized its payment in his Record of Employment (ROE) as "severance pay", because in doing so that prompted Service Canada to claw back $1,213 in money it had previously paid him under the *Employment Insurance Act*.

17. The applicant says because the settlement arose from a discriminatory action complaint under the *Workers Compensation Act*, the payment made under it cannot be categorized as "severance pay". In other ways, he says the settlement was compensation in damages, rather than actual wages or severance pay. The applicant says since he worked only 26 days, there is no way the $9,800 settlement could be considered "severance pay" under the *Employment Standards Act* or otherwise.

18. The respondent says the settlement payment was severance pay, also known as a retiring allowance. The respondent refers to Canada Revenue Agency's website that describes such pay as including payments for loss of employment "even if the amount is for damages (wrongful dismissal when the employee does not return to work)". The applicant replies that his was not a wrongful dismissal claim, but a discriminatory action complaint. Yet, the respondent also notes that Income Tax Folio S2-F1-C2 says at section 2.16 that a retiring allowance includes any compensation on account of damages for loss of employment. However, as the applicant withdrew his claim about the taxes withheld, I find nothing turns on the tax treatment despite the parties' focus on that issue.

19. In other words, Canada Revenue Agency may treat his settlement as not attracting taxes as alleged by the applicant (and disputed by the respondent), but I do not need to decide that matter. Quite apart from the withdrawal of the claim related to withheld taxes, I say this because the tax treatment does not necessarily mean that Service Canada will treat a settlement payment as attracting a collection for Employment Insurance overpayment. I have insufficient evidence before me that there was a different category for the ROE that would have been more appropriate from the perspective of Service Canada. In any event, on balance, based on the evidence and submissions before me I am not persuaded that "severance pay" was an unreasonable classification for the respondent to use.

20. Further, there was no term in the parties' September 20, 2018 settlement agreement about how the settlement payment would be categorized in the ROE. Therefore, I find there is no issue before me that the $1,213 collection from Service Canada arose from the respondent's breach of that settlement agreement.

21. Based on the facts before me, I find the respondent reasonably believed that it was appropriate to categorize the settlement payment as severance pay. I agree with the respondent that Service Canada's decision to collect an overpayment from the applicant was outside the respondent's control. There is nothing preventing the

applicant from asking Service Canada to reconsider that decision based on the same arguments he makes in this dispute.

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

ORDER

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

Shelley Lopez, Vice Chair