



# Civil Resolution Tribunal

Date Issued: August 8, 2019

File: SC-2019-002063

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cole v. Mission and District Rod and Gun Club et al*, 2019 BCCRT 947

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

CHARLES H. COLE

**APPLICANT**

**A N D :**

MISSION AND DISTRICT ROD AND GUN CLUB and PAUL MAHLER

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kathleen Mell

### **INTRODUCTION**

1. This is a dispute about unpaid wages. The applicant, Charles H. Cole, says that the respondents, Mission and District Rod and Gun Club (Club), and Paul Mahler, who is the president of the Club, did not pay him for work he did for them. The applicant

requests \$720.00 in payment for the work completed. The applicant represents himself.

2. The respondent, Paul Mahler, who also goes by the name Tex, says that he acts as the Club's president, but he is not personally financially responsible and should be removed as a respondent on this Dispute. Mr. Mahler represents himself.
3. The respondent Club agrees there is a possibility money is owed to the applicant but argues that the applicant has not proved the days he worked or the amount owing. The Club is represented by Mr. Mahler.

## **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* (CRTA). 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. In some respects, this dispute amounts to a "he said, it said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

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 make one or more of the following orders, where permitted under section 118 of the CRTA: 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**

8. The issue in this dispute is whether the respondents owe the applicant money for work performed for them, and if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

9. In a civil dispute such as this, the applicant must prove his claim. He bears the burden of proof on a balance of probabilities.
10. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
11. The first question is whether Mr. Mahler should be named as a respondent in this proceeding. For a contract to exist, there must be an offer by one party that is accepted by the other, as well as agreement on the essential terms of the contract. The applicant has provided no evidence that he formed a contract to perform work for Mr. Mahler in his personal capacity. The applicant has also not established that the Mr. Mahler intended to enter into a contract personally with him, or that he intended to be personally liable for the applicant's wages. I note that the applicant chose not to provide a reply to Mr. Mahler's submission that he did not contract personally with the applicant. On balance, I find that the applicant has not met his

burden to establish that he had a contract with Mr. Mahler. I dismiss the applicant's claim against Mr. Mahler.

12. The Club does not dispute that it had a contract with the applicant and that there is a possibility that money is owed. Its argument is that the applicant refused to provide them with information needed to verify this and then, when he did provide information, it was not able to confirm the dates the applicant said he worked.
13. I note that the evidence does not indicate that the applicant was an employee of the Club but rather that he billed it at an hourly rate for contract and volunteer work. The applicant says the Club provides an honorarium of \$15.00 per hour for assigned work. The Club also does not say that the applicant was an employee but notes that it expected the applicant to confirm with them the hours he worked "the same as an employee in the workforce using a time clock." Based on this, I find that the applicant was not an employee of the respondent.
14. Therefore, I find the applicant's claim for payment is within the tribunal's small claims jurisdiction under the CRTA and is not within the exclusive jurisdiction of the Employment Standards Branch under the *Employment Standards Act*.
15. The applicant says that the Club's bookkeeper held back his payment for work performed either on her own or with the "tacit" approval from a higher Club authority, or at the specific direction of a Club officer. According to the applicant, the wages were held back between the summer of 2018 and the spring of 2019. The applicant suggests that Mr. Mahler was possibly responsible for this.
16. The applicant indicates that he contacted Mr. Mahler to advise him that his wages were withheld, and that Mr. Mahler said he would look into it. The applicant suggests that there were some ongoing issues with the bookkeeper. The applicant says that he refused to provide the information about the days and hours he worked to Mr. Mahler because this could be used against him. The applicant does not explain how this could happen or what he means by this statement.

17. The applicant argues that instead of him providing the information, Mr. Mahler and the Club should have carried out a thorough investigation to determine what money they owed him.
18. The applicant says that he followed up with the Club's vice-president who in April of 2019 told him that the bookkeeper was no longer employed by the Club. The vice-president asked the applicant to provide the dates that he had worked but was not paid. He told the applicant that he would try to "fix things up." The applicant says that he was reluctant to provide this information to the vice-president because he thought that there was an "agenda." Again, the applicant does not explain what he means by this or why specifically he would not provide the dates he was claiming wages for. Perhaps most importantly, the applicant does not explain how the Club could pay him for missing wages if the applicant refused to provide detail as to what they were.
19. In his submission, the applicant said that he performed work for two volunteer programs at the Club. The first involves a range safety officer (RSO) and a roving range safety officer program (RRSO). The second program is an orientation class instructor (OC). As noted above, the applicant says that the Club provides an honorarium of \$15.00 per hour for assigned work in either of these programs.
20. The applicant then filed in evidence a list of dates he worked for the Club for which he was not paid. He lists dates between July 22, 2018 and January 11, 2019 for a total of 48 hours which equals \$720.00. He also says that he thinks he worked on February 11, 2019 for 6 hours which would be another \$90.00 that he had not originally claimed for. According to the applicant, the OC classes took place on July 22, 28, 29, 2018. All the other times (August 27, September 24, October 6, November 13, December 31, 2018, and January 8, January 11, 2019) were RSO/RSSO time. Then there is the additional date of February 11, 2019, which the applicant is unsure whether he worked.
21. The applicant says that he always had to send in a report to Mr. Mahler for each RRSO day worked and that he always did so by email. He said he never received

an acknowledgement. However, the applicant did not provide a copy of the emails he says he sent.

22. The applicant says that the Club should provide copies of these emails as well as sign in and out sheets from the range. He also says that the respondent should provide the information from the administrator of the OC which will prove he instructed classes on the dates claimed.
23. The Club submits that the applicant was scheduled to perform the volunteer work on the dates indicated except October 6, 2018, when he was actually scheduled to work on October 9, 2018. It also says that the applicant was not scheduled to volunteer on January 8, 2019. It agrees the applicant was scheduled to volunteer on February 11, 2019.
24. The respondent says that the Club administrator reviewed these dates and that the applicant was paid for the OC dates on July 22, 28, 29, 2018, and that the applicant deposited the cheque on September 17, 2018.
25. As for the other dates submitted by the worker, the Club says that no RSO reports were submitted by the applicant for these days. The Club says that all reports have to be sent to a specific email address to the Club indicating that the volunteer's duty was carried out for that scheduled day. The Club says it does not follow up with the volunteers to confirm if they worked that day or not. As this is a volunteer task, sometimes volunteers do not report for duty due to personal reasons, and then no report is submitted. If a report is not submitted to the email address, then it is assumed that the volunteer did not perform their volunteer work that day and they are not paid.
26. The Club says that because the applicant did not submit the reports to the email as directed, they should not have to pay him for his requested wages or the costs of the tribunal proceedings.
27. The applicant was given an opportunity to respond to the Club's argument, but he told the tribunal that he had technological difficulty submitting a final reply. He

confirmed that he no longer wanted to provide any additional information even though the tribunal offered to assist him in uploading his reply.

28. Based on the information provided, I find that the applicant has failed to prove the specific dates he worked for the Club or the amount owing. The applicant says that the Club should conduct an investigation to establish which dates he worked. I accept the Club's submission that the OC hours were paid and that the other days claimed are days where no report was filed. Therefore, the RSO/RSSO volunteer hours cannot be confirmed because there is no evidence that the applicant sent in the required email to confirm that he worked those hours. As mentioned, the burden of proof is on the applicant to prove his claim. On balance, I find that he has failed to do so. I dismiss the applicant's claim.
29. 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 unsuccessful in his claim he is not entitled to have his tribunal fees or expenses reimbursed.

## **ORDER**

30. I dismiss the applicant's claim and this dispute.

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Kathleen Mell, Tribunal Member