



# Civil Resolution Tribunal

Date Issued: September 5, 2019

File: SC-2019-001519

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Seyed-Ali v. Central City Brewers & Distillers Ltd.*, 2019 BCCRT 1052

B E T W E E N :

SEYED-SEPEHR SEYED-ALI

**APPLICANT**

A N D :

CENTRAL CITY BREWERS & DISTILLERS LTD.

**RESPONDENT**

A N D :

SEYED-SEPEHR SEYED-ALI

**RESPONDENT BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

David Jiang

## **INTRODUCTION**

1. The applicant and respondent by counterclaim, Seyed-Sepehr Seyed-Ali, was previously employed by Central City Brewers & Distillers Ltd. (CCBD). He says that CCBD wrongfully dismissed him and claims \$5,000 in damages. He does not break down his claim further. However, he mentions suffering from mental distress due to his termination and also seeks punitive damages in connection with his treatment during his employment.
2. CCBD, the respondent and applicant by counterclaim, disagrees and says that Mr. Seyed-Ali's employment was terminated for just cause. CCBD counterclaims for \$5,000. This amount is composed of a wage overpayment of \$1,344.35 due to payroll errors and \$3,655.65 for alleged abuse of process.
3. Mr. Seyed-Ali is self-represented. CCBD is represented by Diljeet Naga, who I infer is a principal or employee.

## **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, both sides have called into question the credibility of the other. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to

be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.

6. 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 decided to hear this dispute through written submissions.
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 make one or more of the following orders, where permitted by 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.
9. Mr. Seyed-Ali brought a complaint to the Employment Standards Branch (ESB) over the same set of facts. To my knowledge, the ESB has not issued its decision yet about Mr. Seyed-Ali's entitlement to wages under the *Employment Standards Act* (ESA). The ESB has exclusive jurisdiction over employee entitlements to wages as defined under the ESA. The tribunal has no jurisdiction over such matters and I shall discuss this matter further below.
10. As one requested remedy, Mr. Seyed-Ali asked for a letter of reference from the respondent. I am unable to order the respondent to provide such a letter, as this request for injunctive relief falls outside the tribunal's jurisdiction.

## **ISSUES**

11. The issue in Mr. Seyed-Ali's claim is whether he is entitled to compensation for:
  - a. wrongful dismissal, including damages for inadequate notice, aggravated or moral damages, or punitive damages, and
  - b. bullying/harassment during his term of employment.
12. The issue in CCBD's counterclaim is whether it is entitled to \$1,344.35 for wage overpayments plus \$3,655.65 as compensation for Mr. Seyed-Ali's alleged abuse of process.

## **EVIDENCE AND ANALYSIS**

### ***Wrongful Dismissal - Inadequate Notice***

13. Mr. Seyed-Ali began working for CCBD on February 19, 2018, as a quality control technician. The terms of his employment are documented in a February 14, 2018 written employment contract. The contract states that CCBD employed Mr. Seyed-Ali for a fixed term from February 19 to September 18, 2018. I find (and it is undisputed) that this contract is valid and binding.
14. In an August 31, 2018 letter, CCBD terminated Mr. Seyed-Ali's employment before it was set to expire on September 18, 2018. Although not explicitly stated, I find that the letter terminated Mr. Seyed-Ali's employment effective immediately.
15. Mr. Seyed-Ali says he was wrongfully dismissed. As noted in *Acumen Law Corporation v. Ojanen*, 2019 BCSC 1352 at paragraphs 33 to 35, a claim for wrongful dismissal is a claim for breach of the parties' employment contract. An employer may be justified in terminating employment, but justification, or "just cause", requires a finding that the employee is guilty of misconduct amounting to a breach of the employment contract such that the employment relationship can no longer continue.

16. Mr. Seyed-Ali submits that in early June 2018 CCBBD verbally offered to extend his contract without any discussion of an end date. He says that CCBBD withdrew this offer because he complained of harassment, though he submits he started complaining as early as February 2018. I considered if Mr. Seyed-Ali was making a claim for breach of an alleged verbal extension contract, but his arguments clearly show that this is not the case. In any event, I find that no such contract exists as the alleged offer lacks key terms including the length of the extension.
17. Based on the evidence before me, I find that Mr. Seyed-Ali was dismissed with just cause. My reasons follow.
18. Mr. Seyed-Ali went on sick leave on July 23, 2018, as documented in a medical note and CCBBD's timekeeping records. Mr. Seyed-Ali ultimately never returned to work. He provided another medical note dated July 27, 2018, stating he had to be off work for one month (i.e. until August 27, 2018). However, these medical notes lack basic details including the reason for his illness or why he could not work.
19. On August 28, 2018, CCBBD requested a meeting for August 30, 2018, to discuss his return to work. CCBBD noted that a failure to attend the meeting or suggest an alternative date or time would be interpreted as a resignation. On August 29, 2018, Mr. Seyed-Ali replied that he was unable to meet as he felt unwell and was in the process of seeking legal advice. He suggested either September 6 or 7, 2018. He said he was not resigning. CCBBD subsequently terminated his employment in an August 31, 2018 letter.
20. I find that CCBBD has met the onus of showing proof of Mr. Seyed-Ali's misconduct. There was no medical evidence to show Mr. Seyed-Ali was still ill after August 27, 2018, such that he could not work. He provided no details of his illness and instead said that at least part of the reason he did not wish to meet so soon was that he was seeking legal advice. He suggested meeting September 6 or 7, 2018, which was at least 10 days after his medical note expired. This did not bode well for the continuing employment relationship. He was also failing to meet his basic obligation

of attending work. Mr. Seyed-Ali could have also suggested discussions by phone, but he did not.

21. I find that by staying off work without a current medical note and refusing to meet his employer until well after his note had expired (at least in part, to assemble legal case), Mr. Seyed-Ali was guilty of misconduct. This amounted to a breach of his employment contract with CCBD, such that their relationship could no longer continue.
22. Mr. Seyed-Ali made passing reference to constructive dismissal in his submissions. As noted in *Evans v. Listel Canada Ltd.*, 2007 BCSC 299, in general, a constructive dismissal occurs when an employer breaches a fundamental term of an employment contract or gives notice of its intention to do so. Such a breach, or anticipatory breach, gives the employee a right to treat the contract as terminated.
23. I acknowledge that Mr. Seyed-Ali says that he was bullied and harassed by another employee, KB, and that Mr. Seyed-Ali was dissatisfied with CCBD's internal investigation and handling of the matter. However, I did not find CCBD's conduct to be a breach of a fundamental term of the parties' employment contract. CCBD carried out an investigation of a June 19, 2018 incident that included witness interviews. The investigation resulted in a July 30, 2018 disciplinary letter against KB. The matter was clearly not ignored. Mr. Seyed-Ali's August 29, 2018 letter also makes it clear that he did not believe himself to have been constructively dismissed at the time.
24. I dismiss Mr. Seyed-Ali's claim for wrongful dismissal. However, regardless of whether or not Mr. Seyed-Ali was wrongfully dismissed, I find that there is a second reason I must dismiss this claim.
25. The parties' employment contract states that CCBD may terminate employment for just cause at any time without notice or pay in lieu of notice. It also says that CCBD may terminate employment without just cause by providing notice or pay in lieu of

notice as required by the ESA. The contract goes on to state that Mr. Seyed-Ali agrees that notice or pay in lieu was limited to what is provided under the ESA.

26. The parties' contract expressly says there are no 'notice' damages available beyond what is in the ESA. I do not have the jurisdiction to grant employee entitlement to wages as defined under the ESA, regardless of the status of the ESB proceedings.
27. I find this case shares similarities with *Hall v. Trueblue, DBA Labour Ready*, 2017 BCSC 2004. In that case, the plaintiff claimed for breach of contract and wrongful dismissal. The parties' employment contract specified what termination notice or pay in lieu of notice the plaintiff would be entitled to if she were dismissed without just cause. In that case, the contract stated she was entitled to no more notice than what is provided under the applicable employment standards legislation. The plaintiff had filed a complaint with the ESB and her complaint was allowed. She was awarded pay in lieu of termination notice under the ESA, as well as vacation pay on that amount, accrued interest, and an administrative penalty of \$500.
28. The court in *Hall* dismissed the plaintiff's action. At paragraphs 37 to 39 it noted that the employment contract limited the plaintiff's entitlement to pay in lieu of notice to what is provided under the ESA. The court wrote that the plaintiff had received what she was contractually entitled to in the event of termination of her employment without cause. She received this through her complaint to the ESB. The court held the court action was therefore an impermissible attempt to seek "double recovery".
29. I find the reasoning in *Hall* persuasive and binding on me. I conclude that the written employment contract limits Mr. Seyed-Ali's entitlement to pay in lieu of notice to what is provided in the ESA. This matter is currently before the ESB. If Mr. Seyed-Ali succeeds, a delegate of the ESB will determine what he should receive under the ESA. This amount would also be what he is contractually entitled to in the event of termination without just cause. I dismiss Mr. Seyed-Ali's claim for wrongful dismissal.

## ***Aggravated/Moral Damages and Punitive Damages***

30. Mr. Seyed-Ali claims for mental distress arising from his dismissal and well as punitive damages. As noted *Lau v. Royal Bank of Canada*, 2017 BCCA 253, mental distress is awardable as part of aggravated or moral damages.
31. Aggravated/moral damages are awarded where an employer has engaged in bad faith conduct warranting more than ordinary damages and results in an impact on the plaintiff that is greater than the normal distress and hurt feelings resulting from dismissal. Although medical evidence is not strictly necessary to prove the existence of mental distress, there must be an adequate factual basis to support an award of moral damages based on the employer's conduct.
32. In *Honda Canada Inc. v. Keays*, 2008 SCC 39 at paragraph 68, the Court wrote that punitive damages are only awarded in "exceptional cases" where the conduct is "harsh, vindictive, reprehensible and malicious". Punitive damages requires an 'actionable wrong', though a breach of the contractual duty of good faith can qualify as such an independent wrong.
33. I note that aggravated/moral or punitive damages are potentially payable even if there is just cause for an employee's dismissal, as these amounts can relate to the manner of dismissal.
34. I dismiss Mr. Seyed-Ali's claim for aggravated/moral damages. He was dismissed through a letter. There was no bad faith conduct in the manner of the dismissal. The dismissal was not, for example, conducted in a manner to embarrass him. Further, Mr. Seyed-Ali did not provide sufficient evidence to show damages for mental distress beyond the ordinary upset that accompanies termination of employment. Although he produced medical notes, they do not describe the source of his illness. There are no expense receipts (such as for counselling or medication) or other evidence that assist in establishing his claim.



35. I also find there is nothing in this dispute that merits any award for punitive damages. Fundamentally, Mr. Seyed-Ali disagrees with the results of CCBD's internal investigation and handling of another employee, KB, who the applicant says bullied and harassed him. I have already found that CCBD investigated the matter and reprimanded KB. While the parties may disagree as to whether this punishment was appropriate, I do not find this to be an actionable wrong within the meaning of *Honda Canada Inc.* Similarly, I did not find there to be any actionable wrong with respect to the manner of dismissal. There is nothing in the evidence that shows CCBD acted in a harsh, vindictive, reprehensible, or malicious manner at any time.

### ***Bullying and Harassment***

36. As referenced above, Mr. Seyed-Ali says KB bullied and harassed him in the workplace. He holds CCBD liable for KB's behavior and also claims that CCBD should have done more to stop KB. Section 11(1)(a)(i) of the CRTA states that the tribunal may refuse to resolve a claim or dispute within its jurisdiction if the claim or dispute would be more appropriately resolved through another legally binding process or dispute resolution process. For the reasons that follow, I refuse to resolve this claim.

37. Mr. Seyed-Ali describes this claim in a "Statement of Bullying of Harassment" that he completed on August 27, 2018. The document is an online bullying and harassment questionnaire provided by the Workers Compensation Board, which operates as WorkSafeBC.

38. In his questionnaire, Mr. Seyed-Ali says he was "hazed" by KB, another quality control technician. He described multiple unpleasant incidents during which KB swore at or berated him. He wrote that CCBD, and in particular his manager, TE, turned a blind eye to such incidents and retaliated against him when he reported these incidents to human resources. He also wrote that he was considering filing a mental illness claim with WorkSafeBC. He consented to WorkSafeBC using his information to undertake an inquiry into his complaint and for compensation purposes under the *Workers Compensation Act (WCA)*.

39. I find that I must refuse to resolve this bullying and harassment claim for two reasons. First, there is another legally binding process in place that best addresses this claim. Section 96 of the WCA states that WorkSafeBC has exclusive jurisdiction to determine all questions of fact and law about benefits under Part 1 of the WCA. Part 1 includes section 5.1(1), which states that a worker is entitled to compensation for a mental disorder that is predominantly caused by a significant work-related stressor, including bullying or harassment, or by a series of such stressors.
40. There is no dispute that the applicant was a worker and the respondent an employer. Mr. Seyed-Ali also filled out WorkSafeBC's Statement of Bullying and Harassment. This conduct further supports my conclusion that this is a claim that should be resolved under the WCA. For this reason, I do not need to address the further issue of whether a tort of harassment exists in British Columbia that could permit a remedy in this tribunal proceeding (see *Gidda v. Hirsch*, 2014 BCSC 1286).
41. In summary, I refuse to resolve the applicant's bullying and harassment claim under section 11 of the CRTA.

### ***Wage Overpayment – Counterclaim***

42. CCBD counterclaims for a \$1,344.35 wage overpayment. It says it overpaid Mr. Seyed-Ali during his sick leave from July 27 to August 27, 2018.
43. Banking documents show that CCBD submitted a stop payment, which was successfully processed on August 2, 2018. However, the August 17 and 31, 2018 payroll stubs show that CCBD continued to pay Mr. Seyed-Ali for 80 hours of work while he was sick and not working.
44. CCBD says that under its sick leave policy Mr. Seyed-Ali was entitled to only 3 days of sick leave pay. Thereafter, he was obliged to apply for Employment Insurance (EI) disability benefits. However, I was not provided a copy of the sick leave policy.
45. I have read Mr. Seyed-Ali's submissions closely. He acknowledges he was entitled to 3 days of paid sick leave according to CCBD's policies as of the first week of

August 2018. I did not find any clear admission that the CCBD policies provided for only 3 days of sick leave pay for the entire term of his employment. I found his submissions vague on this point.

46. The parties' February 14, 2018 employment contract does not directly address sick leave. It states that the position "does not provide benefits". However, under "POLICIES", it also refers to policies being in place that employees must both know and comply with.
47. I find that CCBD has not met its burden of proof. CCBD bases its claim on the doctrine of unjust enrichment. The legal test for unjust enrichment is that CCBD must show: 1) the applicant was enriched, 2) CCBD suffered a corresponding deprivation or loss, and 3) there was no "juristic reason" or valid basis for the enrichment (see *Murray Market Development Inc. v. Casa Cubana*, 2018 BCSC 568).
48. I find that CCBD has proven the first two factors in the above-mentioned legal test. However, I am unable to determine if there was a valid basis for the enrichment without the sick leave policy wording. The sick leave policy is a key document that I find CCBD could and should have provided, and I find that I am unable to evaluate CCBD's claim without it.
49. I dismiss this claim.

### ***Abuse of Process – Counterclaim***

50. CCBD says that by starting proceedings at both the ESB and this tribunal Mr. Seyed-Ali is engaging in an abuse of process. CCBD claims \$3,655.65 in damages.
51. Abuse of process is a tort which may entitle a party to an award of damages. It is also a doctrine that is available to prevent a misuse of the court's process by a litigation for an improper use: *England Securities Ltd. v Ulmer*, 2019 BCSC 1426 at paragraphs 27 to 32. As CCBD is seeking damages I shall consider the tort.

52. CCBD must show the following to succeed in its tort claim for abuse of process:
- a. a collateral and improper purpose of the tribunal's process (such as extortion);
  - b. a definite act or threat for a purpose that is not legitimate in the tribunal process; and
  - c. damage to the tort victim as a result.
53. In *England Securities Ltd.* the court noted at paragraph 31 that the essence of this tort is the first factor, being the existence of an improper purpose. CCBD did not show a collateral or improper purpose as the applicant's claims before this tribunal are separate from his claims for wages before the ESB. Given this, I dismiss this claim.

### ***Tribunal fees and expenses***

54. Under section 49 of the CRTA, 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. However, as there was divided success in this dispute, I find each party must bear their own tribunal fees or dispute-related expenses.

### **ORDERS**

55. I dismiss Mr. Seyed-Ali's claims for compensation for wrongful dismissal, including damages for inadequate notice, aggravated or moral damages, or punitive damages. I refuse to resolve his claim for bullying and harassment, under section 11 of the CRTA.

56. I dismiss CCBD's counterclaims for wage overpayments totaling \$1,344.35 and compensation for abuse of process in the amount of \$3,655.65.

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David Jiang, Tribunal Member