



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Truck Time Auto Sales v. Burnaby Dieseltech Services Inc.*,
2019 BCCRT 1136

B E T W E E N :

TRUCK TIME AUTO SALES

APPLICANT

A N D :

BURNABY DIESELTECH SERVICES INC.

RESPONDENT

A N D :

TRUCK TIME AUTO SALES

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant and respondent by counterclaim, Truck Time Auto Sales (Truck Time), says the respondent, Burnaby Dieseltech Services Inc. (Dieseltech), improperly placed a lien on Truck Time's International truck after Truck Time failed to pay Dieseltech's \$1,907.99 invoice. Truck Time claims \$4,500 for its alleged loss of the truck's sale to a third party due to Dieseltech's lien, plus \$1.00 and an order that Dieseltech remove the lien.
2. In its counterclaim, Dieseltech claims payment of its \$1,907.99 invoice. Truck Time says it never requested any repair, and only a diagnosis that it says Dieseltech failed to do properly. Truck Time says it eventually took the truck elsewhere and paid \$734.58 for the correct diagnosis and repair. Truck Time says it should not have to pay Dieseltech anything.
3. The parties are each represented by an employee or 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* (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 the circumstances here, I find that I can fairly decide this dispute based on the written evidence and submissions before me.
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 do one or more of the following where permitted under section 118 of the CRTA: 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. As noted above, Truck Time asks for an order that Dieseltech remove the lien it filed on the truck under the *Repairers Lien Act*. Under its small claims jurisdiction, the tribunal has no jurisdiction to grant such an order, as it is an order for injunctive relief not permitted under section 118 of the CRTA. I refuse to resolve Truck Time's 'lien removal' claim under section 10 of the CRT, which says the tribunal must refuse to resolve claims outside its jurisdiction.

ISSUES

9. The issue in this dispute are:
 - a. whether Dieseltech had reasonable authorization to do the work on Truck Time's truck, and
 - b. if yes, whether Dieseltech is entitled to payment of its \$1,907.99 invoice, or
 - c. if not, whether Truck Time is entitled to \$4,500 in damages for alleged loss of the truck's sale.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the burden of proof is on the applicant Truck Time to prove its claims on a balance of probabilities. Dieseltech bears this same burden in its counterclaim. 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. It is undisputed that Truck Time took its 2010 or 2011 International truck to Dieseltech on November 7, 2018, because the truck's dash was displaying fault codes. Truck Time wanted an "MVI inspection" in order to sell the truck, and it says that MVI inspection would not 'pass' if there were any fault codes lighting up. I infer an "MVI inspection" is a required inspection for a commercial truck, although nothing turns on it. As set out in its February 19, 2019 email to Dieseltech, Truck Time said "the first step" was to see why the warning light or fault code was on. However, Truck Time says it never authorized the repair work Dieseltech did, and that it just wanted a diagnosis.

12. I will deal with Dieseltech's counterclaim first, and then Truck Time's claim.

Dieseltech's counterclaim – payment of its \$1,907.99 invoice

13. As discussed further below, Dieseltech issued its \$1,907.99 invoice on February 16, 2019, for the investigation and repair work it did in November 2018.

14. It is undisputed that on November 8, 2018, Dieseltech scanned a check engine light at Truck Time's request. Dieseltech says it found 2 active fault codes: 1) a map sensor fault, and 2) a "lambda sensor fault". While Truck Time at one point appears to argue Dieseltech did not diagnose the codes, I accept Dieseltech's evidence, which is consistent with Dieseltech's contemporaneous business records.

15. Based on the diagnoses, Dieseltech says that on November 8, 2018 it replaced the defective sensors, repaired a broken exhaust shield, topped up coolant, and inspected wiring but there was no wiring schematics information available. Truck Time does not dispute the work was done and the replacement of the sensor is noted on the invoice of the third party who completed the sensor code diagnosis and repair in January 2019, Dawson Truck Repairs Ltd. (Dawson). I accept Dieseltech did the work as set out in its invoice.

16. It is undisputed that Dieseltech could not determine why the lambda sensor code was lighting up even after it had replaced the lambda sensor. The parties agree

Dieseltech referred Truck Time to Dawson, an International dealer with expertise in the area. Dieseltech says this sort of referral is common given the specialized equipment required.

17. Truck Time's central argument appears to be that Dieseltech allegedly did not have the proper computer scanning equipment to analyze the fault codes that were displayed, and, that Truck Time failed to identify a broken wire that Dawson found was the cause of the lambda sensor continuing to light up as a fault code. Truck Time says that Dieseltech should not have accepted the job because they were unqualified.
18. On balance, I find Dieseltech's referral to Dawson was not unreasonable. Truck Time has provided no evidence that Dieseltech ought to have been able to solve the problem, and I note there is nothing in Dawson's invoices that is critical of Dieseltech. I find Truck Time hired Dieseltech on a time and materials basis, and I find there is no evidence that it spent time unreasonably. In particular, Truck Time has provided no evidence from a mechanic to show Dieseltech ought to have identified the problem themselves or that their work fell below the standard expected of a truck mechanic.
19. Next, contrary to Truck Time's assertion, I find it more likely that it did authorize the repair work. First, it is undisputed that on November 15, 2018 Dieseltech asked for Truck Time's approval to take the truck to Dawson to further diagnose the "lambda sensor" fault. It is also undisputed that on November 28, 2018, Truck Time advised Dieseltech it would pick up the truck and take it to the dealer itself, and then return the truck to Dieseltech for the repairs. I find this timing and approval supports the conclusion that Truck Time had approved Dieseltech's repair work. If Truck Time had objected to Dieseltech doing the repairs, I find it more likely that it would have said so at the time.
20. Truck Time did not pick up the truck until January 8, 2019, and never returned it to Dieseltech for repairs, presumably because Dawson fixed the problem in mid-January. When Dieseltech realized that Truck Time was not going to return the

truck for repairs, on February 16, 2019 Dieseltech issued its invoice, which is the subject of Dieseltech's counterclaim.

21. On balance, I find Truck Time did authorize Dieseltech to diagnose and repair the problem underlying the fault codes. I have found Dieseltech's invoice reasonable, despite the fact that it was unable to diagnose the cause of the lambda sensor code. I find Dieseltech is entitled to payment of its \$1,907.99 invoice.
22. Dieseltech claims interest of 2% per month, as stated on its invoice. However, the federal *Interest Act* states the maximum permitted is 5% per year where an annual equivalent is not set out on the invoice or contract, as was the case here. So, I find Dieseltech is also entitled to 5% annual pre-judgment interest on the \$1,907.99, from February 16, 2019 the date Dieseltech sent the invoice to Truck Time. This equals \$58.02.

Truck Time's claim – \$4,500 in damages for loss of the truck's sale

23. Truck Time says it lost the truck's sale due to Dieseltech having its truck for more than 2 months, and, because Dieseltech filed a lien against it under the *Repairers Lien Act*. For the reasons that follow, I dismiss Truck Time's claim for \$4,500.
24. Truck Time brought the truck to Dieseltech because it needed an "MVI inspection" for a pending sale of the truck. I accept this evidence, but find Dieseltech was not aware of the pending sale. There is no evidence before me otherwise.
25. Dieseltech filed the lien on February 22, 2019, which was about a month after Dawson had completed its repairs. Truck Time does not explain how this timing caused him to lose the sale of the truck. It also does not explain when it lost the sale, given the truck's sales agreement was dated in November 2018.
26. Truck Time provided a November 10, 2018 contract for the sale of the truck. It shows the purchase price as \$39,200. Truck Time does not explain why it did not pick up the truck from Dieseltech on November 28, 2018 as it said it was going to do. Truck Time also does not explain how it arrived at its calculation of \$4,500

based on the alleged lost sale of the truck. I find Truck Time has not proved its claim, both that the truck sale was lost due to Dieseltech's conduct and the \$4,500 claimed value of the loss.

27. For all these reasons, I dismiss Truck Time's counterclaim for \$4,500. I find it has not proved Dieseltech caused it any loss. As noted, I refuse to resolve Truck Time's claim about removing the lien, and I say the same about the nominal monetary claim of \$1.
28. According to the CRTA and the tribunal's rules, as Dieseltech was successful in its counterclaim I find it is entitled to reimbursement of the \$125 it paid in tribunal fees. It did not claim any dispute-related expenses and so I make no order about that. As Truck Time was unsuccessful in its claim, I dismiss its claim for reimbursement of tribunal fees.

ORDERS

29. I refuse to resolve Truck Time's claim for \$1 and an order for removal of the *Repairers Lien Act* lien filed by Dieseltech, under section 10 of the CRTA. I dismiss the balance of Truck Time's claims.
30. Within 14 days of this decision, I order Truck Time to pay Dieseltech a total of \$2,091.01, broken down as follows:
 - a. \$1,907.99 in debt,
 - b. \$58.02 in pre-judgment interest at 5% per year, and
 - c. \$125 in tribunal fees.
31. Dieseltech is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
32. Under section 48 of the CRTA, 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.

33. Under section 58.1 of the CRTA, 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.

Shelley Lopez, Vice Chair