



Civil Resolution Tribunal

Date Issued: November 19, 2019

File: SC-2019-005851

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gamboa v. Ching*, 2019 BCCRT 1308

BETWEEN:

GARY GAMBOA

APPLICANT

AND:

ROBIN CHING

RESPONDENT

AND:

GARY GAMBOA

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute between co-workers. The applicant, Gary Gamboa, says that the respondent, Robin Ching, stole his home and car keys and garage door opener from the workplace, which he says caused him financial losses and physical and mental anguish. Mr. Gamboa wants Mr. Ching to pay him \$4,541.18 in damages.
2. Mr. Ching says Mr. Gamboa's allegation is false and asks that his claim be dismissed. By counterclaim, Mr. Ching asks for compensation for wages he says he lost while attending to this matter.
3. The parties are self-represented.

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. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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.

ISSUES

8. The issues in this dispute are:
 - a. whether Mr. Ching stole the applicant's keys and garage door opener,
 - b. whether Mr. Ching must pay Mr. Gamboa \$4,541.18 in damages, and
 - c. whether Mr. Gamboa must compensate Mr. Ching for lost wages.

EVIDENCE AND ANALYSIS

9. In a civil dispute such as this one, an applicant (whether by claim or counterclaim) bears the burden of proof on a balance of probabilities. Both parties provided evidence and submissions in support of their positions. While I have considered all of this information, I will only refer to what is necessary to provide context to my decision.
10. The parties were working at the same company on January 23, 2019. That morning, Mr. Gamboa says that he placed a bag of personal items, including his keys and attached garage door opener, behind a machine located in his usual work area. He says that when he retrieved the bag at the end of the day, his keys and garage door opener were missing.
11. After reviewing footage from a surveillance camera in the area, Mr. Gamboa concluded that Mr. Ching may be responsible for the missing items as the footage

showed Mr. Ching standing behind the machine. He reported the matter to the employer, who investigated but determined that the evidence did not establish that a theft had occurred.

12. Mr. Gamboa says that he purchased a new garage door opener, locks and keys after the theft. He also says the theft made him fear for his safety, as well as the safety of his family, which left him anxious and unable to sleep. Mr. Gamboa sought medical attention and missed time from work. He asks for an order that Mr. Ching pay him \$541.18 for the replacement garage door opener, locks, and keys, as well as medication and counselling expenses. Mr. Gamboa also claims \$4,000 in lost income and unspecified damages.
13. Mr. Ching denies that he stole Mr. Gamboa's keys. He says that he went behind the machine in question to use his cell phone, something that was not allowed at the workplace. According to Mr. Ching, he has experienced harassment and intimidation as a result of Mr. Gamboa's false theft allegation, and feels that his reputation has been ruined. As noted above, he asks that Mr. Gamboa's claim be dismissed and that Mr. Gamboa compensate him for wages lost from having to deal with this matter.
14. The parties both provided copies of the surveillance footage from the workplace, which I have reviewed. The footage did not show the entire workday, but contained clips from several periods of time on January 23, 2019. The parties agree that the individuals shown in the footage are Mr. Gamboa and Mr. Ching.
15. The surveillance footage showed Mr. Gamboa placing a bag behind the machine at 8:19 a.m. The bag was not visible once Mr. Gamboa put it down. At 3:20 to 3:21 p.m., Mr. Ching moved behind the machine and appeared to adjust a portion of it. At 3:27 p.m., Mr. Ching moved behind the machine again. His hands were obscured by the machine, but he appeared to reach for and grasp an item before walking away from the camera's view with the item in his hand. He returned to view a short time later and appeared to resume working. At 4:43 p.m., the footage shows Mr. Gamboa searching through the bag.

16. The surveillance footage shows Mr. Gamboa's bag, but not what was inside it when he placed it behind the machine. I am not satisfied that this evidence establishes that the keys were in the bag at the beginning of the work day. Even if the keys were inside the bag, as the footage does not show the entire work day and other employees had access to the area, I find that the video footage does not prove that Mr. Ching was responsible for the loss of the keys.
17. Mr. Ching's movement behind the machine at 3:27 p.m. does appear to be unusual as he did not perform any work activity and he seemed to be very aware of his colleagues around him. However, Mr. Ching has explained his behaviour by saying that he was violating company policy by using his cellular phone at the workplace. This is confirmed by an image of Mr. Ching's phone that was obtained by the employer during its investigation. The image shows that Mr. Ching sent an email message to another person inquiring about the availability of a GPS device at 3:27 p.m. on January 23, 2019, which is around the same time he is shown removing the item from behind the machine.
18. Although the surveillance footage does show an item in Mr. Ching's hand, the evidence does not support Mr. Gamboa's suggestion that it was his keys. The evidence before me contains images of both Mr. Ching's phone and Mr. Gamboa's car key and garage door opener. I find that the size and shape of the item shown in Mr. Ching's hand is more consistent with a cellular phone than the car key and garage door opener. Based on the evidence before me, I am not satisfied that Mr. Ching took the keys from Mr. Gamboa's bag.
19. I acknowledge Mr. Gamboa's belief that Mr. Ching took his keys, but find that this belief is not supported by the evidence. I find that Mr. Gamboa has not proven that Mr. Ching is responsible for the missing keys and garage door opener, or his claimed losses. Accordingly, I dismiss Mr. Gamboa's claim.
20. Mr. Ching's counterclaim involves damages for lost wages. Mr. Ching has not provided evidence to show that he lost any wages as a result of this dispute. The tribunal generally does not award a party expenses for their own time spent on a

dispute, unless there are extraordinary circumstances. I do not find that the circumstances of this dispute are extraordinary, and would not have made this award even if a loss was supported by the evidence. I dismiss Mr. Ching's counterclaim.

21. 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. As both parties were unsuccessful, I dismiss their claims for reimbursement of their tribunal fees.

ORDERS

22. I dismiss Mr. Gamboa's claims.

23. I dismiss Mr. Ching's counterclaim, and this dispute.

Lynn Scrivener, Tribunal Member