



Civil Resolution Tribunal

Date Issued: November 26, 2019

File: SC-2019-004569

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Western Transloading Corporation v. Canadian Grain Inc.*,
2019 BCCRT 1327

B E T W E E N :

WESTERN TRANSLOADING CORPORATION

APPLICANT

A N D :

CANADIAN GRAIN INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Western Transloading Corporation says it provided the respondent Canadian Grain Inc. with transloading services, which means a service that transfers a shipment from one mode of transportation to another. The applicant

claims \$1,177 CAD, which it paid for container detention fees from steamship lines, which it says were the respondent's responsibility.

2. The respondent says that it does not know where these charges came from, nor why they would be responsible to pay them. The respondent asks that the dispute be dismissed.
3. The applicant is represented by Vice President, Jordan Atkins. The respondent is represented by Operations Manager Rocio Ramos.

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.

ISSUE

- 8. The issue in this dispute is whether the respondent must pay the \$1,177.00 claimed by the applicant as repayment for container detention fees.

EVIDENCE AND ANALYSIS

- 9. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence but only refer to the evidence and submissions as I find necessary to provide context for my decision.
- 10. The respondent agreed to have the applicant provide transloading services for it. To perform the agreement, the applicant contracted Trans BC Freightways Ltd. (TBC) to transport the respondent's containers. TBC is not a party to this dispute.
- 11. Based on the terms that the parties exchanged by email in spring 2017, I find that the applicant agreed to "...do everything in its control to return all containers within the free time advised by the shipper" but that it did not "...accept any implied responsibility resulting from such advice."
- 12. The agreed terms say that there are 21 calendar days of free time from the date of pick up to the date of return. If a delay beyond 21 free days was within the applicant's control, the applicant agreed to pay a maximum of \$25.00 per container.
- 13. On the issue of container detention, the emails show and I find that the parties agreed that the respondent would be "considered the responsible party" to settle any the container detention charges where the delay was beyond the applicant's control.

14. On March 15, 2017, SG, the respondent's employee, emailed Mr. Atkins and MS, an employee of the applicant, asking to transfer the cargo into storage and then to use the container for another company to return full.
15. The same day, MS wrote that the applicant could transfer the product for a charge, but that the container would not be usable in another booking, and that there would "still be charges for the over due container as well." He wrote "Please advise what you would like us to do."
16. SG responded with instructions to empty the container. SG did not raise any concerns about charges for the overdue container, which I find were the claimed container detention fees.
17. In April 2017, TBC entered the Maersk steamship line yard to pick up the respondent's containers. It is uncontested, and I find, that due to delays beyond the control of the applicant or TBC, Maersk billed TBC US \$880.00 in container detention fees.
18. On May 1, 2017, TBC passed along the \$880 USD invoice to the applicant. The applicant passed the invoice along to the respondent for payment on May 2, 2017. However, when more than 30 days passed without payment, I find that the applicant paid this invoice on June 15, 2017.
19. Based on the documents filed in evidence, I find that the respondent agreed to be responsible for any container detention fees charged in the course of handling the respondent's containers, for delays beyond the applicant's control. Here, Maersk issued a container detention fee to TBC, who passed the charge along to the applicant. Under the terms of the parties' agreement, I find that the respondent is responsible reimburse the applicant for it.
20. The respondent submits that because its customer made the container booking at that shipping yard, the customer should pay the container detention fee. While it may be that the respondent can recover the fee from its customer, under the terms of the parties' agreement, the respondent must pay the detention fee.

21. The respondent did not contest the conversion of the US \$880 detention fee to \$1,177.00 Canadian. I find that the respondent must pay the applicant \$1,177.00 within 30 days of this decision.
22. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the \$1,177.00 from June 15, 2017, the date the applicant paid the fees, to the date of this decision. This equals \$40.81.
23. 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. I find the applicant is entitled to reimbursement of \$125 in tribunal fees. The applicant did not claim dispute-related expenses.

ORDERS

24. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$1,342.81, broken down as follows:
 - a. \$1,177.00 as reimbursement for the container detention fee,
 - b. \$40.81 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in tribunal fees.
25. The applicant is entitled to post-judgment interest, as applicable.
26. 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.
27. 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.

Julie K. Gibson, Tribunal Member