



# Civil Resolution Tribunal

Date Issued: January 16, 2020

File: SC-2019-005958

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ibraheem v. Canadian Merchant Service Guild*, 2020 BCCRT 61

BETWEEN:

MOHAMMAD IBRAHEEM

**APPLICANT**

AND:

CANADIAN MERCHANT SERVICE GUILD

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about membership fees. The applicant marine engineer, Mohammad Ibraheem, says the respondent trade union, Canadian Merchant Service Guild,

continued to automatically withdraw membership fees from his bank account after he allegedly ceased being a member. The applicant claims \$2,840.26 in reimbursement for fees that the respondent withdrew between August 2011 through February 2019.

2. The respondent says the applicant's claims are mostly out of time. The respondent also says the applicant's membership did not cease in November 2011 as he alleges, and so it only deducted membership fees while the applicant was a member.
3. The applicant is self-represented. The respondent is represented by an 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 the circumstances here, I find that I am properly able to assess and weigh the documentary 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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may: 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. The applicant was formerly a voluntary member of the respondent guild. As noted above, this dispute is about whether the applicant is entitled to a refund of membership fees (union dues) that he paid between 2011 and 2019. At my request, the parties provided submissions about whether the tribunal had jurisdiction over this dispute. Specifically, whether the Industrial Relations Board might have exclusive jurisdiction to resolve this dispute. The parties agree the respondent is a certified bargaining agent for its members, within the definitions of “trade union” and “bargaining agent” under the federal *Canada Labour Code*. However, it is undisputed that for the time periods at issue the respondent guild never acted as the applicant’s bargaining agent. The parties agree that the applicant was a voluntary member of the guild and so there is no collective agreement at issue in this dispute. The parties also agree the applicant was paying the “unemployed rate” and that there was never any deduction of dues from his employment income under section 70 of the *Canada Labour Code*. It is undisputed that there is no applicable arbitration clause in any agreement or guild bylaws. Given the above, I find the tribunal has jurisdiction to resolve this small claims dispute, which falls within the debt or damages provisions in section 118 of the CRTA.

## **ISSUES**

9. The issues in this dispute are:
  - a. Was the respondent entitled to treat the applicant’s membership as ongoing after November 2011, or, had it lapsed such that the applicant is entitled to reimbursement of any membership dues?
  - b. To what extent, if any, are the applicant’s claims out of time?

## EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant must prove his claim, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
11. Based on the evidence before me, I find the following are the relevant facts, most of which are undisputed.
12. The applicant marine engineer was a member of the respondent guild since 1983. For all relevant periods, he was a voluntary member and so he paid dues directly to the respondent through automatic bank withdrawals, rather than having them be deducted from employment income.
13. In short, the applicant says after August 2011 he mistakenly believed he remained a member of the respondent guild up until February 2019, when he says he realized that due to the effect of the respondent's bylaw 8.21 his membership had actually ended in November 2011. This is why he says the respondent should refund him his paid membership fees from August 2011 through February 2019.
14. For the reasons that follow, I allow the applicant's claim in part. I turn first to the relevant chronology.
15. At its May 2011 convention, the respondent determined that it would repeal its bylaw 8.21, effective December 1, 2011. The relevant aspect of bylaw 8.21 is quoted in the next paragraph. The respondent says it advised all members about the outcome of the May 2011 convention. In his submissions, the applicant does not address this May 2011 decision, but I infer his argument is that despite his being a member at that time he was not aware of the decision.
16. In late August 2011, the applicant applied to withdraw his membership (a "withdrawal card request"), stating he was leaving the country "temporarily". In August 2011, the respondent permitted temporary withdrawals under its bylaw 8.21,

which avoided payment of a re-initiation fee on resumption of membership. On the withdrawal card, there is a pre-printed statement that reads:

[Bylaw 8.21] **The failure to contact the office prior to the expiry of the withdrawal card shall constitute a lapse of membership** and an application for membership and initiation fee must be filed in order to once again become a Member. [my bold emphasis added]

17. On August 25, 2011, the respondent wrote the applicant that his withdrawal card had been issued and would be effective from August 1, 2011 to November 30, 2011 (the Approval Letter). This letter also said that if the applicant wanted to renew the withdrawal card beyond November 30, 2011, he should contact the guild by November 15, 2011. This message is consistent with a note on the withdrawal card request form.
18. Yet, as noted above, the respondent had already determined at its May 2011 convention that it would repeal bylaw 8.21 effective December 1, 2011 and so withdrawal cards would no longer be issued after November 30, 2011. I infer this was largely a 'boilerplate' letter, and so the respondent inadvertently failed to address the upcoming repeal of bylaw 8.21. The Approval Letter did not expressly refer to bylaw 8.21, but the respondent indicated it had granted the withdrawal according to "article XIV" of the bylaws. Notably, the bylaws are not in evidence.
19. On November 7, 2011, the respondent wrote the applicant at his home address that as a result of bylaw changes (made at the respondent's May 2011 convention) all withdrawal cards would expire on November 30, 2011 and would not be renewed. The letter noted the respondent had on file the applicant's pre-authorized debit form and so it would deduct the applicable monthly dues at the end of each month. The letter concluded that if the applicant ever wanted the respondent to stop the deduction or if the applicant wanted to make a change to his membership status, he should contact the respondent in writing.

20. The applicant says he did not receive this November 7, 2011 letter as he was out of the country until December 2011. He says the respondent should not have expected him to receive the letter, as it knew he was out of the country. I disagree. The applicant's August 2011 withdrawal card request only said he was out of the country "temporarily" and did not give a return date. The withdrawal was only approved to November 30, 2011, so the respondent reasonably would have expected the applicant to receive its November 7, 2011 letter by the end of November.
21. The applicant also submits that the November 7, 2011 letter did not come to his attention after his return to Canada in December 2011, and he says he first saw it during this tribunal proceeding. I find it more likely that the November 7, 2011 letter was delivered to the respondent but that he simply did not turn his mind to it. I say this because elsewhere in his submissions the applicant says that due to distracting personal circumstances he did not read much if any of the respondent's correspondence the Approval Letter.
22. The applicant did not contact the respondent before November 30, 2011 to renew his withdrawal term. In fact, he did not contact the respondent at all until February 2019.
23. The respondent continued to withdraw membership fees from the applicant's bank account from August 2011 to February 2019. The applicant then resigned his membership.
24. I turn now to the parties' arguments.
25. The applicant says that until December 1, 2011, the respondent's bylaw 8.21 provided that if a member with a withdrawal card did not contact the guild to renew the withdrawal card within the time allotted, the member's membership would lapse. Based on the evidence before me, I agree. This is what the withdrawal card expressly said. I find it is also in substance what the Approval Letter said. Here, the

time allotted was by November 30, 2011. It is undisputed the applicant did not contact the respondent by November 30, 2011.

26. So, I find that on December 1, 2011, the date bylaw 8.21 was effectively repealed, the applicant's membership in the respondent had already ended as of November 30, 2011. In other words, contrary to the respondent's submission I find the effective repeal of bylaw 8.21 on December 1, 2011 was irrelevant, because the applicant's membership had in fact already ended the day before. So, I find that the applicant had no obligation to pay membership fees after December 1, 2011. He also had no obligation to pay fees during the agreed withdrawal period, August 1 to November 30, 2011.
27. What about the respondent's November 7, 2011 letter? While I have found above the applicant likely received this letter by sometime in December 2011, I find nothing turns on it. I say this because there is no evidence before me that the respondent had any legal entitlement to treat the applicant's membership as ongoing if he did not contact the respondent by November 30, 2011. The respondent's November 7, 2011 letter was effectively a unilateral extension of the applicant's membership, without his agreement.
28. However, my conclusion above is not the end of the matter. The respondent submits the applicant's claims are largely out of time. For the reasons that follow, I agree.
29. The *Limitation Act* (LA) applies to the tribunal. The LA sets out limitation periods, which are specific time limits for pursuing claims. If the time limit expires, the right to bring the claim disappears, and the claim must be dismissed. Section 6 of the LA says that the basic limitation period is 2 years, and that a claim may not be started more than 2 years after the day on which it is "discovered".
30. Section 8 of the LA says a claim is "discovered" on the first day that the person knew or reasonably ought to have known that the loss had occurred, that it was caused or contributed to by an act or omission of the person against whom the

claim may be made, and that a court or tribunal proceeding would be an appropriate means to seek to remedy the loss.

31. The applicant filed his application to the tribunal on July 28, 2019, which stopped the limitation period. This means that if the applicant's claim arose before July 28, 2017, he filed it too late and it is out of time.
32. The applicant's claim is for \$2,840.26, but it is undisputed that this represents monthly membership fee withdrawals of between \$32 and \$33.66, between August 2011 and February 2019.
33. The applicant says that after he returned to Canada and reviewed his bank statements, he discovered the respondent continued to automatically withdraw dues from his bank account. As noted above, the applicant returned to Canada in December 2011.
34. The applicant admits he knew the respondent was withdrawing his membership fees, and the evidence supports this. The applicant says that he was mistakenly "under the impression" that his membership was current and active, and only "by pure accident" realized in February 2019 that it ended on November 30, 2011, after the applicant re-read the Approval Letter. I infer his argument is that his claim was therefore not discovered or discoverable until February 2019. I disagree.
35. I find the applicant's later February 2019 realization does not support a conclusion that the discoverability of the applicant's claim was postponed. As noted, under the LA discovery is not just when someone actually knew but includes when they ought to have known about the claim. There is nothing in evidence before me to support a conclusion that the applicant could not reasonably have come to his February 2019 interpretation of the Approval Letter in December 2011 or at any point before July 28, 2017.
36. So, I find the bulk of the applicant's claim is out of time, and specifically all of the membership fees paid before July 28, 2017. I dismiss that portion of the applicant's claim that pre-dates July 28, 2017.



37. So, I allow reimbursement of only those membership fee withdrawals that happened in the 19 months after July 28, 2017. After July 28, 2017, the membership fees were \$33.66 monthly, billed at the end of each month. So, the applicant is entitled to \$639.54 (19 x \$33.66).
38. The *Court Order Interest Act* (COIA) applies to the tribunal. I find the applicant is entitled to pre-judgment interest under the COIA on the \$639.54, from February 22, 2019, to the date of this decision. This equals \$11.24. That is the date the applicant raised the reimbursement issue with the respondent, and I find it is most reasonable, given the applicant's delay in raising any issue despite the respondent's earlier correspondence that it considered the applicant a member and would be withdrawing fees. I also find this is proportionate given the relatively small amount of interest at issue.
39. Under the CRTA and the tribunal's rules, the successful party is usually entitled to reimbursement of their tribunal fees and reasonable dispute-related expenses. The applicant was partially successful and so I find he is entitled to reimbursement of half his paid \$125 in tribunal fees, namely \$62.50. The applicant also claims \$11.31 in dispute-related expenses for serving the Dispute Notice, which I allow as it is reasonable.

## **ORDERS**

40. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$724.59, broken down as follows:
- a. \$639.54 in debt,
  - b. \$11.24 in pre-judgment interest under the COIA, and
  - c. \$73.81, for \$62.50 in tribunal fees and \$11.31 in dispute-related expenses.
41. The applicant is entitled to post-judgment interest as applicable.

42. 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.
43. 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.

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Shelley Lopez, Vice Chair