



Civil Resolution Tribunal

Date Issued: February 4, 2020

File: SC-2019-006814

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chohan Freight Forwarders Ltd v. 1143875 B.C. LTD.*,
2020 BCCRT 134

B E T W E E N :

CHOHAN FREIGHT FORWARDERS LTD

APPLICANT

A N D :

1143875 B.C. LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about unpaid insurance expenses. The applicant, Chohan Freight Forwarders Ltd, says it hired the respondent, 1143875 B.C. LTD., as an independent trucker. The applicant says the respondent must reimburse it \$3,565.95 for insurance from the Insurance Corporation of British Columbia (ICBC).

The respondent disagrees. The respondent says the parties agreed that it would not be liable for this expense until it leased a truck from a third party, which it says never happened.

2. The parties are represented by their employees or principals.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUE

7. Must the respondent reimburse the applicant \$3,565.95 for insurance expenses?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. The parties' January 2, 2018 signed agreement shows that the applicant hired the respondent as an independent contractor to transport goods. I find the parties were bound by this agreement.
10. Section 9.01 of the agreement says the applicant must insure the truck described in Schedule "A" of the agreement. Schedule "A" says the truck is a 2013 Freightliner and provides a specific serial number. Section 9.01 goes on to say that the cost of insurance is shared by the parties as decided by the applicant. Further, the cost of the insurance is payable by the respondent upon termination of the agreement. It is undisputed that the applicant paid for the truck's insurance from ICBC.
11. The respondent says that after it signed the parties' agreement, it contacted TFG Financial, also known as Powerlease, to lease the truck identified in Schedule "A". Based on the evidence before me, including the parties' agreement, I find TFG Financial/Powerlease is not affiliated with the applicant and is the lessor of the truck.
12. Upon inspecting the truck, the respondent found its odometer had been tampered with and dialed back by 180,000 kilometers. The respondent returned the truck to Powerlease. The respondent then worked for the applicant for 1 week using 1 of the applicant's trucks, to wait for Powerlease to provide a replacement truck. Powerlease was unable to locate a different truck. At that point, the respondent told the applicant it would no longer work for it.
13. I find the respondent's version of events about Powerlease accurate as the applicant does not dispute it. It follows that the respondent terminated the parties' agreement in January 2018 when it advised it no longer wished to work for the applicant.

14. The respondent says that parties' agreement was based on the respondent leasing a truck from Powerlease. The respondent argues that he therefore owes no expenses. The applicant says the respondent's issues with Powerlease are unrelated to the applicant, and that the applicant should still be reimbursed what it paid to ICBC.
15. I find that there is no language in the agreement that says it was not binding until the respondent obtained the truck identified in Schedule "A". The respondent did not point to any contract term or provide any evidence in this dispute to support its position. Section 18.01 of the agreement also says the written agreement is the whole agreement between the parties.
16. I find that the parties' agreement determines whether the respondent should pay in this situation. Section 9.01, discussed above, explicitly states the respondent must reimburse the applicant for insurance expenses when the agreement is terminated. Section 1.0 of the parties' agreement says that the respondent warrants and represents that it is the legal and beneficial owner of the truck in Schedule "A". This was not the case when the respondent signed the agreement. However, I find that section 1.0 shows that the parties intended for the respondent to be responsible for obtaining the truck in Schedule "A". It follows that the respondent bears the risk of any difficulties arising from obtaining the truck.
17. Given the above, I find that the respondent must reimburse the applicant for insurance expenses from ICBC. I must now determine the appropriate amount.
18. The applicant claims \$3,565.95 for "outstanding ICBC Truck Prorate Insurance". It says this amount consists of \$2,725.71 CDN and \$630.75 USD. The applicant provided an August 13, 2019 statement that says the respondent owes \$2,725.71 for fuel purchases, insurance, permits, and signs. However, the statement only says \$905.20 of that amount is for ICBC prorate insurance and associated GST. The applicant also provided another January 31, 2018 statement for \$630.75 USD. The entire amount is for ICBC prorate insurance. The applicant says this equals \$840.95

CDN as of August 24, 2019. The respondent did not disagree with the exchange rate or conversion date used.

19. Section 9.01 says the costs of insurance are shared in a proportion determined solely by the applicant. The respondent does not say that the applicant agreed to share more of the costs of insurance than it claims in this dispute.
20. Based on the above, I find the respondent owes the applicant \$905.20 under the August 13, 2019 statement and \$840.95 under the January 31, 2018 statement. This equals a total of ($\$905.20 + \$840.95 =$) \$1,746.15 CDN. I dismiss the applicant's remaining claim as I find it has not proved the alleged debt beyond what I have ordered.
21. The applicant claims for pre-judgment interest under the *Court Order Interest Act* (COIA). The COIA applies to the tribunal. Interest on a debt normally runs from the date the debt is due.
22. The parties did not provide the exact dates the debts were due. The tribunal's mandate includes providing dispute resolution in a manner that is speedy and flexible. Using my discretion, I find the applicant is entitled to pre-judgement interest on \$905.20 from the statement date of August 13, 2019. I also find the applicant is entitled to pre-judgment interest on the \$840.95 from the conversion date of August 24, 2019. Although I considered using the statement date of January 31, 2018, the parties did not provide the applicable exchange rate as of that date.
23. In total, prejudgment interest equals ($\$8.51 + \$7.41 =$) \$15.92.
24. Under section 49 of the CRTA, and the 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.
25. I find the applicant has been roughly half successful in this dispute. I order the respondent to reimburse the applicant \$87.50 in tribunal fees within 15 days of the

date of this decision. This is half of the applicant's tribunal's fees. The applicant did not claim dispute-related expenses and so I do not order any.

ORDERS

26. Within 15 days of the date of this order, I order the respondent to pay the applicant a total of \$1,849.57, broken down as follows:
 - a. \$1,746.15 in debt for insurance expenses,
 - b. \$15.92 in pre-judgment interest under the COIA, and
 - c. \$87.50 in tribunal fees.
27. The applicant is entitled to post-judgment interest, as applicable.
28. The applicant's remaining claims are dismissed.
29. 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.
30. 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.

David Jiang, Tribunal Member