



Civil Resolution Tribunal

Date Issued: February 21, 2020

File: SC-2019-007057

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chohan Freight Forwarders Ltd v. Gagnon*, 2020 BCCRT 208

B E T W E E N :

CHOHAN FREIGHT FORWARDERS LTD

APPLICANT

A N D :

MICHEL GAGNON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, Chohan Freight Forwarders Ltd, says the respondent, Michel Gagnon, owes unpaid expenses under the parties' agreement. The respondent is

an independent owner/operator truck driver who worked for the applicant as a long-haul truck driver. The applicant says the respondent owes \$6,525.27 for various truck-related charges, but reduces its claim to \$5,000, the small claims monetary limit of the Civil Resolution Tribunal (tribunal).

2. In his Dispute Response filed at the outset of the tribunal proceeding, the respondent said that the applicant had verbally agreed to provide him with a fully inspected, "safe and ready to go" truck. However, the respondent said the truck had numerous issues, which caused him to lose money on jobs. So, the respondent denies he owes the applicant anything. The respondent later chose not to provide evidence or submissions, despite the opportunity to do so.
3. The applicant is represented by an employee or principal. The respondent is self-represented.

JURISDICTION AND PROCEDURE

4. These are the tribunal's formal written reasons. 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.

ISSUE

8. The issue in this dispute is whether the respondent owes the applicant the claimed trucking expenses, or, whether the respondent is entitled to a set-off due to the applicant's alleged failure to provide him with a safe and "ready to go" truck.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant must prove its claim, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. The applicant submits the respondent quit without notice, and left behind the claimed unpaid operating expenses. This is undisputed, and I accept it.
11. In support, the applicant submitted the respondent's October 31, 2018 final pay statement. In particular, the respondent's final pay was \$3,300, but there was \$8,522.15 in various deductions plus a \$1,303.12 "previous balance owing". This left the claimed \$6,525.27, reduced to the tribunal's \$5,000 small claims limit.
12. The deductions on the final pay statement were for: cargo insurance, drug testing and physical exams, fuel, insurance, lease payment, log audit, and repairs and maintenance. I find all of these charges are payable by the respondent under the parties' April 30, 2018 agreement, which is not disputed.
13. Under the parties' contract, I find the respondent owes the claimed \$5,000.
14. What about the respondent's claimed set-off? The respondent bears the burden of proving he is entitled to a set-off. Specifically, he must prove the applicant breached

a verbal agreement to lease the respondent a fully functioning truck, rather than one that later broke down.

15. First, there is nothing in the parties' written agreement that says the respondent would not have to pay his expense obligations if the leased truck did not function properly. Second, given the respondent's unsupported assertion, I find he has not proved the applicant verbally promised him a "fully safe" and "ready to go" truck. Third, the respondent has not established any loss of income, because he provided no evidence, such as income statements or proof that there were jobs he was unable to complete. So, I find the respondent is not entitled to any set-off from the \$5,000 I find he owes the applicant under the parties' contract.
16. The *Court Order Interest Act* (COIA) applies to the tribunal. I find the respondent owes \$123.71 in pre-judgment COIA interest on the \$5,000, calculated from October 31, 2018.
17. Under the CRTA and the tribunal's rules, I find as the successful party the applicant is entitled to reimbursement of \$175 in paid tribunal fees. No dispute-related expenses were claimed.

ORDERS

18. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$5,298.71, broken down as follows:
 - a. \$5,000 in debt,
 - b. \$123.71 in pre-judgment interest under the COIA, and
 - c. \$175 in tribunal fees.
19. The applicant is entitled to post-judgment interest, as applicable.
20. 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.

21. 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