



# Civil Resolution Tribunal

Date Issued: February 28, 2020

File: SC-2019-007392

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chohan Freight Forwarders Ltd. v. Madden, 2020 BCCRT 232*

**B E T W E E N :**

**CHOHAN FREIGHT FORWARDERS LTD.**

**APPLICANT**

**A N D :**

**JOHN STEWART MADDEN**

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Trisha Apland

### **INTRODUCTION**

1. The applicant, Chohan Freight Forwarders Ltd., says its former employee, the respondent John Stewart Madden, vandalized the wiring and electronic computer system in its company truck. The applicant seeks \$3,028.77 for repair costs to the truck's computer system.

2. In the Dispute Response, the respondent denied the claim. He said he never vandalized the truck's computer system. The respondent said it never worked.
3. The applicant is represented by one of its employees. The respondent is 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. 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**

8. The issue in this dispute is to what extent, if any, the respondent must reimburse the applicant \$3,028.77 for the applicant's truck's computer repairs.

## EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proving its claims on a balance of probabilities.
10. The applicant says it employed the respondent as a truck driver until the respondent quit on March 1, 2019. The respondent undisputedly drove one of the applicant's trucks. The applicant says it had installed a new electronic logbook in the truck but does not say exactly when. I infer an electronic logbook tracks the truck's driving hours. The applicant alleges that the respondent tampered with the electronic logbook by cutting the wires so he could not be traced. In his Dispute Response, the respondent denied this allegation, but then made no submissions for this hearing.
11. To support its claim, the applicant provided two repair invoices and a signed witness statement from its company president.
12. The applicant submitted a March 2019 invoice for repairs on the truck that say nothing about the truck's wires, computer or electronic logbook. I find this invoice is not relevant to the claimed repair costs. The applicant also submitted a June 20, 2019 repair invoice for \$3,028.77, the amount claimed. The invoice lists repairs to wiring and E-Logger and other items. I infer the E-Logger is the electronic logbook. I accept on this invoice that the electronic logbook and wiring needed repairing and that the applicant performed the repairs in June 2019.
13. The applicant's company president stated that after the respondent quit his employment, a new driver took possession of the truck. He said the new driver told him that the respondent had cut the wires behind the dashboard and left all the wires exposed. He said the conversation occurred the day the new driver took the truck keys from the respondent. The president stated that he immediately called the respondent, asked about the cut wires, and the respondent "blatantly lied to deny it".
14. Without explanation, the applicant provided no statement from the new driver. However, the respondent also provided no evidence to contradict the president's statement. I accept on the president's signed statement that the president did have

the above conversation with the new driver about the cut wires. I also accept that the president called the respondent about the cut wires on the key exchange day.

15. The courts have said that an adverse inference can be drawn against a party where without sufficient explanation, they fail to produce evidence or call a witness expected to provide supporting evidence. An adverse inference should only be drawn after a “prima facie” case has been established by the party bearing the burden of proof (see *Port Coquitlam Building Supplies Ltd. v. 494743 B.C. Ltd.*, 2018 BCSC 2146). The words “prima facie” mean that the applicant’s case appears on its face to have merit. Again, without explanation, the respondent did not submit any evidence or submissions at this hearing.
16. Considering that I accept the cut wire conversation happened, that it happened at the time the respondent transferred the truck, and the repair invoice shows wiring repairs, I find the applicant has established a prima facie case that the respondent cut the wires. I am mindful that the applicant did not perform the repairs until 4 months after the key exchange. However, I find the time gap alone not enough to refute the applicant’s prima facie case. I draw an adverse inference against the respondent for his failure to provide any submissions or evidence to refute the applicant’s version of events. So, I find that the respondent cut the wires. I also accept that the cut wires would make the computer and electronic logbook inoperable. I find that the respondent is responsible for the cost to repair the damage caused by the cut wires.
17. As mentioned above, the June 2019 invoice mentions wiring and E-Logger repairs. However, the invoice also includes a new alternator, a new valve height sensor, a new scanner, and glass replacement. Without an explanation on how these items relate to the cut wires, I find they do not. I find the respondent is not liable for these additional repair costs.
18. The invoice does not separate the labour costs, which were \$1,020.00 for all the repair work. On a judgement basis I will allow \$800.00 for the wiring related labour, plus \$32 for the shop fee. I also allow \$553.97 for the parts and troubleshooting

related to the wiring. I find the respondent must reimburse the applicant a total of \$1,455.27, inclusive of GST for repairing the cut wires.

19. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the repair costs from June 20, 2019, the invoice date, to the date of this decision. This equals \$19.75.
20. 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. Even though the applicant was only partially successful, I will allow reimbursement of \$175.00 in tribunal fees. The applicant claimed no dispute-related expenses.

## **ORDERS**

21. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$1,650.02, broken down as follows:
  - a. \$1,455.27 as reimbursement for wiring repairs,
  - b. \$19.75 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$175.00 in tribunal fees.
22. The applicant is entitled to post-judgment interest, as applicable.
23. 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.
24. 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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Trisha Apland, Tribunal Member