



Civil Resolution Tribunal

Date Issued: May 4, 2020

File: SC-2019-009402

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Vanderhoek v. Pasutto*, 2020 BCCRT 486

BETWEEN:

LUCAS VANDERHOEK

APPLICANT

AND:

JUSTIN PASUTTO

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Butch Bagabuyo

INTRODUCTION

1. This is a claim for unpaid wages. The applicant, Lucas Vanderhoek, claims that the respondent, Justin Pasutto, owes him \$1,174.50 for 76.5 hours of boat-cleaning services.

2. The respondent says the applicant is only entitled to \$721.50, for 48.1 hours of work based on his business' time tracking software. The respondent has not paid the \$721.50.
3. Both parties are 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. In this dispute, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I find that an oral hearing is not necessary, and I can fairly hear this dispute through written submissions.
6. I have no jurisdiction to grant entitlement to wages available under the *Employment Standards Act* (ESA). Only the ESB has jurisdiction to order compensation payable under the ESA. However, I find the tribunal has jurisdiction over the applicant's unpaid wages claim based on the law of contract, which falls under the tribunal's small claims jurisdiction over debt and damages.
7. 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.

8. 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

9. The issue in this dispute is to what extent, if any, the respondent owes unpaid wages to the applicant.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicant must prove his claim, on a balance of probabilities. While I have read and considered all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. The applicant says he worked for the respondent's business called "Scrub Captain", where he cleaned boats for \$15.00 per hour. The applicant says he worked 76.5 hours. As such, he claims \$1,147.50 for unpaid wages. It is undisputed that the applicant worked at Scrub Captain from April 27, 2019 to May 28, 2019. It is also undisputed that the applicant has not been paid.
12. Between August 29, 2019 and October 30, 2019, the applicant says he repeatedly texted the respondent asking about getting his pay cheque. The respondent replied that he expected to hear from him, and they should meet. Ultimately, for one reason or another, the parties were not able to agree on a date to meet. I note that during their text messages neither the applicant nor the respondent says anything about the hours worked or the amount owed. The respondent did not explain why he could not mail the applicant's pay cheque or pay him online.

13. The applicant provided a statement from the manager of Scrub Captain, JV, as part of his evidence. In a February 12, 2020 statement, JV confirmed that the applicant had worked 76.5 hours as claimed. I note that JV is the brother of the applicant and JV's statement was prepared for this dispute.
14. On further review of the evidence, I find that on August 1, 2019 JV emailed the hours of all the workers at Scrub Captain to the respondent. In that email, JV told the respondent that from April 27 to May 28, the applicant had worked a total of 76.5 hours and was owed \$1,147.50. In that email, JV asked the respondent when he could pick up the cheques so he could pay the workers. I note that JV's email was part of the respondent's evidence, and JV's email was part of the respondent's business operation. I also note that JV's email was made before this dispute have begun. I find JV's August 1, 2019 email significant and persuasive.
15. The respondent says that according to his business time tracking software, the applicant only worked 48.10 hours, which he says amounts to only \$721.50. The respondent provided a copy of a printout showing times, dates, and some time reductions. The respondent did not explain how the times were entered or recorded into the respondent's business time tracking software. I note that the printout was prepared more than a month after JV emailed the respondent with the hours of all the workers at Scrub Captain.
16. The respondent says that even the applicant's brother, JV, who "was the manager...cannot verify the hours his brother is claiming to have worked". I note that the respondent did not provide any statement from JV or an explanation why he did not obtain a statement from JV. I also note that the 76.5 hours claimed by the applicant are the same exact hours that JV told the respondent in his August 1, 2019 email. In effect, JV has verified the applicant's hours.
17. As part of his evidence, the respondent submitted an unsigned "settlement and release" document dated October 8, 2019. I place no weight on an unsigned October 8, 2019 settlement agreement, in which the respondent asks the applicant

to admit he only worked 48.1 hours. There is no evidence the applicant has ever agreed he only worked 48.1 hours.

18. The respondent also included a copy of a purported sub-contractor agreement between Scrub Captain and JV. The applicant is not a party to this agreement, and it does not address the applicant's wages. As such, I find this document not relevant to this dispute and I place no weight on it.
19. The respondent submitted a September 4, 2019 cheque for \$721.50, made payable to the applicant as evidence of his willingness to pay. It is unclear if the respondent's September 4, 2019 cheque was ever offered to the applicant or whether the applicant declined it. It is undisputed that the respondent never gave the September 4, 2019 cheque to the applicant.
20. The applicant also provided statements from his co-workers, KS and LO. Both co-workers confirmed that the applicant worked with them at Scrub Captain. They also say that like the applicant, they too were not paid. As mentioned earlier, it is undisputed that the applicant worked for the respondent's business. These statements do not speak about the actual hours worked. As such, I put no weight on them.
21. On the evidence, I find that the applicant worked a total of 76.5 hours, and so the respondent owes the applicant \$1,147.50.
22. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the \$1,147.50 calculated from May 28, 2019, which was the last date the applicant worked at Scrub Captain to the date of this decision. This equals \$21.03.
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 \$125.00 in tribunal fees. The applicant did not claim dispute-related expenses.

24. I turn to the respondent's claim for \$1,000 in dispute-related expenses for his time spent dealing with this dispute. The tribunal typically does not award a party expenses for their own time in dealing with a dispute, consistent with the tribunal's practice of not generally awarding legal fees. For that reason, and the fact the respondent was not successful, I do not order compensation for his time spent on the dispute.

ORDERS

25. Within 10 days of this decision, I order the respondent to pay the applicant a total of \$1,293.53, broken down as follows:

- a. \$1,147.50 in debt,
- b. \$21.03 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125.00 for in tribunal fees.

26. The applicant is entitled to post-judgment interest, as applicable. The respondent's claim for dispute-related expenses is dismissed.

27. 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. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

28. 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.

Butch Bagabuyo, Tribunal Member