



# Civil Resolution Tribunal

Date Issued: May 22, 2020

File: SC-2019-007222

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Heavytech Industries Inc. v. Kamloops Hotshot & Courier Ltd.*,  
2020 BCCRT 560

B E T W E E N :

HEAVYTECH INDUSTRIES INC.

**APPLICANT**

A N D :

KAMLOOPS HOTSHOT & COURIER LTD. and Satinderpal Gill

**RESPONDENTS**

A N D :

HEAVYTECH INDUSTRIES INC.

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## **INTRODUCTION**

1. This dispute is about truck repairs. The applicant, Heavytech Industries, Inc. (Heavytech), repaired a truck belonging to the respondent, and applicant by counterclaim, Satinderpal Gill. Mr. Gill is an employee or principal of the respondent, Kamloops Hotshot & Courier Ltd. (Hotshot).
2. Heavytech claims \$3,378.03 from the respondents for unpaid truck repairs. Mr. Gill says he owes nothing because the truck was not repaired properly, and counterclaims against Heavytech for \$4,800 in lost income and additional repairs. Hotshot says the truck is owned, registered, and operated by Mr. Gill, and that it owes nothing because the dispute is between Heavytech and Mr. Gill.
3. Heavytech and Hotshot are each represented by an employee in this dispute. Mr. Gill 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 only, as 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, 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.

## **ISSUES**

8. Were Heavytech's truck repairs faulty, and if not, do the respondents owe Heavytech \$3,378.03 for repairs, or another amount?
9. If Heavytech's repairs were faulty or late, to what extent, if any, did they cause the claimed \$4,800 in damages to Mr. Gill?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, Heavytech bears the burden of proving its claim, on a balance of probabilities. Similarly, Mr. Gill must prove his counterclaim on the same standard of proof. I have read all the parties' evidence and submissions, but I have only addressed the evidence and arguments to the extent necessary to explain my decision.

### ***Were Heavytech's truck repairs faulty, and if not, do the respondents owe Heavytech \$3,378.03 for repairs, or another amount?***

11. I will first address Hotshot's liability for Heavytech's claimed July 25, 2018 repair invoice for \$3,378.03. Hotshot says the truck is owned, registered, and operated by Mr. Gill, and that the dispute is only between Mr. Gill and Heavytech. Mr. Gill does not deny this. Heavytech's arguments were all directed to Mr. Gill's non-payment, not Hotshot's, and Heavytech's invoice was addressed to Mr. Gill, not Hotshot. Having considered the evidence, I find that Hotshot is not liable for Heavytech's repair invoice. I dismiss Heavytech's claims against Hotshot.

12. The undisputed evidence is that Heavytech repaired the truck's head gasket in June 2017. Heavytech again repaired the truck's head gasket in July 2018, and replaced its water pump. According to the July 25, 2018 invoice at issue here, the 2018 repairs also included cleaning the head tank, checking the head for cracks and performing pressure and leak tests, as well as replacing engine oil and coolant. Heavytech admits one of its employees cracked a turbo return line during the 2018 repairs, which Heavytech fixed for free. Mr. Gill does not deny that Heavytech performed the 2018 repairs, although he takes issue with their quality as discussed below.
13. I find that Mr. Gill initially expected the 2018 head gasket repairs to be covered under a Heavytech warranty, but after inspecting the truck Heavytech determined that its warranty did not apply. More on this below. Mr. Gill obtained replacement parts on his own and instructed Heavytech to use them. Heavytech permitted Mr. Gill to leave without paying following the repairs, and the invoice remains unpaid.
14. Mr. Gill says his truck began overheating less than 70 kilometres after leaving Heavytech in July 2018. I find Mr. Gill immediately reported this issue to Heavytech, but declined to return to Heavytech and instead completed the drive to Kamloops, BC, a distance of several hundred kilometres. On the evidence before me, I find Mr. Gill did not stop to have the truck checked by a mechanic.
15. Mr. Gill had the truck's radiator replaced on August 3, 2018, at which time the mechanic, RG, thought there was a problem with the head gasket, which I discuss further below. Mr. Gill continued to use the truck for work, although he says it took him longer than usual to do jobs because he needed to pull over and vent out pressure and add coolant when necessary.
16. Heavytech says that when it received the truck for repair, there were signs it had been overheating and that it had been driven too far, so it did not qualify for warranty coverage. According to the 2017 and 2018 Heavytech invoices, the truck was driven 111,248 kilometres between the two head gasket repairs.

17. Neither party submitted evidence about the Heavytech warranty's terms. However, section 18(c) of the *Sale Of Goods Act* says that goods supplied under a contract of sale carry an implied condition that the goods will be durable for a reasonable period of time having regard to the use to which they would normally be put and all of the surrounding circumstances of the sale. No evidence was submitted about the expected lifespan of a head gasket in this truck. However, I note that the head gasket was previously replaced in 2017 after the truck had been driven 168,305 kilometres since being sold new. On balance, I find a second replacement after an additional 111,248 kilometres and 1 year of operation, regardless of any overheating, is a reasonable period of time. Further, there is no evidence that Heavytech's 2017 repairs were faulty. So, I find Heavytech did not break any warranty for the 2017 repairs.
18. I find Mr. Gill's replacement parts for the 2018 repairs are not covered under any warranty, because Heavytech did not supply them. I also find there is no evidence that any of the parts supplied by Heavytech for the 2018 head gasket repairs were defective. However, I find Heavytech was required to install all the truck parts properly when performing the 2018 repairs.
19. So, did Heavytech perform the 2018 repairs properly? Where deficient work is alleged, the burden of proof is on the party asserting the defects. Here, I find there was an oral contract that Heavytech would replace the truck's head gasket using the parts supplied by Mr. Gill, as well as a turbo part and the water pump. So, Mr. Gill must prove on a balance of probabilities that the 2018 Heavytech repairs were not of reasonable quality, as stated in *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124.
20. Where a dispute's subject matter is technical or beyond common understanding, expert evidence is required to help the decision-maker determine the appropriate standard of care: see *Bergen v. Guliker*, 2015 BCCA 283, paragraphs 124 to 131. I find the same principle applies in determining whether the repairs performed under

the parties' contract were of reasonable quality, which I find requires expert evidence.

21. Mr. Gill says he took the truck to other mechanics, who determined that the repairs were faulty. Mr. Gill also says that Heavytech did not machine the head before reinstalling it, which was a required step, and that he replaced the truck's turbo in November 2018. However, Mr. Gill does not claim to be a mechanic or an expert in engine repair.
22. Mr. Gill provided statements from KC, a Red Seal certified mechanic, and RG, the Red Seal certified mechanic who repaired the truck's radiator. I find the statements are expert evidence. I also find that none of this expert evidence says that Heavytech's repairs were of poor quality, or that they caused the truck's ongoing problems. KC said head gasket replacements usually took him 10-12 hours, and included inspecting the engine block for flatness, but he did not say the head necessarily needed to be machined as Mr. Gill argues. RG said that the truck's radiator was "plugged solid" when he inspected it on July 30, 2018, and badly needed replacement. RG also said the head gasket was "blown", but that he had seen trucks with head gasket issues continue driving for many months with proper daily maintenance including adding coolant and using an allen key tool. RG did not identify the cause of the truck's head gasket issue, or say how severe it was, or how long Mr. Gill would have been able to operate the truck before replacing the gasket.
23. I note Mr. Gill never mentioned adjusting the engine with an allen key. Further, Mr. Gill drove the truck several hundred kilometres after the Heavytech repairs, while he knew it was overheating, and without having the "plugged solid" radiator diagnosed. Mr. Gill also admits the radiator problem both contributed to the head gasket failing so quickly after the 2018 Heavytech repairs, and caused the truck "not to cool down." I find the expert evidence failed to rule out that Mr. Gill's continued operation of the truck while it was overheating, including with a plugged radiator, was the likely cause of the truck's issues. The expert evidence also did not address whether

the parts provided by Mr. Gill may have been defective and responsible for the truck's issues.

24. Mr. Gill says Heavytech was supposed to inspect the truck for any possible failures that could cause overheating, not just the head gasket. However, I find that argument is unsupported by any evidence. Mr. Gill argues that he initially expected the 2018 Heavytech repairs to be a warranty replacement of the truck's head gasket. There is no evidence that Mr. Gill requested, or that Heavytech agreed to, a broader mechanical inspection of the truck, although Heavytech noticed that the truck's water pump needed replacing and performed that work. I find the evidence does not show Heavytech was obligated to inspect the radiator or other parts of the truck.
25. While I acknowledge that further head gasket issues appeared to arise shortly after Heavytech completed the 2018 repairs, I find Mr. Gill has not met his burden of proving that those problems resulted from faulty Heavytech repair work. Overall, I find Mr. Gill has not proven that defective Heavytech repairs caused the truck's head gasket problem and other mechanical issues. I place significant weight on the fact that no experts connected the truck's issues with faulty Heavytech repairs, or addressed the effects of Mr. Gill driving the truck several hundred kilometres home from Alberta while it was overheating and had a plugged radiator.
26. As a result, I find Mr. Gill owes Heavytech for the 2018 truck repairs. Mr. Gill says Heavytech agreed not to charge labour on the repairs, but there is no evidence to support that, apart from the Heavytech invoice showing that no parts or labour were charged for the turbo repair. I find Mr. Gill was required to pay for both parts and labour. I will discuss the amount owed below, in the context of Mr. Gill's counterclaims.

***If Heavytech's repairs were faulty or late, to what extent, if any, did they cause the claimed \$4,800 in damages to Mr. Gill?***

27. I found above that Heavytech's 2018 repairs were not proven to be faulty. So, I find that Heavytech does not owe Mr. Gill for later truck repairs. I note that even if I had found Heavytech was responsible for further repairs, it is not clear from Mr. Gill's submissions exactly which amounts he claims and whether he personally paid for all of them.
28. Mr. Gill uses his truck for work. Because I found above that Heavytech's 2018 repairs did not cause the truck's ongoing problems, so I find Heavytech is not responsible for any of Mr. Gill's lost income after the repairs were completed on July 25, 2018. However, Mr. Gill also says Heavytech took too long to repair the truck, which caused him to miss delivery work with his truck before July 25, 2018. Mr. Gill says Heavytech had the truck from June 17, 2018 to July 25, 2018, 38 days.
29. A Hotshot employee said Hotshot could have provided Mr. Gill with approximately 5 weeks of work during the time his truck was being repaired. Mr. Gill provided a spreadsheet of delivery jobs in June 2018 and July 2018 together with hourly charges and waybill numbers, but no other supporting documentation.
30. Mr. Gill did not say exactly when the repairs should have been completed, which specific jobs he missed due to repair delays, or how much his losses were. There is no evidence that the parties ever agreed to a repair deadline, or that Mr. Gill demanded the work be completed by a specific date, although he says he contacted Heavytech about its progress several times. Mr. Gill agrees that the parties spent some time discussing warranties and payment, and there is no evidence refuting Heavytech's argument that there were some delays waiting for parts not provided by Mr. Gill. Mr. Gill also did not explain why he did not rent a truck or make other arrangements to continue working, given that he left his truck in a different province for repairs. There is no expert evidence about whether the delays waiting for parts or discussing payment were out of the ordinary in these circumstances.



31. On balance, I find there is insufficient evidence that Heavytech failed to perform the 2018 truck repairs in a reasonably timely manner. While I acknowledge that Heavytech did not appear to make the repairs its top priority, in the circumstances I find the warranty and payment discussions, parts ordering, and lack of agreement on a completion date means completing the repairs within 38 days was reasonable, if not ideal.
32. Therefore, I find Heavytech did not spend an unreasonable length of time dealing with the truck, and so Heavytech is not responsible for Mr. Gill's lost wages. I find Mr. Gill owes Heavytech the claimed \$3,378.03 for the repairs.

### ***Tribunal Fees, Expenses, and Interest***

33. The *Court Order Interest Act* applies to the tribunal. Heavytech is entitled to pre-judgement interest on \$3,378.03 in debt. Heavytech's invoice did not specify payment terms or deadlines, but Heavytech says that it often gives customers 30 days to pay. On balance, I find that the July 25, 2018 invoice was due in 30 days, on August 24, 2018. So, interest is calculated from August 24, 2018 until the date of this decision. This equals \$109.12.
34. 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. Heavytech was successful in its claims against Mr. Gill only, so I find it is entitled to \$175 in tribunal fees from Mr. Gill. Mr. Gill was unsuccessful in his counterclaims, so I do not order reimbursement of his tribunal fees. Kamloops Hotshot & Courier paid no tribunal fees. No dispute-related expenses were claimed.

### **ORDERS**

35. Within 14 days of this decision, I order Mr. Gill to pay Heavytech \$3,662.15, broken down as follows:
  - a. \$3,378.03 in debt for truck repairs,

- b. \$109.12 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 for tribunal fees.

36. Heavytech is entitled to post-judgment interest as applicable. Heavytech's claims against the respondent, Kamloops Hotshot & Courier Ltd., are dismissed. Mr. Gill's counterclaims against Heavytech are dismissed.
37. 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 a Ministerial Order 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.
38. 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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Chad McCarthy, Tribunal Member