



Civil Resolution Tribunal

Date Issued: May 25, 2020

File: SC-2019-010798

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bougie v. Pacific Ropes Contracting Ltd.*, 2020 BCCRT 569

BETWEEN:

RYAN BOUGIE

APPLICANT

AND:

PACIFIC ROPES CONTRACTING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about a rope training certificate program. The applicant, Ryan Bougie, says that he signed up with the respondent, Pacific Ropes Contracting Ltd., to recertify his level 2 qualification but the respondent's instructor started an

investigation against him. The applicant says this resulted in his not being able to take the assessment required to recertify. The applicant seeks \$2,467.50, which he says he paid for training and assessment. The applicant represents himself.

2. The respondent says that it provided the training, but the assessment was carried out by a third party. It says it was the third party who decided that the applicant had not fulfilled the requirements necessary to take the assessment. It says it is not responsible for refunding the applicant's tuition and also says that the amount claimed is not accurate. The respondent is represented by an organizational contact.

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. In some respects, this dispute amounts to a "he said, it said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

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. The issue in this dispute is whether the respondent must reimburse the applicant for the cost of the training program.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant must prove his claim on a balance of probabilities. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
9. It is undisputed that the parties entered into an agreement for training services. The respondent is a training facility for the Industrial Rope Access Trade Association (IRATA). The applicant needs to be recertified every 3 years. During his last attempt at recertification, which is the subject of this dispute, the IRATA assessor refused to allow the applicant to take the assessment because of issues with the applicant's logbook. The applicant says he was allowed to take the test in the past with the same logbook so he was led to believe he would be able to do so again.
10. The applicant previously recertified after training with the respondent in 2016. I note that the respondent's May 26, 2016 email to the applicant warned him about issues about his logbook. In 2019, when his certification was about to expire, the

respondent sent the applicant an email inviting him to take the necessary recertification training with them again.

11. On March 1, 2019, the respondent emailed the applicant and told him to be sure that he had his logbook when he started training and that he would not be assessed if he did not. The email stated that the logbook had to be filled in a certain way, and with all the applicant's hours entered. The email provided a link to examples of how the logbook should be completed.
12. The March 3, 2019 registration form shows that the applicant was originally scheduled to take the course in April 2019. It is undisputed that he did not take the course until the week of June 10, 2019. The registration form stated in red capitalized letters that "correctly completed and signed off logbooks must be presented." It also said that logbooks had be present on the first day of training or else the student would not be assessed and that there were no exceptions.
13. The applicant signed the registration form. I find that the evidence is clear that the applicant was warned about the necessity of presenting a proper logbook and that he might otherwise not be assessed. The applicant does not dispute this but rather argues that despite warnings he was allowed to take the test in the past.
14. The applicant took the course but failed the assessment in June 2019. The evidence shows that the applicant was warned about his faulty logbook but the assessor at that time decided to allow him to take the test. After the applicant failed the assessment, he sent the respondent an email saying that his license was suspended, and he had to take the assessment again. He signed up for two more days of training on July 22 and 23, 2019. The examination was scheduled for July 26, 2019. The applicant was not allowed to take the assessment because of his logbook's state. The respondent says that it is up to the individual assessor to decide whether to allow the student to take the assessment. The registration agreement does not say that registration means that the student is guaranteed an assessment. I find the respondent's position reasonable. The evidence does not show the respondent promised the applicant a right to take the assessment.

15. The instructor, J, provided an August 7, 2019 letter explaining what occurred. He said that when the applicant came back after failing in June 2019, J looked through the applicant's logbook. J's letter notes multiple issues with the logbook including missing detail, signatures, and inaccurate calculation of hours. J stated that the applicant said that this did not matter because he was not qualifying but recertifying. J said that he gave the applicant a chance to provide additional information and provide phone numbers and validation letters from previous employers. J said that he told the applicant that he would run it by the scheduled assessor, W, after this was done.
16. J's letter also said that he spoke to W who said that J should report the logbook to IRATA, but J wanted to give the applicant a chance to fix the logbook. J says that when he informed the applicant about the defective logbook in July 2019 the applicant then blamed the respondent for allowing him to use the logbook in the past, both in June 2019 and when he previously certified. According to J, the applicant also said that he did not have time to fix it. J says that the applicant left the logbook with him but did not then provide contact information or get any letters of validation. J says that he sent photos of the logbook to W who sent them to IRATA's head office. IRATA made the decision to pull the logbook, not allow the applicant to assess, and began an investigation.
17. IRATA investigated and sent the applicant a letter on December 13, 2019 noting that the applicant had logged over 500 unverified rope access hours and this made it question the truthfulness of the other entries. IRATA found there was a total disregard of its policies and said the applicant could not train or assess for 6 months and if he did return, he had to start back at level 1.
18. The applicant does not dispute the accuracy of any of this information. Rather, he says that he managed to get assessed with his faulty logbook on two previous occasions and the only reason he was not allowed this time was because J was biased against him. The applicant has provided no proof of this. There are no emails, records of communication, or specific examples showing that J was biased.

Also, as noted, J gave the applicant an opportunity to fix the logbook. I find that applicant has not proved his assertion that J was biased.

19. J says that when he tried to give the applicant a chance to fix the reports in his logbook, the applicant did not do anything. The applicant admits this but says that he did not have time. I note that the first class was July 22nd and the exam was July 26th. This suggests there was some time to provide additional information, but the applicant did not do anything in that timeframe. The applicant says that the respondent had his logbook. J says that the applicant could have added information to it even while it was in the respondent's possession. The applicant says he would have to get information from people "all over the world" but does not explain who these people are and why he could not phone or email them regardless of where they lived. I do not accept the applicant's submission that he could not contact the people he claimed he had done work with to verify his hours.
20. The applicant also says that the assessor, in this case W, is not really an objective third party because he also does some work for the respondent. The respondent does not deny this and points out that a student's instructor is not allowed to assess their student. W was not the applicant's instructor so there was no reason he could not assess the applicant or decide not to assess the applicant.
21. Finally, I note that J, W, and the respondent were not the ones who ultimately decided not to assess the applicant. It was IRATA who made that decision after reviewing the applicant's logbook. The applicant argues that the respondent should not have informed IRATA about the faulty logbook and it should have let him take the exam as the respondent had in the past. However, the evidence shows that the respondent does not have the final authority about who can take the test. That is up to IRATA's representative administering the exam. The respondent could not guarantee the applicant would be allowed to take the test and, as already noted, according to the evidence never promised it could.
22. Further, the respondent warned the applicant on several occasions that he might not be able to take the assessment. I find the applicant's submissions that he

thought he could rely on what happened in the past, where he was allowed to take the test using the same logbook, as a promise as to what would happen in the future unreasonable. The respondent did not have control over whether the applicant would be allowed to take the test and the applicant has not provided any evidence that it did so. Given my conclusions above, I dismiss the applicant's claim.

23. I also note that even if I had found the applicant successful, I would not have awarded him the \$2,467.50 claimed. Most of this amount was paid for the training and testing in June 2019 which the applicant did fully participate in, although he did not successfully pass the assessment. Therefore, he would not have been entitled to a reimbursement of those fees.

TRIBUNAL FEES AND EXPENSES

24. 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. Here the applicant was unsuccessful, so he is not entitled to reimbursement of his tribunal fees. There was no request for dispute-related expenses.

ORDER

25. I dismiss the applicant's claims and this dispute.

Kathleen Mell, Tribunal Member