



# Civil Resolution Tribunal

Date Issued: June 9, 2020

File: SC-2020-000367

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chohan Freight Forwarders Ltd. v. Wilks*, 2020 BCCRT 637

B E T W E E N :

CHOHAN FREIGHT FORWARDERS LTD.

**APPLICANT**

A N D :

FABIAN WILKS

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Rama Sood

## INTRODUCTION

1. This dispute is about a trucking contract. The applicant, Chohan Freight Forwarders Ltd. (Chohan), says it hired the respondent, Fabian Wilks, as an independent trucker. Chohan says Mr. Wilks quit before his start date. Chohan says Mr. Wilks must reimburse it \$3,141.56 for costs that it incurred on Mr. Wilks's behalf. Mr. Wilks denies he is required to reimburse Chohan.

2. Chohan is represented by an employee, CH. Mr. Wilks is self represented.

## **JURISDICTION AND PROCEDURE**

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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.
5. The CRT 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 CRT 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 CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## **ISSUES**

7. The issues in this dispute are whether Mr. Wilks breached an agreement with Chohan, and if so, what remedy is appropriate.

## EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant, Chohan, bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. Mr. Wilks signed an agreement on December 2, 2019 to work as an independent contractor to transport goods for Chohan (agreement). The agreement also named Mr. Wilk's trucking company, Heaven's Light Transport Inc. (HLT), as a separate contracting party. Since Mr. Wilks signed the agreement, I find there was a binding agreement between Chohan and Mr. Wilks. I will not address the contractual relationship between the parties and HLT since HLT was not named as a party in this dispute.
10. Chohan says Mr. Wilks was supposed to start on December 15, 2019. It says it spent \$3,141.56 ahead of the start date for truck insurance, truck decal signs, and shipping costs to mail a license plate to Mr. Wilks (startup costs). On December 9, 2019, Mr. Wilks emailed Chohan that he declined its offer because he was offered a job closer to home. Chohan now seeks reimbursement of the startup costs it paid.
11. Despite what he wrote in the email, Mr. Wilks now says that he quit because Chohan did not advise him about the startup costs before he signed the agreement. He says Chohan emailed him a \$3,822.02 invoice for equipment on December 6, 2019. I find Mr. Wilks is mistaken. At the time, Chohan was trying to ensure Mr. Wilks was equipped with necessary gear. I accept Chohan's explanation that the invoice was a sample list of the type of gear Mr. Wilks would need. I also find Mr. Wilks knew it was a sample list because he responded that he needed 12 straps and a tarp.
12. Mr. Wilks also says the contract should be void because Chohan did not disclose the startup cost to him before he signed the agreement and he says he felt pressured to take the job. I find Mr. Wilks' arguments are not credible.

13. I note that Mr. Wilks initialed each page of the agreement. I infer this means he had the opportunity to read the agreement before he signed it. I find the agreement clearly stated in paragraph 8.03 that if Mr. Wilks breached the agreement, he would reimburse Chohan for all costs, expenses and damages. It also stated in paragraph 8.04 that Chohan would insure equipment, the trailer, and cargo at Mr. Wilks's expense. I find Mr. Wilks would have been aware of insurance and truck decal costs based on his almost 20 years of experience as a truck driver and the fact that he recently bought a truck. Further, Mr. Wilks did not provide any evidence that the startup costs were unreasonable.
14. I also do not accept that Mr. Wilks felt pressured to sign the agreement. As discussed above, Mr. Wilks stated clearly in his email that he was declining Chohan's offer because he found work closer to home. He did not mention anything about the startup costs or feeling pressured into signing the agreement.
15. Did Mr. Wilks breach the agreement? According to paragraph 2.04 of the agreement, Mr. Wilks could not terminate the agreement for the first 180 days unless Chohan agreed. There is no evidence before me that Chohan agreed to Mr. Wilks terminating the agreement. As a result, I find Mr. Wilks breached the agreement when he informed Chohan on December 9, 2019 that he quit.
16. What remedies are available to Chohan for the breach of contract? I am satisfied that Mr. Wilks breached a fundamental term of the agreement that he would work as an independent contractor. A fundamental breach of contract is a breach that destroys the whole purpose of the contract and makes further performance of the contract impossible (see *Bhullar v. Dhanani*, 2008 BCSC 1202). Damages for breach of contract are intended to place an applicant in the position they would have been in if the contract had been carried out as agreed (see *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319 at paragraph 39).
17. I am satisfied that in this case Chohan is entitled to recover the startup costs it incurred in anticipation of Mr. Wilks's start date. Chohan seeks \$3,141.56 in damages. Since Mr. Wilks has not disputed it, I accept that Chohan paid ICBC

\$2,893.27 for insurance on his behalf based on receipts it produced. Chohan also says it shipped license plates to Mr. Wilks on December 9, 2019, but it did not state the shipping cost. Considering the size of the package that was shipped, I find \$25 is a reasonable amount for shipping costs. This comes to \$2,918.27. Since Chohan did not explain how it arrived at \$3,141.56, I find it is entitled to \$2,918.27 in damages and I dismiss the rest of its claim.

18. The *Court Order Interest Act* applies to the CRT. Chohan is entitled to pre-judgment interest on \$2,918.27 from December 9, 2019, the date Mr. Wilks breached the contract, to the date of this decision. This equals \$28.84.
19. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find Chohan is substantially successful and so it is entitled to reimbursement of \$125 in CRT fees. Chohan did not seek dispute-related expenses.

## **ORDERS**

20. Within 30 days of the date of this order, I order Fabian Wilks to pay Chohan Freight Forwarders Ltd. a total of \$3,072.11, broken down as follows:
  - a. \$2,918.27 as reimbursement for damages,
  - b. \$28.84 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 in CRT fees.
21. The applicant is entitled to post-judgment interest, as applicable.
22. Under section 48 of the CRTA, the CRT 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 CRT's final decision.

23. 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 CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
24. Under section 58.1 of the CRTA, a validated copy of the CRT'S order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Rama Sood, Tribunal Member