



Civil Resolution Tribunal

Date Issued: July 29, 2020

File: SC-2020-001569

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Raju v. TD Systems Ltd.*, 2020 BCCRT 837

BETWEEN:

VICTOR RAJU

APPLICANT

AND:

TD SYSTEMS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about contractual notice under a private employment contract.
2. The applicant Victor Raju says the respondent TD Systems Ltd. (TD Systems) terminated his employment without cause and failed to pay the whole required 4 weeks' notice under their contract. The applicant claims \$2,443.12 for the notice

and \$308.00 in legal fees. Mr. Raju says the \$2,443.12 is equivalent to the missing 1.5 weeks' pay.

3. TD Systems says the employment contract provided that it could terminate Mr. Raju's employment at any time, without cause, by providing written notice, pay in lieu of notice or some combination of the two, if that notice accorded with the *Employment Standards Act* (ESA). TD Systems says it terminated Mr. Raju's employment on August 21, 2019, as permitted by the contract. TD Systems asks me to dismiss the dispute.
4. Mr. Raju is self-represented. TD Systems is represented by business contact JZ.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT 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.
6. 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.
7. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
8. Under section 11 of the CRTA, the tribunal may refuse to resolve a claim or a dispute within its jurisdiction if it considers that the claim would be more appropriate for another legally binding process or dispute resolution process.

9. A preliminary issue is whether Mr. Raju's claim is within the CRT's jurisdiction, or whether it falls within the Employment Standards Branch (ESB)'s jurisdiction under the ESA.
10. An employee is only prevented from bringing a civil action when the employee is seeking to enforce a right that they only have under the ESA. Where an employment contract provides certain benefits, the employee may pursue a remedy by civil action, such as through a CRT dispute: see the non-binding decision in *Bellagama v. International Tentnology Corp.* 2018 BCCRT 549 at paragraph 5, which I find persuasive.
11. I find that the claimed remedy, for contractual notice, arises under the parties' private employment contract. Due to the contract's language, the contractual notice is determined based on the ESA. However, the claim itself is not for ESA entitlements. I therefore find that the CRT, not the ESB, has jurisdiction over this dispute.
12. 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.
13. 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.

ISSUE

14. The issue in this dispute is whether TD Systems provided Mr. Raju with adequate notice or pay in lieu of notice under the parties' contract.

EVIDENCE AND ANALYSIS

15. In a civil claim such as this, Mr. Raju 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.
16. The parties agree to the following facts:
 - a. Mr. Raju commenced employment with TD Systems on December 17, 2018, as a mechanical project engineer on a full-time basis.
 - b. The parties entered into an initial employment contract dated November 15, 2018 and a subsequent contract dated February 22, 2019 (the Contract).
 - c. On August 9, 2019, Mr. Raju resigned his position and provided four weeks' written notice, as required by the Contract, with the last day of work to be September 6, 2019.
 - d. On August 21, 2019, TD Systems terminated Mr. Raju's employment with one week's written notice. Mr. Raju was paid until the last day of employment on August 28th.
17. TD Systems' August 21, 2019 letter indicates that it accepts Mr. Raju's resignation from his position. The Record of Employment lists the reason for the end of his employment being that Mr. Raju quit.
18. Under the Contract Mr. Raju could resign at any time by providing 4 weeks' written notice to TD Systems. The Contract also provides that TD Systems could terminate Mr. Raju's employment "at any time without cause by providing..." "written notice, pay in lieu of notice or a combination of both in the sole discretion of TD, in accordance with your entitlements under the British Columbia *Employment Standards Act*."
19. The parties disagree about whether TD Systems could terminate Mr. Raju's employment during his resignation notice period under the Contract.

20. The Contract provides that TD Systems can terminate Mr. Raju's employment at any time. On this basis, I find that TD Systems was able to terminate Mr. Raju's employment, including during Mr. Raju's resignation notice period.
21. The agreed contractual notice upon TD Systems' termination is whatever the ESA would provide. Again, this dispute is not about Mr. Raju's statutory entitlements under the ESA. Rather, it is about Mr. Raju's contractual entitlements, which are based on the ESA's provisions that were expressly incorporated into the parties' contract.
22. Section 63(6) of the ESA says that where an employee gives notice of termination to the employer, and the employer then terminates the employee during the notice period, the employer must pay the lesser of (i) the amount of wages the employee would have earned for the remainder of the notice period or (ii) the amount the employer is liable to pay on termination.
23. For Mr. Raju, who worked for TD Systems for about 8 months, section 63 of the ESA requires either one week's written notice, payment in lieu of notice, or a combination. That is, TD Systems must either give one weeks' written notice to Mr. Raju, pay him for that week, or provide a combination of the two. That is what TD Systems did – it paid Mr. Raju one week's notice, during Mr. Raju's notice period.
24. Mr. Raju is not entitled to payment of wages he would have earned for the remainder of his notice period. I say that because the Contract provides for notice as set out in the ESA, and not more. So, the amount of required notice by TD Systems under the Contract is one week. One week is less than the payment of wages for the balance of Mr. Raju's notice period. Given the language in section 63(6) of the ESA, under the Contract I find that TD Systems was only required to pay the lower amount.
25. Because TD Systems paid Mr. Raju to August 28, 2019 and gave Mr. Raju one weeks' written notice that August 28 would be his last day, I find that TD Systems

met its contractual obligations. I dismiss Mr. Raju's claim to be paid for an additional 1.5 weeks.

26. Because I have dismissed the contractual claim, it follows that I dismiss Mr. Raju's claim for \$308 in legal fees.

27. 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. Because TD Systems was successful but did not pay CRT fees or claim dispute-related expenses, I make no order in this regard.

ORDER

28. I dismiss Mr. Raju's claims and this dispute.

Julie K. Gibson, Tribunal Member