



Civil Resolution Tribunal

Date Issued: August 12, 2020

File: SC-2020-000067

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hauki v. Kozak*, 2020 BCCRT 896

BETWEEN:

MADISON HAUKI

APPLICANT

AND:

AMANDA KOZAK

RESPONDENT

AND:

MADISON HAUKI

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about an agreement for babysitting services. The applicant, Madison Hauki, says that she provided babysitting services for the respondent, Amanda Kozak, when Ms. Kozak hired Ms. Hauki to travel with her to Vancouver Island for 5 weeks to stay at a property rented by Ms. Kozak. She says that Ms. Kozak did not pay for the babysitting services. Ms. Hauki also says that Ms. Kozak did not reimburse travel expenses and money for order-in food and groceries. Ms. Hauki claims a total of \$2,462.00.
2. Ms. Kozak says Ms. Hauki did not perform her job correctly and did not prove the number of hours she worked. She says that Ms. Hauki left early, and this caused additional travel costs because Ms. Hauki decided to fly home. Ms. Kozak also says that she paid for Ms. Hauki's food.
3. In her counterclaim, Ms. Kozak says there are ferry costs caused by Ms. Hauki not letting the children stay in Ms. Hauki's sleeping berth on the ferry and not cancelling her trip back. Ms. Kozak also says she had to arrange alternate childcare when Ms. Hauki left. Ms. Kozak further states she had to hire someone to move Ms. Hauki's mattress and also pay to replace a damaged bed sheet. She says there were cleaning costs because Ms. Hauki left her room and the house dirty. Ms. Hauki requests \$1,118.90. Ms. Kozak represents herself.
4. Ms. Hauki disputes that Ms. Kozak had to pay these costs or that she is responsible for any of Ms. Kozak's claims. Ms. Hauki represents herself.

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. In some respects, this dispute amounts to a “she said, she 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 CRT’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.
7. 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.
8. 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

9. The issues in this dispute are:
 - a. Whether Ms. Hauki properly provided the babysitting services under the agreement and, if so, what is the appropriate remedy.
 - b. Does Ms. Kozak owe Ms. Hauki for travel and food expenses?
 - c. Does Ms. Hauki owe Ms. Kozak for travel, childcare, cleaning and other expenses?

EVIDENCE AND ANALYSIS

10. In a civil dispute such as this, the applicant Ms. Hauki must prove her claim on a balance of probabilities just as Ms. Kozak must prove her counterclaim. 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.

Did Ms. Hauki properly provide the babysitting services under the agreement and, if so, what is the appropriate remedy.

11. It is undisputed that the parties agreed that Ms. Hauki would provide babysitting services while travelling with Ms. Kozak, who was in the final trimester of pregnancy, and Ms. Kozak's four other children. Ms. Hauki had babysat for Ms. Kozak before. The parties agree that Ms. Kozak prepared a contract, but Ms. Hauki did not sign it. Ms. Hauki says this was because she did not agree to its terms. Neither party provided the contract.

12. Ms. Kozak sent Ms. Hauki a text, which is in evidence but undated, saying that she had rented a house and Ms. Hauki would have her own space. Ms. Kozak stated that she wanted Ms. Hauki to help with loading the children into the car and taking them places until the new baby arrived. Ms. Kozak said that then she would be in the hospital for a day or less and only could do light activity for a few days after that. Ms. Kozak also said that she would pay for travel and any expenses. She further stated that she would be willing to fly Ms. Hauki back early if the baby arrived before the due date and if Ms. Hauki did not want to stay for a few weeks afterward. There is no other discussion of dates or pay in the text submitted in evidence. According to the ferry bookings the trip began on May 25, 2019 and there was a return trip scheduled for June 27, 2019.

13. Ms. Hauki says that she was to travel with Ms. Hauki for five weeks and they agreed to a flat rate of \$1,265, which was based on minimum wage of \$12.65 for 20 hours a week for five weeks. Ms. Hauki also says that they agreed she would receive \$15.00 per hour for any overtime hours over the 20 hours per week. Ms. Kozak did

not specifically dispute that this was the agreed rate.

14. Ms. Kozak's argument is that Ms. Hauki did not do her job properly or put in the hours. Ms. Kozak says that when she spoke to Ms. Hauki about this, Ms. Hauki decided to leave without notice. She says that Ms. Hauki did not properly care for the children and that Ms. Hauki also did not provide documentation of her hours at the time so Ms. Kozak could not pay her.
15. I find Ms. Kozak's submissions about how Ms. Hauki was to be paid inconsistent. She says that she expected Ms. Hauki to be more of a live-in nanny and that she would be responsible for the children whenever she was around. Then Ms. Kozak says that she could not pay Ms. Hauki because she did not provide a list of hours Ms. Hauki worked. This suggests that Ms. Hauki would have on and off hours and not be on call constantly. I also find Ms. Kozak's submission that Ms. Hauki should have been responsible for the children almost all the time inconsistent with Ms. Kozak's text saying that Ms. Hauki would have her own space and was responsible for loading the children in the car and taking them out places until the baby arrived.
16. Based on the evidence provided, I find that the agreement was to pay Ms. Hauki on an hourly basis. I also find that the agreed upon pay was \$12.65 minimum wage for 20 hours per week and then \$15.00 per hour for any time above that. Ms. Kozak did not dispute this in any detail and again she requested Ms. Hauki document her hours. In her subsequent submissions, Ms. Kozak acknowledged that she agreed to pay minimum wage but with Ms. Hauki's living expenses taken off her wage. I note that Ms. Hauki was not a live-in nanny and her staying with Ms. Kozak was only on a temporary basis. Ms. Hauki provided occasional babysitting services and therefore the *Employment Standards Act* does not apply including its provisions for deducting room and board. I find Ms. Kozak's suggestion that she would take Ms. Hauki's living expenses off her wage inconsistent with the text saying that Ms. Hauki's expenses would be covered.
17. As noted, the ferry receipt shows that the trip began on May 25, 2019 and there was a return trip scheduled for June 27, 2019. Ms. Kozak says that Ms. Hauki left after

three weeks so she is not entitled to five week's pay. Ms. Hauki says that when she agreed to leave town for five weeks, she gave up other employment opportunities so she should be paid for the full five weeks. I do not accept this submission. Ms. Hauki did not provide any evidence of lost opportunities. Therefore, I find that Ms. Hauki is only entitled to payment for the hours worked. Ms. Kozak submits she should not even be paid for that because Ms. Hauki's work was unsatisfactory.

18. The evidence shows that Ms. Kozak criticized Ms. Hauki's work and wanted her to be more available and perform cooking and other chores. Ms. Hauki was candid in submitting that she was 18 at the time and had never worked as a live-in nanny. She thought that she was correctly doing the job. Ms. Kozak did not provide evidence showing what the babysitting services required were aside from what is set out in the text message in evidence.
19. Ms. Kozak provided a text from a friend saying that on occasion when she was there with Ms. Kozak, Ms. Hauki was not taking care of the children at all and that on one occasion Ms. Hauki told the children to wait because she was drafting an email. Ms. Hauki admits this happened but stated that she had to respond urgently to an email and it did not take much time. Ms. Kozak also says that once when she was there one of the children went missing for a period. Ms. Hauki says that she was caring for a different child when this happened. Ms. Kozak says that on another occasion one of the children was hurt when their hand got jammed against a wall. Ms. Hauki acknowledges that this happened but argues that Ms. Kozak was present. I do not have sufficient evidence to determine whether Ms. Kozak was present or not when this occurred. Regardless, I do not find that these few instances show that Ms. Hauki was not fulfilling her babysitting tasks.
20. I accept Ms. Hauki's evidence that she was doing her job but that when others were present, she did not think she was solely responsible for the children. I also find this was reasonable because Ms. Kozak stated in the text that she wanted assistance, she did not state that she wanted Ms. Hauki to take over complete care of all the children even when Ms. Kozak was present. Ms. Kozak's expectations stated in her

submissions are not consistent with the requirements she set out in her text. I find that Ms. Kozak has not established that Ms. Hauki did not meet the terms of the babysitting agreement such that she should not have to pay her for hours worked.

21. The parties' arrangement broke down on June 12, 2019 when Ms. Kozak suggested reducing Ms. Hauki's pay. Ms. Kozak told Ms. Hauki that she was unhappy with the number of hours Ms. Hauki worked in the first two weeks and requested that she reduce her pay by 5 hours, or Ms. Hauki could make the time up. Ms. Hauki says this is what triggered her deciding to leave. I find that Ms. Kozak's complaint about Ms. Hauki's hours does not make sense because Ms. Kozak had her baby during the first two weeks and Ms. Kozak herself admits that Ms. Hauki worked 36 hours straight.
22. Ms. Hauki then booked a flight for June 13, 2019. I find that Ms. Hauki was justified in deciding to leave, particularly since Ms. Kozak's text stated that Ms. Hauki did not have to stay the full five weeks. Therefore, I find that Ms. Hauki is entitled to payment for the hours worked up until June 13, 2019.
23. Ms. Hauki provided documentation of the hours she worked. Ms. Kozak submits that she can prove that Ms. Hauki did not work these hours. However, Ms. Kozak did not provide any documentation showing this. I will detail the hours because Ms. Hauki submitted that she should be paid a flat fee for all five weeks plus overtime, but I find that she should only be paid for the hours she actually worked.
24. Ms. Hauki's document tracks the hours worked from Friday to Friday. The first week was from May 24 to May 28 which amount to 14.5 hours. At \$12.65 an hour this equals \$183.43. The second week is from May 31st to June 6th which is the week I infer Ms. Kozak had the baby as it shows Ms. Hauki taking care of the children constantly over two nights. I note that Ms. Hauki did not charge the hourly rate when working from 8 pm until 6 am but rather a flat rate of \$100. She also did not include these hours when calculating how many overtime hours she worked that week. Ms. Kozak agrees this is the correct rate, so I accept Ms. Hauki's calculation. The document shows that Ms. Hauki worked 33.5 hours aside from the overnight hours

which means she worked 13.5 hours overtime during that week. This amounts to 20 hours at \$12.65 equaling \$253.00, 13.5 hour at \$15 per hour or \$202.50, plus \$200 for two overnight periods. This totals \$655.50. Ms. Hauki also worked 8.5 hours on June 12, 2019 which amounts to \$107.53. Based on the evidence, I find that Ms. Kozak owes Ms. Hauki \$946.46 for babysitting services.

25. Ms. Kozak submits that she paid Ms. Hauki \$292.50 on June 8, 2019 and left \$100 for one of the overnight periods. Ms. Hauki says the \$292.50 was for babysitting services outstanding from before the trip under consideration here. Ms. Kozak did not address this. Ms. Hauki also says that Ms. Kozak never left her \$100 in cash. I note that in the Dispute Response, Ms. Kozak stated that the \$100 was for groceries while she was in the hospital. I find Ms. Kozak's evidence is inconsistent and so I prefer Ms. Hauki's evidence. Therefore, I find the \$392.50 does not have to be subtracted from the \$946.46 owing,

26. Ms. Hauki also requests \$7.50 that are still outstanding from previous babysitting performed. She has not provided evidence of this agreement or even specified when these services exactly occurred. I decline to award this amount.

Does Ms. Kozak owe Ms. Hauki for expenses?

27. Ms. Hauki also requests \$180.00 for food and groceries. Ms. Kozak says she paid for all groceries and, as noted, says that she left \$100 for food when she was not there. There is a text where Ms. Kozak says that she owes Ms. Hauki for milk from when she was in the hospital. Ms. Hauki did not provide receipts for these expenses. Because the evidence is unclear, I decline to award any amount for groceries.

28. Ms. Hauki also requests \$462.00 for her flight home. She points to Ms. Kozak's text that she would fly Ms. Hauki home if the baby came early, which it did. I acknowledge that Ms. Kozak booked the ferry ticket however this could be cancelled and Ms. Kozak did specifically agree to fly Ms. Hauki home if she decided

to leave before the 5 weeks were up. Ms. Kozak submitted that she only agreed to fly Ms. Hauki back if it was soon after the baby was born and not after two weeks.

29. I note that the text does not specify this. It says that Ms. Kozak was willing to fly Ms. Hauki back if she did not want to “hang out” on the beach for “another few weeks.” This left it open to Ms. Hauki to choose to leave early and fly back, which she chose to do. I find that Ms. Kozak must reimburse Ms. Hauki for the airfare. The receipt shows the cost was \$409.63. I note that Ms. Hauki claimed \$462.00 in travel expenses, but she did not provide any other receipts. I find Ms. Kozak must pay Ms. Hauki \$409.63 for travel expenses.
30. Therefore, I find that Ms. Hauki is entitled to \$1,356.09 for the babysitting service and the travel costs. She is also entitled to pre-judgment interest from June 13, 2019 date she stopped babysitting and flew home until the date of this decision under the *Court Order Interest Act (COIA)*. This amounts to \$28.54.

Does Ms. Hauki owe Ms. Kozak for expenses?

31. In her counterclaim, Ms. Kozak says that on the ferry trip to Victoria Ms. Hauki refused to let any of the children stay in her cabin on the ferry. Ms. Kozak requests \$199.00 because she paid for Ms. Hauki’s cabin but then had to sleep on the floor with her children all in her cabin. Ms. Hauki says that she offered to have 2 children sleep in her cabin, but Ms. Kozak refused. I prefer Ms. Hauki’s evidence on this point. I find it unlikely that Ms. Hauki would refuse to allow any children to sleep in her cabin when she had beds available and forced Ms. Kozak, her pregnant employer, to sleep on the floor with all the children. I also note that Ms. Kozak did not provide evidence that Ms. Hauki agreed to allow the children to sleep in her ferry cabin.
32. Ms. Kozak says she was unable to cancel the ferry back and that Ms. Kozak should reimburse her money for the fare and the accommodations. She says that Ms. Hauki was responsible for cancelling the ticket and did not do so. Ms. Hauki says that Ms. Kozak never advised her to cancel the ticket and that she called BC Ferries

who advised that it is only the person who booked the ticket, who was Ms. Kozak, who could cancel it. Ms. Kozak did not provide evidence that she could not cancel the ticket or that she did not do so. I find that Ms. Hauki does not have to reimburse Ms. Kozak for the ferry costs.

33. Ms. Kozak also says that Ms. Hauki left before the end of their agreement and that she is responsible for the expenses Ms. Kozak paid afterward for childcare. Ms. Kozak provided a receipt from a daycare showing a \$300 charge for Ms. Kozak's four children's care. There is no indication as to what date the children were in care or that the dates corresponded with any medical appointments as Ms. Kozak claimed. I again note that the agreement was not that Ms. Hauki would stay for the full five weeks to care for the children after the baby was born. The text stated that Ms. Hauki could leave if the baby was born early and Ms. Hauki did not want to stay. Therefore, Ms. Kozak was aware she might have to arrange for other childcare if Ms. Hauki left early. I decline to award the daycare cost.
34. Ms. Kozak also provided a receipt for movers who she says had to move the mattress that Ms. Hauki brought downstairs. The receipt does not specify it is to move a mattress. Ms. Hauki says that she moved the mattress at Ms. Kozak's suggestion. Further, Ms. Kozak has not established that moving furniture was part of the agreement. I decline to award this amount.
35. Ms. Kozak says that Ms. Hauki ordered \$36.90 in food on a day off and did not reimburse her. Ms. Hauki says that Ms. Kozak offered to pick up the food and when Ms. Hauki offered to pay Ms. Kozak refused. Ms. Hauki also provided the receipt showing the amount was \$23.04. I find that Ms. Kozak has not proved that Ms. Hauki owes her money for this item.
36. Ms. Kozak says that Ms. Hauki owes her money to replace damaged bed sheets. Ms. Kozak provided pictures of laundry on the floor and on a couch but did not establish that Ms. Hauki damaged any bed sheets. Ms. Kozak also did not prove that she paid to replace bed sheets. I decline to make an award for this amount,

37. Ms. Kozak also requests \$100 for cleaning and sanitizing Ms. Hauki's room and the house. Ms. Hauki says she did not leave her room or the house in a mess. Ms. Kozak provided some pictures of food items in the house. They do not look unsanitary such that it would cost \$100 to clean up. The pictures are also not proof that Ms. Hauki left the house in this state. It is also unclear how Ms. Kozak arrived at this amount. I decline to award \$100 for clean-up expenses.

38. I dismiss Ms. Kozak's claims.

39. 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. Because Ms. Hauki was partly successful in her claims, I find she is entitled to reimbursement of half of the \$125 paid for CRT fees, which equals \$62.50. Ms. Kozak was unsuccessful so she is not entitled to reimbursement of her CRT fees. Neither party claimed for expenses.

ORDERS

40. I dismiss Ms. Kozak's counterclaim.

41. Within 30 days, Ms. Kozak must pay Ms. Hauki a total of \$1,447.13 broken down as follows:

- a. \$946.46 in debt for babysitting services,
- b. \$409.63 in debt for travel costs,
- c. \$28.54 in pre-judgement interest under the *COIA*, and
- d. \$62.50 in CRT fees.

42. I dismiss Ms. Hauki's other claims.

43. Ms. Hauki is also entitled to post-judgement interest under the *COIA* as applicable.

44. 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. 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.
45. 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.

Kathleen Mell, Tribunal Member