



# Civil Resolution Tribunal

Date Issued: August 19, 2020

File: SC-2020-001575

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McGraw v. RJS Construction Ltd.*, 2020 BCCRT 927

**BETWEEN:**

LEE MCGRAW

**APPLICANT**

**AND:**

RJS CONSTRUCTION LTD.

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Kathleen Mell

## INTRODUCTION

1. This dispute is about bonus entitlements under an employment contract. The applicant, Lee McGraw, says that the respondent, RJS Construction Ltd. (RJS),

hired him on salary but promised bonuses. Mr. McGraw says that RJS did not pay all of the bonuses he was entitled to after it terminated his employment. Mr. McGraw states that he received \$2,000.00 but should have received the full \$10,000.00 discussed in the contract, prorated to 33 weeks of employment. Mr. McGraw claims \$4,538.46 for bonuses not paid. Mr. McGraw represents himself.

2. RJS says that Mr. McGraw was paid out his bonuses in keeping with the terms of the employment contract. RJS is represented by an organizational contact.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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 "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 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.
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. I have considered whether I have jurisdiction to consider this matter because it deals with an employment contract which usually would be considered under the *Employment Standards Act (ESA)*. In a recent decision from this tribunal, *Raju v. TD Systems Ltd.*, 2020 BCCRT 837, the tribunal member noted that an employee was only prevented from bringing a civil action when the employee was seeking to enforce a right that they only have under the *ESA*. However, where an employment contract provides certain benefits the employee can pursue a remedy by civil action. I am not bound by this decision but find it persuasive and apply its reasoning here. Because Mr. McGraw does not claim for *ESA* entitlements but is seeking a benefit under the contract, I find that I have jurisdiction to consider this matter.
7. 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**

8. The issue in this dispute is whether Mr. McGraw is entitled to additional bonuses under the terms of the employment contract.

## **EVIDENCE AND ANALYSIS**

9. In a civil dispute such as this, the applicant Mr. McGraw must prove his case 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.
10. It is undisputed that the parties entered into an employment contract on June 24, 2019. The contract said that Mr. McGraw's position was project coordinator. The

contract said that in addition to a salary there was a \$5,000 “measured tiered bonus bi-annually.”

11. The contract indicates that 4 factors would be considered in determining whether an employee receives a bonus. RJS refers to these factors as metrics, which are:
  - a. Gross Profit: all projects must meet a minimum of the project’s gross target in order to earn a \$1,000 bonus.
  - b. General Requirements: 100% of administrative duties must be fulfilled in order to earn the bonus amount of \$1,000. Administrative duties include producing estimates, filling out forms, scheduling, signing off on document, weekly progress reports, etc..
  - c. Project Schedules: all projects must be completed “within a 5% timeframe” of the change order adjusted schedule in order to earn the \$1,000 bonus.
  - d. Production-Reviewed Bi-annually: estimated, signed and produced work would lead to a bonus payout ranging from \$1,000 for \$1,250,000 produced work to \$2,000 for \$1,750,000 produced work.
12. Mr. McGraw was terminated on February 10, 2020 because he had an interaction with the president of the company about the bonus payout. The regular timing of determining bonus payouts for all employees was at the end of the first week of February. Therefore, Mr. McGraw was paid his bonus upon termination. Mr. McGraw has made submissions about whether he should have been terminated. Mr. McGraw argues that he should be paid out bonuses for the whole year on the basis he was unjustly terminated. However, the issue in this dispute is not unjust termination but the amount of the bonuses paid upon termination.
13. Again, I do not have the jurisdiction to consider rights Mr. McGraw has under the *ESA*. Looking at the terms of the contract, it indicated that certain circumstances may lead to immediate termination. RJS says that it terminated Mr. McGraw for

angry behaviour including yelling at the president of the company while demanding the bonus be paid out. Mr. McGraw says that this is not one of the grounds for termination set out in the contract. I note that the list of grounds set out in the contract are not exclusive and the contract specifically says that the grounds of termination are not limited to those specifically itemized.

14. Mr. McGraw does not deny that he approached the president of the company on February 6, 2020 and questioned him about his bonus although he denies getting angry. Mr. McGraw says that he has a right to pose questions to his supervisor. Mr. McGraw also does not deny that he told the president of the company that he wanted his bonus that day.
15. RJS provided an email informing all staff that because there were more staff it was taking longer to calculate the bonuses and they would be delayed by a week. RJS says that Mr. McGraw demanded his bonus and refused to leave the president's office becoming increasingly angry and aggressive. Mr. McGraw did not address the allegation that he refused to leave the office.
16. Based on the information, I find it more likely that Mr. McGraw did get angry and behaved inappropriately towards the president of the company because Mr. McGraw did not specifically address the version of what happened put forth by RJS. I find that Mr. McGraw has not proved that RJS was not within their rights under the terms of the contract to fire him. Because I find that Mr. McGraw was not unjustly terminated he is not entitled to bonuses which would have been paid out if his contract continued.
17. Mr. McGraw also made submissions about the one-week delay in paying out his bonus. I note that Mr. McGraw did not argue that he suffered a loss because of this slight delay and therefore will not consider this issue further.
18. Upon termination RJS paid Mr. McGraw a \$2,000 bonus. RJS has provided detailed evidence showing how it arrived at the \$2,000 figure. It explained that it paid Mr. McGraw's bonuses based on the two main projects, CL and W, that Mr. McGraw

worked on while with the company. RJS noted that all, meaning both, projects hit the target for gross profit, so Mr. McGraw was entitled to a \$1,000 bonus. Additionally, 100% of administrative duties were fulfilled on the projects so Mr. McGraw was entitled to another \$1,000 bonus for meeting this metric. However, RJS says that both projects were over schedule and the production target was not met on either project, so Mr. McGraw did not receive a bonus for either of these metrics.

19. Mr. McGraw says that he worked on more than two projects and lists 6 others. RJS stated that on project B, Mr. McGraw briefly helped out in the first week but that he was not the project coordinator because he was working on the two other projects discussed above. On project S, RJS says that Mr. McGraw attended some site meetings as part of his training, but he did not coordinate the project. On Project U, RJS says that it has no record of Mr. McGraw doing work on this project. On Project C, RJS says that this project began on January 14, 2020 and therefore was not part of the February bonus period payout. Finally, on Project F, RJS says that Mr. McGraw never worked on this project.
20. Mr. McGraw provided his time sheets from June 14, 2019 until January 22, 2020. Almost all entries indicate that Mr. McGraw was doing work on the CL and W projects that are covered by his bonuses. There is an occasional reference to Mr. McGraw working on other projects, but it appears that approximately 80% of Mr. McGraw's time was spent on the CL and W projects. Mr. McGraw says that his timesheets are just a rough estimate of the work he did and that he worked on all jobs. He says that he did not think it was necessary to put in every job he worked on every day. However, the time sheets are detailed and sometimes indicate when Mr. McGraw has gone from one project to another in the same day. I do not accept Mr. McGraw's submission that the time sheets do not reflect the work he was doing.
21. Based on the time sheets and the other evidence, I find that Mr. McGraw has not proved he was the project coordinator on projects other than CL and W. The evidence does show that he spent some time on these projects but not that he was

the project coordinator for them. The contract indicates that Mr. McGraw's bonuses are based on the work coordinated by him. I find that Mr. McGraw has not proved that he coordinated the other projects.

22. Mr. McGraw also says that RJS told him that unless he was the one who made errors, he would receive his full bonus. He says that he was misled and that his expectation was that he would receive \$10,000 in bonuses. I note that Mr. McGraw did not provide any evidence that RJS said this and RJS specifically denies that it did so.

23. RJS says that bonuses are often out of the program coordinator's control. I note that nowhere in the contract does it say that bonuses are guaranteed and that it clearly sets out the specific targets that must be met to obtain them. I also note that Mr. McGraw's June 18, 2019 offer of employment letter stated that the bonuses would be measured on the performance of the project manager, not the project coordinator. Mr. McGraw rightfully claims that this means many of the metrics were not completely within his control. I agree. However, I find based on the evidence that Mr. McGraw knew this when he agreed to the employment contract. So, I find that Mr. McGraw has not proved that he was led to believe that his bonuses were guaranteed.

24. Mr. McGraw also says that he should have received the full bonuses for the CL and W projects because it was not his fault that the scheduling targets were not met because they were already running late when he was hired on. I accept this point but note again that the contract does not make allowances for receiving bonuses unless the metrics are met. There was no term in the contract that stated Mr. McGraw's entitlement to bonuses would be based solely on his own performance. Rather, some of the bonuses were based on how the projects developed overall. I find that this was clearly set out in the contract. RJS provided evidence showing that the scheduling metric was not met on these two projects, so Mr. McGraw is not entitled to additional bonuses.

25. Therefore, based on the evidence, I find that Mr. McGraw has not proved that he is

entitled to additional bonuses under the terms of his contract.

26. Under section 49 of the CRTA and the CRT's rules, the CRT will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Mr. McGraw was not successful, so he is not entitled to reimbursement of his tribunal fees. Neither party made a claim for expenses.

## **ORDER**

27. I dismiss Mr. McGraw's claims and this dispute.

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Kathleen Mell, Tribunal Member