



# Civil Resolution Tribunal

Date Issued: September 2, 2020

File: SC-2020-003662

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mawby v. Vancouver Native Housing Society*, 2020 BCCRT 980

B E T W E E N :

NATHAN MAWBY

**APPLICANT**

A N D :

VANCOUVER NATIVE HOUSING SOCIETY

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Trisha Apland

## INTRODUCTION

1. The applicant, Nathan Mawby, is a former employee of the respondent, Vancouver Native Housing Society (VNHS). Mr. Mawby says that VNHS owes him \$3,520 in wages for 11 overtime “shifts”.

2. VNHS denies that Mr. Mawby worked overtime shifts or that it owes Mawby any unpaid wages. It asks that Mr. Mawby's claim be dismissed.
3. Mr. Mawby is self-represented. VNHS is represented by its Chief Executive Officer (CEO).
4. For the reasons that follow, I dismiss Mr. Mawby's claims.

## **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, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly 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.
9. As a preliminary issue, an employee is prevented from bringing a civil action when the employee is seeking to enforce a right that they only have under the *Employment Standards Act* (ESA). In other words, the CRT cannot make an order for statutory entitlements available under the ESA. However, where an employment contract provides certain benefits, the employee may pursue a remedy by civil action for breach of contract, 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. I find I have jurisdiction to resolve Mr. Mawby's claim for breach of his employment contract under the CRT's small claims jurisdiction.

## **ISSUE**

10. The issues in this dispute is to what extent, if any, is Mr. Mawby entitled to be paid the claimed \$3,520 for alleged unpaid wages.

## **EVIDENCE AND ANALYSIS**

11. In a civil claim such as this, Mr. Mawby, as the applicant, bears the burden of proving his claims on a balance of probabilities.
12. I have only addressed the parties' submissions to the extent necessary to explain my decision. I note that VNHS makes several allegations about the way Mr. Mawby conducted himself during his employment, which Mr. Mawby disputes in reply. I have not summarized the allegations where I found them immaterial to my decision.
13. There is no dispute that the parties had an employment contract and Mr. Mawby worked for VNHS for about 3 months. However, there is no written contract in evidence and there is almost no information about the terms of the parties' contract.

While this claim is about payment for overtime shifts, there are no documents in evidence showing Mr. Mawby's entitlement, if any, to overtime under his employment contract.

14. VNHS provided a statement from its CEO who was undisputedly Mr. Mawby's direct supervisor. The CEO stated that the parties had never discussed overtime, that he never instructed Mr. Mawby to work overtime hours, and that Mr. Mawby never worked any extra shifts. The CEO stated that the employees are required to record all their hours on timecards and that Mr. Mawby did not record any "extra" hours.
15. VNHS provided screen shots of Mr. Mawby's electronic timecards. Mr. Mawby agrees that there are no extra hours recorded on his timecards. There is also no dispute that VNHS paid Mr. Mawby for the hours that are recorded on his timecards.
16. However, Mr. Mawby says he worked 11 extra shifts between January 29 and March 10, 2020 that he did not record on the timecards. Mr. Mawby says he was also told not to record extra hours on his timecard. He says a previous general manager told him to "bank" overtime hours for future use and he followed that practice. However, there is no statement from the previous general manager or a company policy in evidence to support Mr. Mawby's assertion about banked hours. If Mr. Mawby worked extra hours as alleged, I would have expected some type of log or email record that tracked the overtime hours for future use. However, Mr. Mawby did not provide any records showing he was recording banked overtime hours. He has also not established that he was entitled to be paid for hours not recorded on his timecard.
17. Mr. Mawby argues that his overtime hours are supported by hotel registration cards showing that he stayed overnight in the hotel operated by VNHS for several nights. Mr. Mawby says that he had to stay overnight because he was tired from the extra overtime work. VNHS disputes this assertion. It says that Mr. Mawby stayed overnight in the hotel rooms without permission and for reasons unrelated to work. I find the fact that Mr. Mawby booked nights in VNHS's hotel does not prove that he

worked overtime. In the absence of contemporaneous overtime records, I find Mr. Mawby's hotel stays could have been for any number of reasons.

18. As mentioned above, Mr. Mawby has the burden to prove his claim on a balance of probabilities. I find he has not done so here. I find that Mr. Mawby has not established on the evidence that he worked extra hours not shown on his timecards. I find that VHNS does not owe Mr. Mawby the claimed overtime wages under his employment contract. I dismiss Mr. Mawby's claim.

19. Neither Mr. Mawby nor VHNS paid CRT fees and they claimed no dispute-related expenses.

## **ORDER**

20. I dismiss Mr. Mawby's claims and this dispute.

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Trisha Apland, Tribunal Member