



Civil Resolution Tribunal

Date Issued: November 16, 2020

File: SC-2020-005201

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Molnar v. VIP Whistler Transportation Ltd.*, 2020 BCCRT 1282

BETWEEN:

ANDREA MOLNAR

APPLICANT

AND:

VIP WHISLTLER TRANSPORTATION LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about payment for work. The applicant, Andrea Molnar, says that the respondent, VIP Whistler Transportation Ltd. (VIP) hired her as an independent contractor to perform driving work. Ms. Molnar says she provided VIP with her invoice,

but it refused to pay her. She asks for an order that VIP pay her the \$825 invoice amount. VIP admits that it hired Ms. Molnar, but says that she was hired as an employee rather than an independent contractor. According to VIP, it is willing to pay Ms. Molnar the \$776.45 it says it owes her.

2. Ms. Molnar is self-represented. VIP is represented by its director.

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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
4. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary 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 in the interests of justice.
5. 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.
6. Section 42 of the CRTA says 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.

7. 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

8. The issues in this dispute are:
 - a. Whether VIP hired Ms. Molnar as an employee or an independent contractor, and
 - b. Whether VIP owes Ms. Molnar the \$825 she claims.

EVIDENCE AND ANALYSIS

9. In a civil dispute like this, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.
10. The CRT does not have jurisdiction over an employee's claim for statutory entitlements to wages under the *Employment Standards Act* as those matters are within the exclusive jurisdiction of the Employment Standards Branch. I find that the issue of whether an independent contractor has any contractual entitlements is within the CRT's small claims jurisdiction..
11. Ms. Molnar describes herself as a "contract commercial driver". She says she heard about the possible availability of work with VIP from another driver, not through a formal advertisement. Ms. Molnar and VIP's director exchanged text messages about the nature of the work. These messages do not include information about whether the work would be performed by an employee or an independent contractor. The parties did not have a formal written contract, but the text messages suggest they agreed to payment of \$25 per hour for driving work.

12. Ms. Molnar worked for VIP on 6 days in May of 2020 driving construction workers to a jobsite using a bus owned by VIP. On one day she drove a single shift, but on the remaining days she drove 2 shifts per day. VIP's bus remained in a parking lot between the trips.
13. On May 28, 2020, Ms. Molnar provided VIP's bookkeeper with an invoice for her driving services. She charged for 33 hours at \$25 per hour, for a total of \$825.
14. On May 29, 2020, VIP's director texted Ms. Molnar to ask for her employee information forms so it could process her pay. Ms. Molnar responded that she was an independent contractor. VIP's view was that it had hired her as an employee. Ms. Molnar stated that she was always paid as an independent contractor and would not want to be an employee. They exchanged further messages, but did not resolve their differences on the matter.
15. The parties agree that Ms. Molnar worked for 33 hours at a rate of \$25 per hour. Ms. Molnar asks for payment of the \$825 without any deductions. VIP says it is prepared to provide Ms. Molnar with payment of \$776.45 (which represents her hourly rate plus vacation pay, but minus statutory deductions).
16. The key consideration is whether Ms. Molnar was hired as an independent contractor or an employee. I find that the parties' historical preferences are not determinative of the matter.
17. The factors to consider in determining whether a person is an independent contractor or employee are discussed in *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, 2001 SCC 59 (671122) and further in *Kirby v. Amalgamated Income Limited Partnership*, 2009 BCSC 1044 at paragraph 71 (*Kirby*). These factors include the level of control the employer has over the worker's activities, whether the worker provides their own equipment, whether the worker hires their own helpers, the degree of financial risk taken by the worker, the degree of responsibility for investment and management held by the worker, and the worker's opportunity for profit in the performance of their tasks. The weight assigned to each factor depends on the facts

and circumstances of each case. The central question is whether the worker is performing services as a person in business on their own account. If so, the person is more likely to be an independent contractor rather than an employee.

18. According to VIP, it hires employees and only works with subcontractors if they have their own vehicles and corporations. There is no dispute that VIP owned the bus that Ms. Molnar drove. Ms. Molnar did not pay for the vehicle's operation expenses or use it outside of her shifts. Further, she operates as an individual rather than through a corporate entity.
19. Turning the issue of equipment, Ms. Molnar says she provided her own driver's vehicle inspection report forms and cleaning supplies. VIP says there were inspection report forms available in its vehicle, but did not comment on whether Ms. Molnar was responsible for cleaning the vehicle.
20. Considering the work itself, although Ms. Molnar had flexibility in terms of how many shifts she worked, the work was controlled by VIP. Ms. Molnar's compensation was limited to the hourly rate paid by VIP, and there was no opportunity for further profit. In addition, Ms. Molnar did not bear any financial risk or hire any helpers.
21. Considering all of the factors and circumstances, I conclude that Ms. Molnar was not performing services as a person in business on her own account as contemplated by 671122 and *Kirby*. I find that Ms. Molnar was VIP's employee rather than an independent contractor.
22. I find that, as Ms. Molnar was an employee under the parties' contract, VIP was entitled to add vacation pay and make statutory deductions from her hourly pay. Therefore, Ms. Molnar is not entitled to the \$825 she claims.
23. VIP provided a statement of Ms. Molnar's earnings and deductions. Ms. Molnar did not dispute VIP's calculations. Based on the evidence before me, I find that the \$776.45 identified by VIP represents Ms. Molnar's contractual entitlement. Therefore, VIP must pay her this amount.

24. In addition to the \$776.45 under the contract, I find that Ms. Molnar is also entitled to the payment of pre-judgment interest under the *Court Order Interest Act*. Calculated from May 29, 2020, this equals \$2.69.
25. 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. Ms. Molnar claims reimbursement of her CRT fees, while VIP did not pay CRT fees or make a claim for dispute-related expenses. As I have ordered VIP to pay Ms. Molnar the same amount it was prepared to pay her at the outset, I dismiss Ms. Molnar's claim for reimbursement.

ORDER

26. Within 30 days of the date of this order, I order VIP to pay Ms. Molnar a total of \$779.14, broken down as follows:
 - a. \$776.45 for the contractual entitlement, and
 - b. \$2.69 in pre-judgment interest under the *Court Order Interest Act*.
27. Ms. Molnar is entitled to post-judgment interest, as applicable.
28. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.

29. 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

Lynn Scrivener, Tribunal Member