



# Civil Resolution Tribunal

Date Issued: December 7, 2020

File: SC-2020-004168

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kaan v. Genesys Laboratories Canada Inc.*, 2020 BCCRT 1380

B E T W E E N :

JAMES KAAN

**APPLICANT**

A N D :

GENESYS LABORATORIES CANADA INC. and GENESYS  
TELECOMMUNICATIONS LABORATORIES, INC.

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This dispute is about entitlement to vacation pay on top of severance pay.
2. The applicant, James Kaan, says he was employed by both the respondents Genesys Laboratories Canada Inc. (Genesys Canada) and Genesys Telecommunications Laboratories, Inc. (Genesys Telecom). Mr. Kaan says the respondents agreed to pay

him 4 months of wages when they laid him off on June 8, 2018. Mr. Kaan says the respondents failed to pay him 4% vacation pay on top of the severance pay amount. Although Mr. Kaan calculated the missing vacation pay as \$5,047.69, he reduced his claim to \$5,000 in order to stay within the small claims jurisdiction of the Civil Resolution Tribunal (CRT).

3. Genesys Canada says Mr. Kaan agreed to a separation package including a \$126,192.31 lump sum payment and that he is not entitled to vacation pay on top of that amount. The respondent Genesys Telecom denies that it employed Mr. Kaan or is involved in any way in this dispute. The respondents ask that Mr. Kaan's claims be dismissed.
4. Mr. Kaan represents himself. The respondents are represented by a Genesys Canada employee.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the 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.
6. The Employment Standards Branch (ESB) has exclusive jurisdiction over entitlements under the *Employment Standards Act (ESA)*, so the CRT has no jurisdiction over those statutory entitlements. In a July 21, 2020 preliminary decision, a CRT member decided that, although the CRT did not have jurisdiction to address any possible entitlements Mr. Kaan may have under the ESA, his claim for common law damages was within the CRT's jurisdiction under section 118 of the CRTA. I agree with and adopt this decision.

7. 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.
8. 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.
9. 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**

10. The issue in this dispute is whether either respondent must pay Mr. Kaan a further \$5,000 in vacation pay.

## **EVIDENCE AND ANALYSIS**

11. In a civil claim such as this one the applicant, Mr. Kaan, must prove his claim on a balance of probabilities. Although I have reviewed all evidence and submissions provided, I only refer to the evidence as needed to explain my decision.
12. On June 6, 2014 a separate company, who is not party to this dispute, hired Mr. Kaan. According to Mr. Kaan's employment contract, he was paid on a salary basis, plus commissions. Mr. Kaan was entitled to 3 weeks of vacation time per year, plus 4% vacation pay calculated on the commissions he earned.
13. Sometime in 2016 or 2017 one, or both, of the respondents took over the company and Mr. Kaan's employment. The respondents say Genesys Canada became Mr.

Kaan's employer and that Genesys Telecom did not. Mr. Kaan says he only communicated with Genesys Telecom employees about payroll, vacation pay, and sales commission issues. Although Mr. Kaan referred to several employees located outside of Canada, he did not include their employment details such as job titles, or evidence supporting they worked for Genesys Telecom, rather than Genesys Canada.

14. Based on the signature block on the June 12, 2018 termination letter, I find it was a Genesys Canada employee who notified Mr. Kaan of his lay off and offered a separation package in lieu of notice. Based on Mr. Kaan's payroll statements, I find it is Genesys Canada who paid Mr. Kaan's wages and commissions. In his submissions Mr. Kaan acknowledges that Genesys Canada was his employer, but says it took instruction from Genesys Telecom about payroll issues. However, there is no evidence supporting this. On balance, I find Genesys Canada took over Mr. Kaan's employment. The evidence does not indicate that Genesys Telecom had any responsibility for paying Mr. Kaan's wages, commissions, or vacation pay. So, I dismiss Mr. Kaan's claim against Genesys Telecom.
15. I now turn to Mr. Kaan's claim against Genesys Canada.
16. It is undisputed that Mr. Kaan was laid off effective June 8, 2018. In a June 12, 2018 termination letter Genesys Canada offered Mr. Kaan a severance package which included a lump sum payment equal to 4 months' earnings, which was \$126,192.31. The offer also included commission for certain existing opportunities if they were booked by July 31, 2018, and other benefits such as health care, retirement savings contributions and job search assistance. On June 15, 2018 Mr. Kaan signed a release, accepting the June 12, 2018 offer as full and final settlement of his job termination.
17. It is undisputed that on June 29, 2018 Genesys Canada paid Mr. Kaan the lump sum amount of \$126,192.31, less the required statutory deductions. The parties agree that, over the next few payroll cycles, Genesys Canada also paid Mr. Kaan his earned

commissions, plus 4% vacation pay on top of those commissions but did not pay Mr. Kaan 4% vacation pay on top of the lump sum separation pay.

18. Mr. Kaan says the respondents should have also paid him 4% vacation pay calculated on the \$126,192.31 lump sum, based on the wording of the June 12, 2018 termination letter and as required under his employment contract and under the ESA. As noted above, the CRT has no jurisdiction over Mr. Kaan's potential entitlements under the ESA but does have jurisdiction over contractual obligations of the parties.
19. The June 12, 2018 termination letter states "Any unused and accrued vacation entitlements, less statutory deductions will be paid on this final payroll." Mr. Kaan says this means that 4% vacation pay should have accrued on the \$126,192.31 severance payment and been paid out in his final payroll. I disagree.
20. In interpreting a contract, the plain and ordinary meaning of the words used should be considered (see *Group Eight Investments Ltd. v. Taddei*, 2005 BCCA 489). I find the termination letter is a settlement agreement offer and so I find the rules of contract interpretation apply here. I find the plain and ordinary meaning of "accrued vacation entitlements" means any entitlement to vacation pay that had already accrued, but not been used, as of the June 8, 2018 termination date. In other words, I find Mr. Kaan was entitled to payment of any of his unused but earned vacation time, as well as any unpaid vacation pay calculated on his earned commissions, as of his termination date. Further, the termination letter specifically identifies certain types of extended benefits, and specific client commissions that Mr. Kaan is entitled to as part of the separation package. If Genesys Canada had intended for Mr. Kaan to receive a further 4% vacation pay on top of the lump sum settlement, I find it would likely have specified that in the detailed termination letter. On balance, I do not find Genesys Canada agreed to pay Mr. Kaan a further 4% vacation pay on top of the \$126,192.31 lump sum payment.
21. I agree with Genesys Canada that the June 15, 2018 release signed by Mr. Kaan means Mr. Kaan is not entitled to any further separation pay, beyond that set out in the June 12, 2018 termination letter. The release specifically states that, for

\$126,192.31 plus commissions payable, Mr. Kaan released Genesys Canada from “all actions, causes of action, damages, claims, crossclaims and demands whatsoever...”. I find Mr. Kaan’s claim for vacation pay is included within that phrase. So, I find Mr. Kaan expressly released Genesys Canada from any further claims about his separation payment. However, even if Mr. Kaan had not released his right to make a further claim, I would find he is not entitled to vacation pay on top of his severance pay.

22. A dismissed employee is not entitled to vacation pay for the duration of the notice period, unless they lost the opportunity to take a vacation during that period (see *Bavaro v. North American Tea, Coffee & Herbs Trading Co. Inc.*, 2001 BCCA 149). Vacation pay may also be awarded where the dismissed employee demonstrates they lost the opportunity to bank the vacation time and extend the employment term (see *Moody v. Telus*, 2003 BCCA 471). Absent those special circumstances, accrual of vacation pay during the notice period is viewed by the courts as “double indemnity” and not to be awarded (see *Urton v. SRI Homes et al*, 2005 BCSC 1019 and *TeBaerts v. Penta Builders Group Inc.*, 2015 BCSC 2008).
23. Mr. Kaan says he lost the opportunity to take a vacation during the 4-month notice period for which he was paid, because he was busy looking for a new job. Mr. Kaan also says the search was more difficult because of the non-competition clause in his employment contract. Mr. Kaan did not provide any evidence demonstrating his job search efforts. I note that he received job search benefits as part of his separation package, which would have provided some assistance. Further, Mr. Kaan did not provide any evidence that he missed out on any vacation opportunity following the termination of his employment. On balance, I find Mr. Kaan has not proven any special circumstances which would entitle him to vacation pay on top of the separation payment he received in lieu of 4 months’ notice.
24. I dismiss Mr. Kaan’s claim for \$5,000 in vacation pay.
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. As Mr. Kaan was unsuccessful in this dispute, I find he is not entitled to reimbursement of any CRT fees or dispute-related expenses. The respondents paid no CRT fees and claimed no dispute-related expenses.

## **ORDER**

26. I dismiss Mr. Kaan's claims and this dispute.

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Sherelle Goodwin, Tribunal Member