



# Civil Resolution Tribunal

Date Issued: December 10, 2020

File: SC-2020-005361

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gladue v. Civil North Consulting Ltd.*, 2020 BCCRT 1401

BETWEEN:

TAYLOR GLADUE

**APPLICANT**

AND:

CIVIL NORTH CONSULTING LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This dispute is about alleged wrongful dismissal.
2. The applicant, Taylor Gladue, says the respondent, Civil North Consulting Ltd. (Civil), terminated his employment without just cause and with no notice. Mr. Gladue claims

\$1,962.75, which he says is less than 2 weeks' pay, in lieu of notice. Mr. Gladue also claims \$600 for moving expenses and \$97 as reimbursement for safety gear.

3. Civil says it had just cause to terminate Mr. Gladue's employment as his job performance was unsatisfactory. Civil says Mr. Gladue is not entitled to pay in lieu of notice. It also says it paid Mr. Gladue \$200 as agreed for moving costs and has already reimbursed Mr. Gladue for his safety gear.
4. Mr. Gladue represents himself. Civil is represented by an owner or employee.

## **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). 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. 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.
7. 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.

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. A preliminary issue is whether Mr. Gladue's claim is within the CRT's jurisdiction. The Employment Standards Branch (ESB) has exclusive jurisdiction over entitlements under the *Employment Standards Act* (ESA). The ESA requires an employer to compensate a dismissed employee, based on length of service, unless terminated for cause. However, this does not mean an employee is barred from bringing a wrongful dismissal claim against a former employer, based on the employer's alleged failure to provide proper notice of termination (see *Roy v. Metasoft Systems Inc.*, 2013 BCSC 1190). This is because a wrongful dismissal claim is based on the contractual relationship between the employee and employer, rather than the employer's statutory obligations under the ESA. I am satisfied that the CRT has jurisdiction to decide Mr. Gladue's claim for wrongful dismissal, as it is a damages claim that arises from his employment contract with Civil.

## ISSUES

10. The parties agree that, prior to this decision being made, Civil paid Mr. Gladue for the outstanding wages he claimed, and reimbursed Mr. Gladue for one month's rent, damage deposit, and fuel for the company vehicle. As those claims have been resolved, I will not consider them in this decision.
11. As noted in the introduction above, the remaining issues in this dispute are:
  - a. Must Civil pay Mr. Gladue damages for failing to provide notice of job termination and, if so, how much,
  - b. Must Civil reimburse Mr. Gladue his moving expenses and, if so, how much, and
  - c. Must Civil reimburse Mr. Gladue the cost of safety gear and, if so, how much?

## **EVIDENCE AND ANALYSIS**

12. In a civil claim such as this one the applicant, Mr. Gladue, must prove his claims on a balance of probabilities. However, Civil, as the employer, must prove it had just cause to dismiss Mr. Gladue without notice (see *Hawkes v. Levelton Holdings Ltd.*, 2012 BCSC 1219 at paragraph 28, affirmed 2013 BCCA 306). I have reviewed all evidence provided by both parties but only refer to that which is necessary to explain and give context to my decision.
13. Civil hired Mr. Gladue to start working around July 1, 2020 in BC. Mr. Gladue relocated from Alberta just prior to the start date. Mr. Gladue worked for Civil for a total of 3 days. On Sunday, July 5, 2020 Civil dismissed Mr. Gladue from his employment without notice. None of this is disputed.
14. I find Civil's May 24, 2020 offer of employment sets out the terms of Mr. Gladue's employment contract. I find the employment contract does not contain a probationary period, which might have lessened Civil's obligation to provide Mr. Gladue with notice prior to dismissal.

### ***Failure to Provide Notice***

15. An employer may dismiss an employee by giving reasonable notice of dismissal or pay in lieu of notice. However, if the employer shows just cause, it may dismiss the employee without notice or pay in lieu (see *Panton v. Everywoman's Health Centre Society (1988)*, 2000 BCCA 621 at paragraph 24). Just cause is conduct that is seriously incompatible with the employee's duties, goes to the root of the employment contract and fundamentally strikes at the employment relationship (see *Panton* at paragraph 25).
16. Civil says Mr. Gladue turned out to be a fraud, as he did not have the skills or experience he said he did. Civil provided a copy of Mr. Gladue's resume but did not provide any evidence that the job experience or training Mr. Gladue listed were incorrect or false. Although Civil says Mr. Gladue misstated his surveying and project

management experience in his interview, it has not provided any supporting evidence. Based on emails between the parties, I find Civil did not contact any of Mr. Gladue's references prior to hiring him. If Civil had taken this step it would have had the opportunity to ask about Mr. Gladue's skills and abilities.

17. On balance, I find Civil has failed to prove Mr. Gladue lied on his resume or in the interview. I find Mr. Gladue did not engage in fraudulent conduct in obtaining a job with Civil.
18. Based on the parties' emails, I find that Civil told Mr. Gladue that he was dismissed because he was "in over his head" and did not appear able to manage the Field Technician job he was hired to do. I infer Civil argues that it had just cause to dismiss Mr. Gladue because he was incompetent.
19. At paragraph 53 of *Parakin v. Bandali Medical Services Inc.*, 1999 CanLII 2690 (BC SC), the court said incompetence may be just cause for dismissal, where the employer shows:
  - a. The incompetence is serious or gross,
  - b. The employee was aware of the employer's established standards of performance, which were objectively reasonable,
  - c. The employer had clearly warned of dismissal if the standards were not met, and
  - d. The employee failed to correct their performance, despite a reasonable opportunity and sufficient time to do so.
20. Based on the parties' emails after the dismissal, Civil was dissatisfied with Mr. Gladue's late start to work because he had to purchase safety equipment, his delay in completing a survey because he had to purchase rain gear, and his late arrival to work on the second day. Civil told Mr. Gladue that he had taken too many hours to complete the surveying job assigned to him, was not prepared for the weather or conditions, and did not appear capable of managing the project.

21. In his submissions, Mr. Gladue says he arrived at work as soon as he could after purchasing required safety gear and did the best job he could in rainy conditions, on a steep slope, beside a busy highway. Mr. Gladue says Civil failed to respond to his request for traffic signs or a lookout to address his safety concerns. He also says Civil did not provide him with adequate training or instruction and acknowledged he was unclear what Civil required in the way of job performance.
22. Given Mr. Gladue's submissions, I agree with Civil that Mr. Gladue appeared to be "in over his head" and unsure about his job tasks. However, I find Civil has failed to prove that this is gross or serious incompetence in the first 3 days of employment. Civil's May 24, 2020 employment offer does not provide any established standards of performance. There is no evidence that Civil spoke with Mr. Gladue about his job performance prior to dismissing him on July 5, 2020. So, I find Civil failed to provide Mr. Gladue with sufficient time and reasonable opportunity to correct his performance, in the 3 days that he was employed with Civil.
23. On balance, I find Civil has failed to prove that it had just cause to terminate Mr. Gladue's employment without notice. I now consider how much pay in lieu of notice Civil must give Mr. Gladue.
24. I find the May 23, 2020 employment agreement between the parties does not contain any agreement about reasonable notice prior to dismissal. So, I find the employment agreement contains an implied term that Civil will give Mr. Gladue a reasonable period of notice before terminating the employment contract.
25. Under the common law, reasonable notice is based on factors such as Mr. Gladue's age, the type and length of employment and the availability of similar employment (see *Hawkes* at paragraph 224). Neither party submitted any evidence about Mr. Gladue's age or the availability of similar employment.
26. Mr. Gladue says he quit his full-time job in Alberta and relocated to BC to work for Civil and, as Civil does not dispute this, I accept it to be true. While inducement to leave a full-time job is a factor to consider, it generally applies where the employer

recruited the employee from a stable, long term position (see *Poole v. Vector*, 2001 BCPC 160, at paragraph 39). Based on Mr. Gladue's resume, I find he was willing to relocate for work. Based on his text messages to Civil, I find Mr. Gladue responded to Civil's job posting. On balance, I find no inducement here.

27. Mr. Gladue says a lawyer told him that he is entitled to 2 weeks' notice or payment in lieu, which he says would be \$4,000. However, Mr. Gladue only claims \$1,962.75. I infer he claimed this amount to keep his total claim within the CRT's \$5,000 small claims jurisdiction. Civil provided no submissions on how much notice would be reasonable in the circumstances.
28. I have considered that Mr. Gladue only worked for Civil for 3 days and that he left a full-time job and travelled to another province to work with Civil. On balance, and on a judgment basis, I find Mr. Gladue is entitled to the \$1,926.75 he claims in damages. This is equal to less than 2 weeks' notice, based on the \$30 per hour wage set out in the May 22, 2020 employment agreement and assuming a 40-hour work week.

### ***Moving Expenses***

29. Based on emails between the parties on June 23, 2020, I find they agreed that Civil would pay Mr. Gladue \$200 for relocation expenses. Mr. Gladue says that he had no choice but to accept that amount, as he had already quit his job in Alberta, packed up his apartment, and was committed to the new job. Although Mr. Gladue does not use the phrase, I find he argues that he accepted the \$200 offer for relocation expenses under duress.
30. To establish duress, Mr. Gladue must prove that Civil put him in a position where he had no realistic alternative but to accept the offer (see *Dairy Queen Canada, Inc. v. M.Y. Sundae*, 2017 BCCA 442). I do not find that to be the case here. In his response email to Civil's offer of \$200 for relocation, Mr. Gladue wrote "Sounds good, thank you." Further, I do not accept Mr. Gladue's assertion that he was half-way between Alberta and BC by the time the parties agreed on \$200. Based on Mr. Gladue's visa

bill, and his notes about the expenses listed, I find he did not leave Alberta until June 28, 2020, after the June 23, 2020 email agreement for \$200.

31. It is undisputed that Civil paid Mr. Gladue the agreed upon \$200 for relocation expenses. I dismiss Mr. Gladue's claim for \$600.

### ***Safety Equipment***

32. Mr. Gladue says he paid \$97 for a helmet and safety vest. Based on Mr. Gladue's July 2, 2020 visa statement and his July 6, 2020 email to Civil asking for reimbursement, I find Mr. Gladue spent \$91.85 on the safety equipment.

33. In its July 14, 2020 email, Civil refused to reimburse Mr. Gladue for the safety equipment because he kept it when he left the job site. I infer that Civil would have reimbursed Mr. Gladue the cost of the safety equipment, if he had not taken it with him.

34. Mr. Gladue says he mailed the safety equipment back to Civil and that Canada Post advised Mr. Gladue that the package had been picked up. As Civil did not dispute that it received the safety equipment, I accept Mr. Gladue's statement as true.

35. Civil says it reimbursed Mr. Gladue for his expenses. Civil provided bank records which show it paid Mr. Gladue for the hours he worked, and reimbursed \$200 in relocation expenses, and \$87.55 for gas costs. Civil provided no records showing it reimbursed Mr. Gladue for the safety equipment. As I find Mr. Gladue returned the safety equipment to Civil, I find he is entitled to reimbursement of \$91.85 for the costs of the equipment.

36. In summary, I find Mr. Gladue is entitled to \$1,926.75 as damages for wrongful dismissal and \$91.85 as reimbursement for safety equipment costs.

37. The *Court Order Interest Act* applies to the CRT. Mr. Gladue is entitled to pre-judgment interest on the \$1,936.60 in damages and equipment costs from July 5, 2020, the date he was dismissed, to the date of this decision. This equals \$3.80.



38. 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. I see no reason in this case not to follow that general rule. I find Mr. Gladue is entitled to reimbursement of \$175 in CRT fees. He has not claimed any dispute-related expenses.

## **ORDERS**

39. Within 30 days of the date of this order, I order Civil to pay Mr. Gladue a total of \$2,115.40, broken down as follows:

- a. \$1,926.75 in damages for wrongful dismissal,
- b. \$91.85 as reimbursement for safety equipment costs,
- c. \$3.80 in pre-judgment interest under the *Court Order Interest Act*, and
- d. \$175 in CRT fees.

40. Mr. Gladue is entitled to post-judgment interest, as applicable.

41. Mr. Gladue's remaining claims are dismissed.

42. 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.

43. 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.

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Sherelle Goodwin, Tribunal Member