



Civil Resolution Tribunal

Date Issued: February 25, 2021

File: SC-2020-007609

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *B.C.D. Holdings v. Grewal*, 2021 BCCRT 224

B E T W E E N :

B.C.D. HOLDINGS LTD.

APPLICANT

A N D :

JAGROOP SINGH GREWAL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about group insurance benefits premiums.
2. The applicant, B.C.D. Holdings Ltd. (BCD), hired the respondent, Jagroop Singh Grewal, as a subcontractor. BCD says Mr. Grewal enrolled in its group insurance benefits plan in March 2019. The plan premiums were to be deducted from Mr.

Grewal's pay, but he stopped working for BCD in April 2019 and never paid any premiums. BCD says Mr. Grewal fraudulently received benefits under the plan until July 2020. BCD claims \$3,147.09 in unpaid insurance benefits premiums.

3. Mr. Grewal denies that he intentionally received benefits under the plan after he stopped working for BCD. He says he was unaware that he was still being covered and it was BCD's responsibility to cancel his benefits. Mr. Grewal says he should not have to pay the claimed premiums.
4. BCD is represented by an employee, CS. Mr. Grewal is self-represented.

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, and I find that there are no significant issues of credibility or other reasons that might require an oral hearing. 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.

ISSUE

9. The issue in this dispute is whether Mr. Grewal owes BCD anything for unpaid insurance benefits premiums, and if so, how much?

EVIDENCE AND ANALYSIS

10. In a civil like this one, the applicant BCD must prove its claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. It is undisputed that Mr. Grewal started working for BCD on January 21, 2019 as an owner-operator truck driver. On March 12, 2019, Mr. Grewal signed an application for BCD's group insurance benefits plan. He became eligible for benefits coverage as of March 21, 2019. The benefits included life insurance, accident and serious illness insurance, extended health care and dental care. It is undisputed that the plan premiums were to be deducted from Mr. Grewal's paychecks, starting in April 2019. The application form in evidence does not state the applicable premium amounts.
12. It is also undisputed that Mr. Grewal's truck broke down on April 5, 2019, and he did not return to work for BCD after that date. BCD says it did not immediately remove Mr. Grewal from its fleet because it did not know if or when Mr. Grewal would get his truck repaired and return to work. BCD provided email evidence showing it made attempts to reach Mr. Grewal in October and December 2019 because he had not been in contact and to inquire whether he was planning to return to work.
13. Mr. Grewal says that he informed a BCD employee (now, former employee) by phone in July 2019 that he got a new job. However, Mr. Grewal did not provide a statement

from this former employee or explain that employee's position at BCD. BCD says it has no record of a July 2019 phone call from Mr. Grewal. I find there is insufficient evidence to prove Mr. Grewal informed BCD in July 2019 that he would not be returning to BCD.

14. Mr. Grewal also says after BCD's further attempts to contact him in December 2019, he advised CS that he had a new job and would not be returning to work for BCD. BCD does not specifically dispute that it learned in December 2019 that Mr. Grewal would not be coming back but says Mr. Grewal did not direct anyone to cancel his benefits at that time. I find BCD knew as of December 2019 that Mr. Grewal would not be returning to work. Further, I do not accept that Mr. Grewal was obligated to specifically direct BCD to cancel his benefits, as I find that it is generally an employer's obligation to advise its benefits provider when an employee is no longer entitled to benefits.
15. Mr. Grewal says he forgot to ask BCD about the insurance premiums when he first stopped working because he had never received a paycheck showing the premium deduction. BCD admits that while the first premium should have been applied to Mr. Grewal's paycheck at the beginning of April 2019, a payroll error resulted in another employee being charged Mr. Grewal's premiums. This error was not discovered until July 2020, which is when BCD ultimately cancelled Mr. Grewal's benefits membership and then asked Mr. Grewal to pay the insurance premiums back to March 2019. BCD provided a copy of its August 1, 2020 invoice to Mr. Grewal for the claimed \$3,147.09.
16. It is undisputed that Mr. Grewal used BCD's extended health care benefits periodically until they were cancelled in July 2020. Mr. Grewal says his use of the plan after April 2020 was unintentional. He says that he provided the plan number to his pharmacy when he first became eligible for benefits in March 2019 and did not realize the pharmacy kept the number on file for future purchases. Mr. Grewal provided some evidence that he did not use the benefits for medical or dental expenses incurred after he stopped working for BCD, other than at the one pharmacy that had the number on file. On balance, I accept that Mr. Grewal's use of the benefits

at his pharmacy was inadvertent and that he did not know he was receiving benefits under BCD's plan.

17. So, given that Mr. Grewal received benefits under the plan, but never paid any premiums, must he pay BCD the claimed premiums from March 2019 to July 2020?
18. I find that Mr. Grewal contracted to pay for insurance premiums while he was working for BCD. Given that he worked in March and part of April 2019, and he admittedly used the benefits during that time, I find Mr. Grewal is required to pay the premiums for those 2 months. BCD submitted a copy of its benefit billing statements, which shows Mr. Grewal's premium for March 2019 was \$238.53 and for April 2019 was \$248.53. This totals \$487.06.
19. After April 2019, while BCD has not specifically framed its claim as such, I find that BCD is saying Mr. Grewal should have to pay the premiums because he has been unjustly enriched by receiving benefits while BCD was paying his premiums in error.
20. The legal test for unjust enrichment is that the BCD must show: 1) that Mr. Grewal was enriched, 2) that BCD suffered a corresponding deprivation or loss, and 3) there is no valid basis or "juristic reason" for the enrichment: *Kosaka v. Chan*, 2009 BCCA 467.
21. Considering the first part of the test, while Mr. Grewal does not dispute that the BCD benefits plan was applied to his prescription purchases, he argues that part of the reason he did not notice was because he qualified for Pharmacare coverage at the time. I infer he means that Pharmacare would have provided him the same coverage he received from the BCD plan. Mr. Grewal provided evidence that he received a total of \$660.22 in benefits from the BCD plan from March 2019 to July 2020. However, Mr. Grewal did not file any evidence showing he applied for Pharmacare or what his coverage would have been. So, while I find Mr. Grewal's explanation for not realizing he received the BCD benefits is credible, I find he has not proven he did not profit or receive an "enrichment" by his receipt of BCD benefits.

22. Accepting that Mr. Grewal was enriched by receiving the benefits, I also find BCD suffered a corresponding deprivation. That is, BCD's payment of Mr. Grewal's premiums, corresponds with his enrichment. Nevertheless, I find there is a valid reason that Mr. Grewal should not have to pay BCD for the premiums it paid in error on Mr. Grewal's behalf. One factor in considering the third part of the test, whether there is a juristic reason for Mr. Grewal's enrichment, is the reasonable expectations of the parties: see *Kerr v. Baranow*, 2011 SCC 10, paragraph 43.
23. I find that Mr. Grewal reasonably expected he would not be entitled to receive benefits from the BCD plan when he was not working for BCD. I also find he reasonably expected that if he had any outstanding premiums, BCD would contact him to arrange payment of the premiums or cancel his plan membership. However, due to BCD's clerical error to charge Mr. Grewal's premiums to another BCD employee, it failed to notify Mr. Grewal that he owed premiums for more than 16 months. Had BCD not made the payroll error, I find Mr. Grewal's outstanding premiums likely would have been discovered immediately, and Mr. Grewal would have had the opportunity to direct BCD and his pharmacy to cancel his BCD plan membership. Further, particularly after he provided formal notice to BCD in December 2019 that he was not returning to work, I find Mr. Grewal reasonably expected he would not receive benefits from BCD's plan or owe any premiums.
24. Overall, I find it would not be just to require Mr. Grewal to pay premiums for benefits he was unaware he had, likely did not obtain the full use of, and says he did not want or need, just because BCD made a payroll error. For these reasons, I find BCD has not proven Mr. Grewal was unjustly enriched by its mistaken payment of his insurance premiums.
25. I have also considered whether BCD's payment of Mr. Grewal's premiums constitutes a "mistake of fact". At common law, money paid to another under a mistake of fact may be recoverable. However, here, BCD did not pay Mr. Grewal anything by mistake. Rather, BCD was paying its benefits plan provider by mistake. Further, for mistake of fact to apply, the mistake must be between the person paying and the

person receiving the money: see *Dyson et al. v. Moser*, 2003 BCSC 1720, paragraph 43. I find BCD's mistake was within its own payroll department. So, not only did Mr. Grewal not receive BCD's payments, I find he was not connected to BCD's mistake of fact. Therefore, I find that mistake of fact does not apply.

26. In summary, I find BCD has not proven Mr. Grewal should be required to pay the claimed insurance premiums, other than for the months of March and April 2019. Therefore, I find Mr. Grewal must pay BCD \$487.06.
27. The *Court Order Interest Act* applies to the CRT. BCD is entitled to pre-judgment interest on the \$487.06 from August 1, 2020, the date of its invoice, to the date of this decision. This equals \$1.25.
28. 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 find BCD was partly successful in its claims, so I find it is entitled to reimbursement of half its CRT fees, which equals \$87.50.

ORDERS

29. Within 30 days of the date of this decision, I order the respondent, Mr. Grewal, to pay the applicant, BCD, a total of \$575.81, broken down as follows:
 - a. \$487.06 in debt for unpaid insurance premiums,
 - b. \$1.25 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$87.50 in CRT fees.
30. BCD is entitled to post-judgment interest, as applicable.
31. 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.

32. 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.

Kristin Gardner, Tribunal Member