Civil Resolution Tribunal

Date Issued: February 26, 2021

File: SC-2020-008038

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wilson (dba Jaguar Express) v. Dempsey Freight Systems Ltd.*, 2021 BCCRT 226

B E T W E E N :

JAMES WILSON (Doing Business As JAGUAR EXPRESS)

APPLICANT

A N D :

DEMPSEY FREIGHT SYSTEMS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Chad McCarthy

INTRODUCTION

1. This dispute is about deductions from earnings. The applicant, James Wilson (doing business as Jaguar Express), worked as an owner-operator truck driver for the

respondent, Dempsey Freight Systems Ltd. (Dempsey). Mr. Wilson claims $4,351.22 for pay that he says Dempsey improperly withheld.

2. Dempsey says it withheld $4,351.22 earned by Mr. Wilson as a "holdback" for expected WorkSafeBC premium charges. Dempsey says Mr. Wilson failed to maintain his WorkSafeBC registration and pay premiums, in breach of the parties' contract. Dempsey says that as a result, it expects WorkSafeBC to charge Dempsey premiums for Mr. Wilson's coverage while working for Dempsey, in a future WorkSafeBC audit. Dempsey says Mr. Wilson is responsible for those expected premium charges. So, Dempsey says it is entitled to keep the withheld earnings to cover those expected charges.

3. Mr. Wilson is self-represented in this dispute. Dempsey is represented by an authorized employee.

JURISDICTION AND PROCEDURE

4. 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.

5. 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.

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.

8. I have no jurisdiction to grant entitlement to wages available under the *Employment Standards Act* (ESA). Only the Employment Standards Branch has jurisdiction to order compensation payable under the ESA. However, nothing in this decision addresses any statutory entitlements or permitted withholdings under the ESA involving the applicant as an employee. I find the CRT has jurisdiction over Mr. Wilson's unpaid earnings claim based on the law of contract, which falls under the CRT's small claims jurisdiction over debt and damages.

ISSUE

9. The issue in this dispute is whether Dempsey was entitled to retain $4,351.22 of Mr. Wilson's earnings for future WorkSafeBC premium charges anticipated by Dempsey.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. Wilson must prove his claims on a balance of probabilities. I have read and weighed all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.

11. The facts are largely undisputed. Mr. Wilson worked as an owner-operator truck driver for Dempsey beginning on February 6, 2019. There is no written contract in evidence that covered the parties' working relationship, including any WorkSafeBC responsibilities. However, I find it likely that the parties had a verbal or implied agreement that Mr. Wilson would provide trucking services for Dempsey, and would

be paid a known amount for them. The parties agree that Mr. Wilson had his own WorkSafeBC coverage in 2019, which he paid for himself throughout that year.

12. Mr. Wilson says he did not work for Dempsey for approximately 45 days at the end of 2019 and the beginning of 2020. Before resuming work on January 24, 2020, Mr. Wilson cancelled his WorkSafeBC account on January 20, 2020 and stopped paying premiums, but did not tell Dempsey.

13. The parties agree Mr. Wilson continued to work for Dempsey from January 24, 2020 until at least June 2020, when he encountered mechanical problems with his truck. During this work pause in June 2020, Dempsey obtained a WorkSafeBC clearance letter showing Mr. Wilson's January 20, 2020 account cancellation. Dempsey says that it will be liable for Mr. Wilson's WorkSafeBC coverage and premiums from January 21, 2020 onward, under section 258 of the *Workers Compensation Act* (WCA). So, it withheld $4,351.22 from Mr. Wilson's pay in an "escrow" account, and told him that the amount would be "paid out in full" after WorkSafeBC completed its annual audit of assessments (insurance premiums). I infer Dempsey planned to pay any WorkSafeBC premiums that might arise for Mr. Wilson's coverage out of this withheld amount.

14. I find the parties agree that Dempsey withheld $4,351.22 of Mr. Wilson's pay. On the evidence before me, I find that Mr. Wilson has met his burden of proving that Dempsey owed Mr. Wilson the claimed $4,351.22 for work he performed.

15. However, Dempsey says it was entitled to withhold $4,351.22, because Mr. Wilson is responsible for paying any WorkSafeBC coverage that Dempsey might be charged for January 21, 2020 through June 2020.

16. If the evidence shows that Dempsey is liable to WorkSafeBC for Mr. Wilson's 2020 premiums, Dempsey might be able to claim what is known in law as a "set-off" against the earnings owed to Mr. Wilson. The decision in *Wilson v. Fotsch*, 2010 BCCA 226 at paragraph 73, sets out the requirements for a claim of equitable set-off. These include that there must be some equitable basis for the set-off. In this case, I find that

basis would be Mr. Wilson unfairly causing Dempsey to be liable to WorkSafeBC for Mr. Wilson's coverage and premiums. However, Dempsey does not deny that it has not yet been charged anything for Mr. Wilson's coverage, and that WorkSafeBC has not yet assessed Dempsey as being liable for that coverage. On the evidence before me, I also find it is unclear whether Dempsey will be charged for any WorkSafeBC coverage in the future. Further, Dempsey's September 4, 2020 demand letter to Mr. Wilson suggests that Landtran Truckload Group may be liable for Mr. Wilson's 2020 premiums. Landtran Truckload Group is not named as a party to this CRT dispute, and I find its relationship to Dempsey is unclear on the submitted evidence. So, I find that it is premature to consider whether Dempsey is entitled to an amount for January 2020 to June 2020 WorkSafeBC premiums that might be charged to it in the future.

17. I note that Dempsey says it had a subcontractor relationship with Mr. Wilson, which required Mr. Wilson to prove that he had WorkSafeBC coverage. As noted, the parties agree that Mr. Wilson worked for Dempsey for almost one year in 2019, during which he maintained his own WorkSafeBC registration and paid his own premiums. Further, Mr. Wilson says that when Dempsey approached him about his cancelled WorkSafeBC registration after they obtained the clearance letter in June 2020, he offered to pay Dempsey $390 to cover the cost of his unpaid WorkSafeBC premiums in 2020. For all of these reasons, I find the parties had an implied or verbal agreement that Mr. Wilson would maintain his own WorkSafeBC coverage and pay for his own WorkSafeBC premiums.

18. However, despite this agreement, I find it is premature to determine whether Dempsey is liable, or will become liable, to WorkSafeBC for Mr. Wilson's 2020 premiums. So, I decline to order any set-off against the earnings owing to Mr. Wilson. Nothing in this decision precludes Dempsey from filing a claim against Mr. Wilson if Dempsey is required to pay WorkSafeBC premiums for him, subject to the applicable limitation periods.

19. As a result, I allow Mr. Wilson's claim, and find that Dempsey owes him $4,351.22 for unpaid earnings.

CRT FEES, EXPENSES, AND INTEREST

20. Under the *Court Order Interest Act*, Mr. Wilson is entitled to pre-judgment interest on the $4,351.22 owing. Payment records Dempsey supplied to Mr. Wilson show this amount was deducted from his earnings on July 31, 2020, so I find pre-judgment interest is calculated from that date until the date of this decision. This equals $11.32.

21. 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. Mr. Wilson was successful here, so I find he is entitled to reimbursement of the $175 he paid in CRT fees. Mr. Wilson claimed no CRT dispute-related expenses. Dempsey was unsuccessful, so it is not entitled to reimbursement of any fees or expenses, including the unproven $630 it claimed for time spent on this dispute. I note that in any event, under CRT rule 9.5(1), the CRT generally does not order a party to compensate another party for time spent dealing with a CRT proceeding except in extraordinary circumstances, which do not exist here.

ORDERS

22. Within 30 days of the date of this order, I order Dempsey to pay Mr. Wilson a total of $4,537.54, broken down as follows:

    a. $4,351.22 in debt for unpaid earnings,

    b. $11.32 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $175 in CRT fees.

23. Mr. Wilson is entitled to post-judgment interest, as applicable.

24. 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.

25. 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.

Chad McCarthy, Tribunal Member