



# Civil Resolution Tribunal

Date Issued: May 17, 2021

File: SC-2020-008713

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Antoniak v. Jack Juusola Sales Limited*, 2021 BCCRT 523

B E T W E E N :

GERALD ANTONIAK

**APPLICANT**

A N D :

JACK JUUSOLA SALES LIMITED

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## INTRODUCTION

1. The applicant, Gerald Antoniak, hired the respondent, Jack Juusola Sales Limited (JJSL), to remove and reinstall a turbocharger in his truck. He says JJSL

overcharged him for the work and failed to use an installation kit he provided. He also says JJSL's work was negligent and damaged the turbocharger and cab of his truck. Mr. Antoniak wants JJSL to reimburse him \$1,349.50 for unauthorized and excessive labour charges, \$183.71 for the installation kit, and \$370.68 for out of pocket expenses, for a total of \$1,903.89.

2. JJSL says Mr. Antoniak authorized all the services it provided on his truck, and that JJSL used the installation kit Mr. Antoniak provided except for a few bolts. It says it was not negligent and does not owe Mr. Antoniak anything.
3. Mr. Antoniak is self-represented and JJSL is represented by an employee or principal.

## **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. Some of the evidence in this dispute amounts to a "she said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

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. In his submissions Mr. Antoniak claims JJSL's repair work was negligent, causing damage to the turbocharger and the cab. He also says JJSL's mechanic was not qualified to complete the work. He did not claim negligence in his Dispute Notice and chose not to amend his Dispute Notice despite the case manager giving him several opportunities to do so. Since JJSL did not have the opportunity to provide evidence in relation to Mr. Antoniak's negligence claim, I find it would be procedurally unfair to decide the claim in this dispute. So, I decline to address Mr. Antoniak's negligence claim in this decision.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did JJSL overcharge Mr. Antoniak for the turbocharger installation?
  - b. Is Mr. Antoniak entitled to reimbursement of the cost of the installation kit?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim like this one, the applicant Mr. Antoniak must prove his claims on a balance of probabilities. I have reviewed all the parties' evidence and submissions but refer only to what is necessary to explain my decision.

### **Did JJSL overcharge Mr. Antoniak for the turbocharger installation?**

11. Mr. Antoniak claims reimbursement of \$1,349.50 for JJSL's allegedly unauthorized and excessive labour on his truck. JJSL says Mr. Antoniak authorized all charges in advance and it did not overcharge him.

12. JJSL operates a Canadian Tire store and service centre. It is undisputed that around September 16, 2020, JJSL quoted Mr. Antoniak \$996 plus tax to remove a twin turbocharger and attachments from his truck and to replace them with a new turbocharger and actuator. Mr. Antoniak says he agreed to this quote and agreed to provide all necessary parts and an installation kit. He says JJSL assured him it would not need to remove the cab of his truck from the chassis during the repair work.

13. JJSL says the original quote was if JJSL did not need to remove the cab, and I find this is supported by the quote's wording. JJSL says when it quoted Mr. Antoniak it notified him that if the mechanic determined the cab required removal to complete the repair work, it would cost more. I find this is supported by Mr. Antoniak's written complaint to Canadian Tire in evidence in which he said the quote was for \$996 without cab removal and \$1,400 with cab removal but was told it could be done without removing the cab. I find that when Mr. Antoniak received the quote from JJSL, he knew there was a possibility the cab would need to be removed to complete the work, in which case the work would cost more than the initial quote.

14. Mr. Antoniak undisputedly dropped his truck off with JJSL on September 25, 2020 at approximately 8:00 a.m. JJSL says at that time it clearly explained to him that there were 2 different labour costs and time frames for completing the job, depending on whether the cab had to be removed. JJSL says it told Mr. Antoniak it

would call him as soon as the mechanic determined whether the cab had to be removed.

15. It is undisputed that once the mechanic started the work, they determined it was necessary to remove the cab to access some seized bolts to complete the work. At approximately 10:00 a.m. JJSL phoned Mr. Antoniak to inform him of this, and of the new higher price of the work, which was \$1,884 before tax based on 14.5 hours of labour. Mr. Antoniak says he did not agree to the higher price or to have the cab removed. JJSL says that while Mr. Antoniak was not happy about it, he agreed to the work and the increased price over the phone. It says it would not have done the work without Mr. Antoniak's approval, and it could not complete the work without removing the cab. JJSL says it told Mr. Antoniak it would need to keep his truck over the weekend, and it would notify him when the truck was ready for pickup. For the reasons explained below, I find Mr. Antoniak authorized the additional labour and related charges.
16. Mr. Antoniak undisputedly returned to JJSL's shop at approximately 3:15 p.m. that day. He says there was no jack under the engine of his truck, the cab was on the chassis, and the mechanic was working on a different vehicle. He says he could see that the turbocharger was fully installed except for the air filter, actuator, fuel cooler, and 2 head lamp fixtures. He says the remaining work would have required less than 30 minutes of labour, but he provided no evidence to support this assertion. JJSL says at the time of Mr. Antoniak's visit the turbocharger was in place but it was not hooked up to the engine, and it still needed to refill fluids, perform scan checks, and test drive the truck.
17. It is undisputed that Mr. Antoniak picked up his truck from JJSL's shop on Saturday, September 26, 2020. JJSL charged Mr. Antoniak \$2,223.04, which included 14.5 hours of labour, and Mr. Antoniak paid the full amount under protest.

18. Mr. Antoniak says JJSL's removal of the cab from the chassis and the related labour was an unsolicited service for which he did not give written acceptance under sections 11 and 12 of the *Business Practices and Consumer Protection Act* (BPCPA). He also says JJSL's allegedly unauthorized increase of labour costs was a deceptive act or practice under Division 1 of the BPCPA.
19. Section 11 of the BPCPA defines unsolicited services as services that are supplied to a consumer who did not request them. Section 12 of the BPCPA says a consumer has no legal obligation in respect of unsolicited services unless and until they expressly acknowledge in writing their intention to accept the services.
20. It is undisputed that Mr. Antoniak hired JJSL to remove and reinstall the turbocharger and actuator, and that JJSL completed that work. On balance, I find Mr. Antoniak approved the additional labour and cost of removing the cab to complete the work. I find his visit to the shop mid-afternoon on September 25, 2020 is consistent with him giving his permission for JJSL to continue the work. Otherwise I would have expected him to pick up his truck at that time, or sooner, since it is undisputed that JJSL could not have completed the work without removing the cab. I also find it unlikely that JJSL would phone Mr. Antoniak to ask his permission for the additional labour if it planned to disregard his wishes and proceed with the work anyway. So, having found Mr. Antoniak authorized the additional labour and associated costs, I find section 12 of the BPCPA is not applicable, and Mr. Antoniak's written approval was not required for the additional labour. I also find Mr. Antoniak has not established that JJSL engaged in a deceptive act or practice under Division 1 of the BPCPA.
21. I turn now to the amount of the final invoice, which included 14.5 hours of labour at \$129.99 per hour, and \$100 in shop supplies, plus tax, for a total of \$2,223.04. The parties gave conflicting evidence about the amount of time JJSL spent working on the truck and the time Mr. Antoniak picked up his truck on September 26, 2020. Mr. Antoniak's evidence is based on JJSL only working during shop hours and him picking up the truck at 11:00 a.m. JJSL's evidence is based on video footage, which

it did not provide as evidence. It says the video shows it finishing work on the truck at 12:34 p.m. I prefer JJSL's evidence for 2 reasons. First, although it is difficult to read on the invoice, I find it shows Mr. Antoniak paid the invoice sometime between 1:00 p.m. and 2:00 p.m. which is consistent with JJSL's timeline. Second, it is undisputed that Mr. Antoniak demanded to pick up his truck on September 26, 2020 even though JJSL told him it may not be ready by then. In the circumstances I find it would not be unreasonable for JJSL to work outside of its regular shop hours to ensure the truck was ready when Mr. Antoniak came to pick it up.

22. However, based on JJSL's own evidence, I find it spent 13 hours and 46 minutes working on the truck, not the 14.5 hours charged in the final invoice. The evidence shows it charged labour based on 6-minute increments. So, I find JJSL overcharged Mr. Antoniak by 0.7 hours, which equals \$101.91 including tax. I order JJSL to reimburse Mr. Antoniak \$101.91 for excessive labour charges.
23. Mr. Antoniak also claims reimbursement of the \$100 shop supplies charge. He says he provided all required parts and the installation kit and says he did not approve this charge in advance. He also says JJSL failed to provide proof supporting this charge when he requested it. JJSL does not explain in its submissions what exactly this charge was for. Although the preliminary work order included a \$96.82 shop supply charge, this amount was not included in the original \$996 estimate and I find there is insufficient evidence that Mr. Antoniak agreed to this initial shop charge. On balance, I find Mr. Antoniak did not agree to the \$100 shop supplies charge. I order JJSL to reimburse Mr. Antoniak \$112, which is the amount of the shop supplies charge including tax. In total, I find JJSL must reimburse Mr. Antoniak \$213.91 for excessive charges.

**Is Mr. Antoniak entitled to reimbursement of the cost of the installation kit?**

24. Mr. Antoniak claims \$183.71 as reimbursement for the cost of the installation kit. It is undisputed that he purchased the kit for \$183.71 and provided it to JJSL to use for installing the turbocharger. It is also undisputed that JJSL did not use some of

the heat shield bolts from the kit, because it reused some of the existing bolts. JJSL says it is willing to return the unused bolts to Mr. Antoniak.

25. Mr. Antoniak says he believes JJSL did not use any part of the installation kit but provided no evidence to support this assertion. Aside from the unused bolts, I find Mr. Antoniak has not proven that JJSL did not use the installation kit. There is no evidence of the value of the unused bolts, and Mr. Antoniak has not asked for their return. So, I find he is not entitled to reimbursement of the cost of the installation kit and I dismiss this claim.
26. The *Court Order Interest Act* applies to the CRT. Mr. Antoniak is entitled to pre-judgment interest on the \$213.91 owing calculated from September 26, 2020, which is the date he paid JJSL for the work, to the date of this decision. This equals \$0.62.
27. 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. Since Mr. Antoniak was partially successful, I find he is entitled to reimbursement of \$62.50 which is half his CRT fees.
28. Mr. Antoniak claims \$370.68 in out of pocket expenses, though I note the total of these expenses claimed in his submissions is \$378.49. I find these are claims for dispute-related expenses. He claims \$22.72 in Canada Post charges, which I find reasonable. Based on his partial success in this dispute I find Mr. Antoniak is entitled to reimbursement of \$11.36 which is half that amount. Mr. Antoniak also claims \$43.38 for photo printing charges, however since he submitted his evidence electronically, I do not allow this claim. He claims \$86.81 for an invoice from a different mechanic who examined his truck to determine whether JJSL had removed the cab. I find this is not a dispute-related expense and I do not allow it. He also claims \$75.58 in relation to a Canadian Tire account, however the basis for this claim is unclear, and in any event, I find it is not a dispute-related expense. Finally, Mr. Antoniak claims \$150 in legal fees. Under CRT rule 9.5(3) the CRT will only order a party to pay another party's legal fees in extraordinary circumstances, and I



find there is nothing extraordinary about this dispute, so I dismiss this claim. In total, I find JJSL must reimburse Mr. Antoniak \$11.36 in dispute-related expenses.

## ORDERS

29. Within 30 days of the date of this order, I order JJSL to pay Mr. Antoniak a total of \$288.39, broken down as follows:

- a. \$213.91 as reimbursement for excessive charges,
- b. \$0.62 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$73.86 for \$62.50 in CRT fees and \$11.36 for dispute-related expenses.

30. Mr. Antoniak is entitled to post-judgment interest, as applicable.

31. I dismiss the remainder of Mr. Antoniak's claims.

32. 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.

33. 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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Sarah Orr, Tribunal Member