



Civil Resolution Tribunal

Date Issued: June 4, 2021

File: SC-2021-000036

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rawling v. Barker*, 2021 BCCRT 618

BETWEEN:

HANNAH RAWLING

APPLICANT

AND:

DANIEL BARKER and DANIEL J. BARKER, LAW CORPORATION

RESPONDENTS

AND:

HANNAH RAWLING

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. The applicant and respondent by counterclaim, Hannah Rawling, is a lawyer who worked for the respondents, Daniel Barker, and his law corporation, Daniel J. Barker, Law Corporation (DJB). Ms. Rawling says she ceased working for Mr. Barker and DJB on December 8, 2020 but has not received her final paycheque or her bonus. She claims \$2,071.38 for her final paycheque and \$760.38 for her bonus.
2. Mr. Barker and DJB do not dispute that they owe \$2,071.38 to Ms. Rawling for her final paycheque, but say the \$760.38 bonus was discretionary and Mr. Barker and DJB were entitled to cancel it.
3. Mr. Barker and DJB also says they are entitled to a set off because they paid Ms. Rawling's 2021 Law Society of BC (LSBC) practice and indemnity fees. Mr. Barker and DJB counterclaim for \$2,146.81 for Ms. Rawling's 2021 LSBC fees. Ms. Rawling disputes this and says Mr. Barker and DJB are not entitled to repayment.
4. Ms. Rawling is self-represented. Mr. Barker represents both himself and DJB.

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. Under section 31(c) of the *Employment Standards Act* (ESA) Regulation, the ESA does not apply to Ms. Rawling because she is a member of the LSBC. Ms. Rawling's claim is under her employment agreement, rather than for entitlements under the ESA. So, I find this dispute is within the CRT's small claims jurisdiction over debt and damages, as set out in section 118 of the CRTA.

ISSUES

10. The issue in this dispute are:
 - a. Whether Mr. Barker and DJB must pay Ms. Rawling \$2,071.38 for her final pay?
 - b. Whether Mr. Barker and DJB must pay Ms. Rawling a \$760.38 bonus?
 - c. Whether Ms. Rawling must repay Mr. Barker and DJB \$2,146.81 for her 2021 LSBC fees?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicants, whether by claim or counterclaim, must prove their claims on a balance of probabilities. I have read all the parties'

submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.

The Employment Agreement

12. It is undisputed that Ms. Rawling agreed to work as an associate lawyer for Mr. Barker and DJB after finishing her articling term in exchange for \$80,000 annually, the payment of all LSBC fees, plus bonuses. There was no formal written agreement between the parties during this time period. While enforceable, verbal agreements are harder to prove than written ones. There is an August 18, 2020 email from Mr. Barker to Ms. Rawling that confirmed Ms. Rawling's \$80,000 salary, plus bonuses. In the email, Mr. Barker wrote "I would hope with some good cases I can give you another 5 to 10K in bonuses" (reproduced as written).
13. Mr. Barker says the employment agreement was between himself and Ms. Rawling, not DJB. However, the only evidence of the employment agreement is the email from Mr. Barker from a DJB email address. Mr. Barker also acknowledges that DJB made all payments to Ms. Rawling under the employment agreement. So, I find Mr. Barker entered in the employment agreement with Ms. Rawling in his capacity as the principal of DJB. As I find Mr. Barker was not personally a party to the employment agreement, I dismiss Ms. Rawling's claims against him.

Ms. Rawling's final pay

14. It is undisputed that DJB failed to pay Ms. Rawling her final pay of \$2,071.38, as agreed. Instead, DJB withheld Ms. Rawling's final pay and claimed a set-off for her 2021 LSBC fees that DJB had paid. I find DJB breached the employment agreement by withholding Ms. Rawling's final pay. I find that her remedy for breach of the contract is damages. Damages for breach of contract are intended to place a party in the position they would have been in if the contract had been carried out as agreed: *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319 at paragraph 39. I find DJB owes Ms. Rawling \$2,071.38.

Ms. Rawling's bonus

15. Ms. Rawling says her bonus was “not entirely discretionary” and says she was entitled a minimum of \$5,000 up to a maximum of \$10,000 based on her performance. DJB disputes this and says bonuses were entirely discretionary. The only written evidence of the bonus structure is Mr. Barker’s August 18, 2020 email where he said he hoped to give Ms. Rawling \$5,000 to \$10,000 in bonuses. I find this email does not support a finding that Ms. Rawling and DJB agreed to a \$5,000 minimum bonus amount. In any event, Ms. Rawling does not claim \$5,000 for her bonus. Here, I find that Ms. Rawling was entitled to discretionary bonuses as part of her agreement with DJB. The parties did not provide any evidence or submissions about previous bonuses.
16. Ms. Rawling says that DJB agreed to pay her a \$760.38 bonus on November 19, 2020 for her work on the “H. File” but failed to do so. DJB does not dispute this and says Mr. Barker advised Ms. Rawling she would receive the “usual bonus” of \$1,000 gross (\$760.38 net) for some “excellent work” she had done on a specific file. However, DJB says that upon discovering that Ms. Rawling was not fulfilling other work requirements, DJB was entitled to cancel Ms. Rawling’s bonus. On December 8, 2020, Mr. Barker emailed Ms. Rawling with his concerns and proposed cancelling her bonus, among other steps he proposed to address concerns with her work.
17. I find that Ms. Rawling was entitled to a discretionary bonus for her “H. File” work. The question then is whether or not DJB reasonably exercised their discretion not to pay the bonus on the basis of objective criteria (see *Burton v. Marwest Utilities Services Ltd.*, 2019 BCSC 490 at paragraph 327).
18. Here, I find that Ms. Rawling’s entitlement to discretionary bonuses was based on “good cases”, as stated in Mr. Barker’s August 18, 2020 email. It is undisputed that Ms. Rawling was advised she would receive a bonus because of her excellent work on a specific file. In evidence is a November 19, 2020 email from Mr. Barker advising Ms. Rawling a bonus was coming for her excellent and efficient work. So, despite other concerns with her work that arose afterwards, I find that DJB did not reasonably

exercise their discretion when cancelling Ms. Rawling's bonus for her undisputedly excellent work on a specific file. I find Ms. Rawling's is entitled to the \$760.38 bonus.

19. In total, I find DJB must pay Ms. Rawling \$2,831.76 for her final pay and bonus.

2021 LSBC fees

20. I will now address Mr. Barker and DJB's counterclaim seeking a refund of the 2021 LSBC fees paid on Ms. Rawling's behalf. As I have already found that Mr. Barker was not a party to the employment agreement, I find that Mr. Barker's counterclaim against Ms. Rawling must fail.

21. It is undisputed that DJB paid the first installment of Ms. Rawling's 2021 LSBC fees. It is also undisputed that Ms. Rawling ceased working for DJB on December 8, 2020 and did not work for DJB at any point in 2021. The parties dispute whether DJB is entitled to a refund after Ms. Rawling terminated her employment with DJB.

22. Here, I find that the employment agreement did not include any provision for DJB to pay Ms. Rawling's LSBC fees after she terminated her employment with DJB. Rather, I find that there was an agreement between the parties that DJB would pay Ms. Rawling's LSBC fees only while she was employed by DJB. I find payment of her LSBC fees was intended as a benefit of employment with DJB, and not as a unilateral, portable benefit for Ms. Rawling that would continue after she terminated her employment (see *Gellert v. Hayer*, 2001 BCPC 262).

23. I note that the LSBC receipt in evidence confirms Ms. Rawling's 2021 LSBC fees were paid during her employment with DJB in November 2020. However, the effective date for the 2021 LSBC fees was January 1, 2021. As Ms. Rawling undisputedly terminated her employment with DJB before 2021, I find she was no longer entitled to payment of her 2021 LSBC fees under the employment agreement. So, I find Ms. Rowling must refund DJB the 2021 LSBC fees paid on her behalf, totaling \$2,146.81.

Summary, CRT fees and expenses, and interest

24. Given my finding above, I find that Ms. Rawling's award of \$2,831.76 for her final pay and bonus must be reduced by \$2,146.81 to account for the 2021 LSBC fees refund. DJB must pay Ms. Rawling the difference, which totals \$684.95.
25. *The Court Order Interest Act* applies to the CRT. Ms. Rawling is entitled to pre-judgment interest of \$684.95 for her unpaid earnings from December 15, 2020, the date it was owed, to the date of this decision. This equals \$1.45.
26. 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. In this case, Ms. Rawling and DJB were successful in their respective claims. Ms. Rawling and Mr. Barker both paid \$125 in CRT fees. DJB did not pay any CRT fees. Here, DJB was added as an applicant to Mr. Barker's counterclaim. Mr. Barker paid the CRT fees for the counterclaim. While Mr. Barker was not personally successful in his counterclaim, the counterclaim itself was successful. So, I find it is reasonable in this dispute to find that Ms. Rawling and Mr. Barker's claims for CRT fees cancel each other out. The parties did not claim any dispute-related expenses. So, I make no award for fees or dispute-related expenses.

ORDERS

27. Within 30 days of the date of this order, I order DJB to pay Ms. Rawling a total of \$686.40, broken down as follows:
 - a. \$684.95 in debt for unpaid earnings, and
 - b. \$1.45 in pre-judgment interest under the *Court Order Interest Act*.
28. Ms. Rawling is entitled to post-judgment interest, as applicable.
29. I dismiss Ms. Rawling's claims against Mr. Barker.
30. I dismiss Mr. Barker's counterclaim.

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.

Leah Volkers, Tribunal Member