



Civil Resolution Tribunal

Date Issued: June 25, 2021

File: SC-2020-006485

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wang v. Zenabis Global Inc.*, 2021 BCCRT 703

B E T W E E N :

SONG WANG

APPLICANT

A N D :

ZENABIS GLOBAL INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about entitlements under an employment contract. The applicant, Song Wang, previously worked for the respondent, Zenabis Global Inc. (Zenabis). Mr. Wang claims a total of \$5,000: \$4,080 for unpaid overtime, \$503.33 for an unpaid bonus, and \$416.67 for stocks options that he says vested.

2. Zenabis denies Mr. Wang's claims. It says it was not obligated to pay overtime, bonuses, or issue stock options under the terms of the employment contract.
3. Mr. Wang represents himself. An employee or principal represents Zenabis.
4. For the reasons that follow, dismiss Mr. Wang's claims.

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.

The CRT's Preliminary Decision of January 20, 2021 about Jurisdiction

9. The CRT has no jurisdiction over an employee's claims for statutory entitlements to wages, as provided under the *Employment Standards Act* (ESA). That is within the exclusive jurisdiction of the Employment Standards Tribunal.
10. In a January 20, 2021 preliminary decision, the CRT allowed Mr. Wang to amend his Dispute Notice to add claims for overtime pay and stock options. The CRT reached this decision in part because Mr. Wang made his request early in the process and there was no prejudice to Zenabis. The CRT also determined the added claims were within the CRT's small claims jurisdiction. This was because Mr. Wang's claims were based on contractual entitlements rather entitlements under the ESA.
11. I agree with the reasoning in the January 20, 2021 preliminary decision and find all of Mr. Wang's claims are within the CRT's jurisdiction over debt and damages. I consider their merits below.

ISSUE

12. The issue in this dispute is whether Zenabis breached the employment contract terms about overtime, bonuses, and stock options, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, the applicant Mr. Wang must prove his claims on a balance of probabilities. I have read all the parties' submissions, including case law cited, but refer only to the evidence and arguments that I find relevant to provide context for my decision.
14. The background facts are undisputed. Mr. Wang signed an employment contract in September 2019. As stated in the contract, Zenabis employed Mr. Wang as a project manager on a continuing basis from September 30, 2019. I discuss the terms in detail

below. Emails show that Mr. Wang's employment ended on January 7, 2020. Mr. Wang does not allege any wrongful dismissal.

15. In January 2020, Mr. Wang emailed Zenabis to ask for payment of an annual bonus, overtime for working 2 weekends, and stock options that he says vested on September 30 and December 30, 2019. Zenabis did not comply with his request.

Contractual Claim for Overtime

16. Mr. Wang claims overtime for working 26 hours on 2 weekends in October and November 2019. He also claims overtime for working another 30 hours at various times. Zenabis denies Mr. Wang has any contractual entitlement to overtime.
17. Having reviewed the parties' contract, I agree with Zenabis. Under section 7(a), Mr. Wang was paid an annual salary. The contract had no terms about overtime. It did not set out Mr. Wang's working hours or days, so I have no basis for calculating overtime.
18. I do not find there is enough evidence to show any implied terms about overtime. Mr. Wang says he worked 2 weekends in response to Zenabis' emails of October 16 and November 15, 2019. He points out that in the latter email, Zenabis said that it would keep track of overtime. However, this email was sent to many employees. I find Zenabis merely confirmed it would pay overtime to employees that were entitled to it.
19. Mr. Wang notes in a January 13, 2020 email, Zenabis' employee, L, advised that she would arrange for payment of overtime. Given the contract terms and lack of any specifics in the email, I find L was simply mistaken about Mr. Wang's contractual entitlements. There is nothing else to suggest L intended to form a new contract or amend the existing employment contract to provide for overtime. Mr. Wang's employment had ended. For all these reasons, I dismiss Mr. Wang's claims for overtime.

Contractual Claim for the STIP Bonus

20. Section 7(b) of the contract described a short-term incentive plan (STIP), which I find is the bonus at issue. The term said that from the employment date of September 30, 2019, Mr. Wang would be eligible for incentive payouts “based on individual and corporate performance” equal to 15% of his annual salary. The term also said that “STIP payouts at the target rate, if at all, are not guaranteed.” Given the lack of any other criteria, I find the STIP bonus was discretionary.
21. An employer has an obligation to exercise its discretion about the payment of bonuses in a transparent and fair manner: *Thoma v Schaefer Elevator Components Inc.*, 2019 BCSC 100 at paragraph 20. An employee may form a reasonable expectation of entitlement to a bonus, even a discretionary one. Factors to consider in assessing reasonable expectations include 1) whether a bonus was received in prior years, 2) whether bonuses were required in order to remain competitive with other employers, 3) whether bonuses were historically awarded and the employer had ever exercised discretion against the employee, and 4) whether the bonus was a significant component of the employee’s overall compensation. See *Thoma* at paragraph 14, citing *Gillies v. Goldman Sachs Canada Inc.*, 2000 BCSC 355.
22. Mr. Wang was employed for slightly more than 3 months. I do not find this was enough time for him to form a reasonable expectation of entitlement to the bonus. As the bonus is a fraction of his salary, I also do not find the bonus was a significant part of his compensation. Mr. Wang did not provide evidence to show Zenabis historically awarded bonuses or that the bonus was required for Zenabis to provide competitive wages. He bears the burden to prove his claim, as discussed above. Further, in the January 2020 email, L advised Mr. Wang that no employees earned a bonus for 2019. This evidence indicates Mr. Wang’s treatment was typical.
23. Mr. Wang says Zenabis failed to provide a performance review or advise him of its decision about the bonus during his period of employment. I do not find these submissions persuasive given the short period of time he worked for Zenabis. For all these reasons, I dismiss this claim.

Claim for Stock Options

24. Section 7(c) of the contract said that as of the September 30, 2019 employment date, “or as soon thereafter as Zenabis’ board of directors is able to pass a board resolution confirming the amount and applicable exercise price available at the time of such grant”, Mr. Wang would be granted up to 25,000 options under Zenabis’ stock option plan. While employed, the options would vest over 3 years, with the first one-twelfth immediately at the time of grant and one-twelfth every 3 months thereafter.
25. Given this wording, I find section 7(c) does not grant any shares and only vests an option to purchase a certain number of shares at a set price.
26. It is undisputed that the board of directors never passed a resolution about the exercise price. I do not find section 7(c) permits Zenabis to indefinitely delay passing a resolution about the exercise price. I find this inconsistent with the contract’s wording and the parties’ reasonable expectations.
27. However, I find Mr. Wang has not shown any loss. He submits that some of the stock options vested on September 30 and December 30, 2019. He says Zenabis’ share price was \$0.95 and \$0.19 on those respective dates. He says the stock price was \$0.13 as of the date of his submissions. Mr. Wang provided no submissions or evidence about what the exercise price would have been or if he would have purchased shares at that price. It is undisputed that Zenabis’ stock price has declined. I am therefore not satisfied that Mr. Wang suffered any loss, even if the stock options vested as alleged.
28. Mr. Wang limited his claim to damages, and in any event, I do not have the jurisdiction to order Zenabis to provide the options now. As I am not satisfied that Mr. Wang suffered a loss, I must dismiss this claim as well.
29. 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.

Zenabis paid no CRT fees and claimed no dispute-related expenses. I therefore do not order reimbursement for any parties.

ORDER

30. I dismiss Mr. Wang's claims and this dispute.

David Jiang, Tribunal Member