



# Civil Resolution Tribunal

Date Issued: July 6, 2021

File: SC-2020-009259

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kolb v. United Parcel Service Canada Ltd.*, 2021 BCCRT 739

**B E T W E E N :**

**KURT KOLB**

**APPLICANT**

**A N D :**

**UNITED PARCEL SERVICE CANADA LTD. and INSURANCE  
CORPORATION OF BRITISH COLUMBIA**

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr

## **INTRODUCTION**

1. This small claims dispute is about vehicle damage from an alleged motor vehicle accident in North Vancouver, BC. The applicant, Kurt Kolb, says that a delivery truck owned by the respondent, United Parcel Service Canada Ltd. (UPS), backed into his parked car, damaging his bumper. Mr. Kolb claims \$750 for the deductible

he paid to have his car repaired and \$1,000 in lost earnings for the time he spent arranging for the repair and dealing with UPS.

2. UPS denies that its truck hit Mr. Kolb's car. UPS asks that I dismiss Mr. Kolb's claims against UPS.
3. The other respondent, Insurance Corporation of British Columbia (ICBC), insures Mr. Kolb but not UPS. ICBC says that it is not a proper respondent in this dispute and asks me to dismiss Mr. Kolb's claims against ICBC.
4. Mr. Kolb is self-represented. UPS and ICBC are each represented by employees.

## **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 pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the CRT considers appropriate.
9. I will briefly address ICBC's argument that it is not a proper respondent to this dispute. ICBC says that it agrees with Mr. Kolb that UPS is 100% liable for the accident, but says that because UPS is self-insured, it has no power to compel UPS to pay Mr. Kolb's deductible. In his submissions, Mr. Kolb does not make any allegations about ICBC's handling of his claim or any arguments about why ICBC should be responsible for the deductible or lost earnings. It is unclear why Mr. Kolb named ICBC as a party. I agree with ICBC that Mr. Kolb has made no claims against it. I dismiss Mr. Kolb's claims against ICBC.

## **ISSUES**

10. The issues in this dispute are:
  - a. Did a UPS truck hit Mr. Kolb's car?
  - b. If so, what are Mr. Kolb's damages?

## **EVIDENCE AND ANALYSIS**

11. In a civil claim such as this, Mr. Kolb as the applicant must prove his claims on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
12. Mr. Kolb works at an office park in North Vancouver. The office park has stall parking. Mr. Kolb was parked nose-in on December 19, 2018, while he was at work. According to Mr. Kolb, a UPS truck struck his parked car while making a delivery.
13. UPS admits that its driver delivered a package at the office park on December 19, 2018. However, UPS denies that its truck struck Mr. Kolb's car.

14. Mr. Kolb did not witness the alleged collision. However, a witness, LS emailed a statement to ICBC on June 24, 2019. LS said that their office is directly above where Mr. Kolb was parked and that their desk faces the window. LS said that before the collision, they noticed a UPS truck pulling up and watched it attempt to reverse into a stall next to Mr. Kolb's car. LS said that they heard a loud bang and then the truck stopped abruptly. When the truck pulled away, LS said that they saw Mr. Kolb's car move, which confirmed to LS that the vehicles had collided. LS said that a little while later, they saw Mr. Kolb inspecting the damage. So, LS said that they went down to tell them that they had witnessed the collision.
15. LS said that the UPS truck hit either the rear left corner or front right corner of Mr. Kolb's car. LS said that they were unsure because they could not remember whether Mr. Kolb was parked nose-in or rear-in.
16. UPS questions the accuracy of LS's statement because LS said that the UPS truck was moving "relatively quickly" and that LS heard a "loud bang". UPS says that this is inconsistent with the minimal damage to Mr. Kolb's car. I find that it would be speculative to draw any conclusion about the force of the impact based on LS's subjective descriptions of the UPS truck's speed and the loudness of a bang.
17. I place significant weight on LS's statement. LS was candid about the details they could not remember. I find that this reinforces the reliability and credibility of their statement overall. I also find that LS is a neutral witness, as their statement makes it clear that they did not know Mr. Kolb before the collision.
18. According to photos in evidence, Mr. Kolb's car had a scrape that started at the car's rear left corner and ran along the car's side to just before the rear wheel well. The photos indicate that the main damage was between 24 and 25 inches off the ground and reached as high as about 29.5 inches.
19. UPS provided measurements of a UPS truck. The photos show that there is a metal grated step between 19 and 21 inches off the ground that protrudes from the back of the truck.

20. UPS argues that the damage to Mr. Kolb's car is inconsistent with being hit by the back of a UPS truck. It argues that if a UPS truck had backed into Mr. Kolb's car, the first point of contact would have been the metal step, which is significantly closer to the ground than the damage to Mr. Kolb's car.
21. I accept the premise of UPS's argument but find that it does not prove that the UPS truck did not hit Mr. Kolb's car. This is because LS does not say what part of the UPS truck collided with Mr. Kolb's car or describe the truck's movement in detail. I agree with Mr. Kolb that it is equally plausible that the UPS truck's side hit Mr. Kolb's car, depending on how they tried to angle into the adjacent stall. I find that the damage on Mr. Kol's car is consistent with being hit by the side of the truck, which does not have a metal step. I find that the damage's location is consistent with both parties' arguments, so it does not help me decide whether the truck hit Mr. Kolb's car.
22. UPS also argues that there is paint transfer on Mr. Kolb's car that is inconsistent with being struck by UPS's brown truck with its black rear step. Mr. Kolb's car is dark and the photos show that the scrape is white and another light colour, which UPS calls "yellow" and Mr. Kolb calls "light mud". UPS suggests that it may be paint from a concrete barrier or bollard. I find that whether these markings are paint transfer, and if so what type of paint, is something that is outside of common and ordinary knowledge. So, I find that expert evidence is necessary to prove on this point (see *Bergen v. Guliker*, 2015 BCCA 283). UPS did not provide any expert evidence to support this argument.
23. As Mr. Kolb points out, UPS did not provide a statement from the driver who delivered the package and did not explain why not. Given that this dispute turns on whether that driver hit Mr. Kolb's car, I find that their evidence is obviously relevant. The CRT rules require parties to provide all relevant evidence, and CRT staff remind parties of this obligation.
24. When a party fails to provide relevant evidence without a reasonable explanation, the CRT may draw an adverse inference against them. An adverse inference is

when a decision maker, like the CRT, assumes that a party failed to provide evidence because the missing evidence would not have supported their case. I find that an adverse inference is appropriate in this dispute. I find that if UPS's driver had not hit Mr. Kolb's car, UPS likely would have provided a statement from the driver to that effect.

25. Based on LS's statement and UPS's failure to provide a statement from the driver, I find that the UPS truck likely hit Mr. Kolb's car and damaged it, as alleged. Based on LS's description of the collision, I find that the UPS driver failed to exercise reasonable care when reversing the truck and was therefore negligent. I also find that UPS is vicariously liable for its driver's negligence as the driver's employer, which UPS does not dispute. I turn then to Mr. Kolb's damages. I note that UPS did not make submissions about Mr. Kolb's damages claims.
26. Mr. Kolb claims \$750 for the deductible he paid to repair his car. There is an estimate in evidence that includes the \$750 deductible, but no invoice or receipt that shows that Mr. Kolb paid it. However, ICBC provided its internal notes, which state that Mr. Kolb had his car repaired on February 8, 2019 and paid the \$750 deductible. I accept this evidence and order UPS to reimburse Mr. Kolb \$750.
27. As for the \$1,000 claim for lost earnings, Mr. Kolb says that he owns and operates a patent agency. In the Dispute Notice, he said that he lost 6 hours of work to get his car repaired and deal with UPS. In submissions, he says that he lost 8 hours of work. Mr. Kolb says that he charges \$250 per hour.
28. I find that Mr. Kolb is entitled to be reasonably compensated for proven lost revenues for the time he spent arranging for his car's repair. As for the time spent dealing with UPS, Mr. Kolb mentions only a single phone call. The evidence suggests that ICBC dealt with UPS directly. I find that Mr. Kolb has not proven that he lost a compensable amount of work time dealing with UPS.
29. That said, I find that Mr. Kolb has not proven that he lost earnings because he was getting his car repaired. Mr. Kolb did not explain why the number of hours claimed

increased from 6 to 8. Mr. Kolb did not provide time sheets or other evidence to show when he missed time or how much time he missed. He also did not provide any evidence to show the impact any missed time had on his billings, such as a revenue report. Because of the lack of objective evidence, and because his own evidence is inconsistent, I dismiss Mr. Kolb's claim for lost earnings.

30. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Kolb is entitled to pre-judgment interest on his damages from February 8, 2019, the date he paid the deductible, to the date of this decision. This equals \$23.78.
31. 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. Kolb was partially successful, so I find he is entitled to reimbursement of half of his \$125 in CRT fees, which is \$67.50. Mr. Kolb did not claim any dispute-related expenses. The respondents did not pay any CRT fees or claim any dispute-related expenses.

## **ORDERS**

32. Within 30 days of the date of this order, I order UPS to pay Mr. Kolb a total of \$841.28, broken down as follows:
  - a. \$750 in damages,
  - b. \$23.78 in pre-judgment interest under the COIA, and
  - c. \$67.50 for CRT fees.
33. I dismiss Mr. Kolb's claims against ICBC.
34. Mr. Kolb is entitled to post-judgment interest, as applicable.
35. 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 in effect until 90 days after June 30, 2021, which is the day that the state of emergency declared on March 18, 2020 ended, 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.

36. 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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Eric Regehr, Tribunal Member