



Civil Resolution Tribunal

Date Issued: July 9, 2021

File: SC-2020-008309

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Speed Up Education Inc. v. Li*, 2021 BCCRT 750

B E T W E E N :

SPEED UP EDUCATION INC.

APPLICANT

A N D :

MENG LI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This is an employment dispute. The applicant, Speed Up Education Inc. (Speed Up), says the respondent, Meng Li, failed to provide written notice of her resignation as required by the parties' employment agreement. Speed Up claims \$8,653.71 in liquidated damages and other damages for Ms. Li's alleged breach of the parties'

employment agreement. Speed Up has abandoned the amount over \$5,000 to remain within the small claims jurisdiction of the Civil Resolution Tribunal (CRT).

2. Ms. Li says the parties' employment agreement is not legitimate or enforceable. Ms. Li says that she resigned one day after signing the employment agreement because her job duties were unclear. She also says Speed Up has not suffered any loss as a result of her resignation.
3. Speed Up is represented by LC, who I infer is an employee or principal. Ms. Li is self-represented.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. 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. Section 11(1)(a)(i) of the CRTA says that the CRT may refuse to resolve a claim if, among other things, it would be more appropriate for another legally binding process.

ISSUES

9. The issues in this dispute are:
 - a. In the event the liquidated damages clause in the parties' employment agreement is an unenforceable penalty, does the CRT have jurisdiction to provide a remedy, and
 - b. If the CRT does have jurisdiction, to what extent, if any, is Speed Up entitled to liquidated and other damages from Ms. Li.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Speed Up must prove its claims on a balance of probabilities. Ms. Li did not provide submissions despite CRT staff providing her with opportunities to do so. I have reviewed the parties' evidence and Speed Up's submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. It is undisputed that the parties' signed an employment agreement on September 13, 2020. Under this agreement, Speed Up hired Ms. Li to provide "admin service" for \$4,360 per month, and "tutoring service and teaching assistance service" for an additional \$3,140 per month. The contractual terms include clause 3.3, titled "termination by employee".
12. Speed Up says Ms. Li breached the parties' agreement when she failed to provide 90 days written notice of her resignation. Speed Up says Ms. Li resigned without notice,

three days after signing the agreement. Ms. Li admits she did not provide any notice prior to resigning, but says she resigned just one day after signing the agreement. Speed Up relies on clause 3.3 to claim liquidated damages.

13. Clause 3.3 of the parties' agreement states that if the employee wishes to terminate the agreement, the employee must give "not less than 90 days of written notice". Clause 3.3. also states (reproduced as written, except where noted):

If the employee does not submit its written notice of intention to terminate in accordance with the date and method stipulated in this clause... the employee shall pay compensation at an amount equal to one-month monthly salary stated in the employment agreement to the employer within 10 business days in order to compensate the company's loss (including, but not limited to, the loss of students, the impact of the company's reputation, etc.) incurred due to the employee's breach of the employment agreement.

14. As noted above, Speed Up claims \$8,653.71 but has abandoned its claim in excess of \$5,000. In its submissions Speed Up says the total claim amount of \$8,653.71 consists of \$7,500 as liquidated damages and \$1,153 for the replacement teacher's overtime wages.
15. As noted, Ms. Li says the parties' agreement is unenforceable. Ms. Li also says that she resigned before the semester started and had not taught a single class. Here, I find Ms. Li alleges that the liquidated damages clause is not a genuine pre-estimate of damages, and instead a penalty. If it is a penalty, it is not enforceable if it would be oppressive or unconscionable to enforce it.
16. I note that the CRT has enforced many liquidated damages clauses in waste disposal contracts based on the binding court decision *Tristar Cap & Garment Ltd. v. Super Save Disposal Inc.*, 2014 BCSC 690. In those disputes, there is no question that the liquidated damages clause is enforceable as a pre-estimate of damages, so the CRT can enforce the clause under its jurisdiction over debt and damages. The liquidated damages clause in this dispute is different because I find that it might be a penalty.

17. As noted above, Speed Up claims \$7,500 in liquidated damages. However, on top of this liquidated damages claim, Speed Up also claims an additional \$1,153 for the actual damages they allegedly suffered when Ms. Li resigned. I find the fact that Speed Up has sought to claim both liquidated damages and the actual alleged damages they suffered when Ms. Li resigned without notice suggests that the liquidated damages clause could be a penalty. I also say this because under common law, the courts have found that while a contractual provision to provide notice is enforceable, damages flowing from an employee's failure to provide the required notice are typically offset by the fact that the employer did not have to pay the employee's salary during the notice period (see *Consbec Inc. v. Walker*, 2016 BCCA 114). I find this also suggests that the liquidated damages clause could be a penalty.
18. The court in *Tristar* said that if a liquidated damages clause is an oppressive penalty, the court may relieve the party from the penalty under section 24 of the *Law and Equity Act* (LEA). Section 24 of the LEA specifically gives the "court" the power to relieve a person from a penalty. The CRT is not a court, so I cannot make an order under the LEA.
19. I am not aware of any common law remedy to address contractual penalty clauses. Rather, I find that the only way to provide a remedy for a penalty clause is under section 24 of the LEA. See *Liu v. Coal Harbour Properties Partnership*, 2006 BCCA 385, at paragraphs 23 and 24. Based on the above, I find that the CRT does not have jurisdiction to relieve Ms. Li from the liquidated damages clause if it is an oppressive penalty. Only a court can do that.
20. As mentioned above, section 11(1)(a)(i) of the CRTA says that the CRT may refuse to resolve a claim if it would be more appropriate for another legally binding process. I find that the court would be more appropriate for the liquidated damages claim because the court can address the issue of whether it is a genuine pre-estimate of damages or a penalty. Given that the liquidated damages and other damages Speed Up claims may overlap, I find it would be more appropriate to address the other damages claimed by Speed Up in same forum as the liquidated damages claim.

21. In making this decision, I make no comment on whether or not the court would likely enforce the liquidated damages clause or award the other damages claimed. Rather, I have refused to resolve this claim without making any findings about these issues.

22. In the circumstances, I direct the CRT to refund Speed Up's CRT fees.

ORDER

23. Under CRTA section 11(1)(a)(i), I refuse to resolve Speed Up's claims.

Leah Volkens, Tribunal Member