



Civil Resolution Tribunal

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File: SC-2021-000260

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chewters Chocolates (1992) Inc. v. Xu*, 2021 BCCRT 768

B E T W E E N :

CHEWTERS CHOCOLATES (1992) INC.

APPLICANT

A N D :

JIAN XU

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about the reimbursement of education expenses. The applicant, Chewters Chocolates (1992) Inc. (Chewters), formerly employed the respondent,

Jian Xu. Chewters claims that Mr. Xu received reimbursement for education expenses that he was allegedly not entitled to. Chewters claims \$2,419.09.

2. Mr. Xu denies Chewters' claims and says that he was entitled to his education reimbursements under the employment contract.
3. Chewters is represented by its in-house lawyer, Kari Pires. Mr. Xu is self-represented.

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. 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.

ISSUE

8. The issue in this dispute is whether Mr. Xu must refund education reimbursements received from Chewters.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Chewters must prove its 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.
10. It is undisputed that Chewters hired Mr. Xu as an intermediate accountant. Mr. Xu accepted Chewters' December 8, 2018 employment offer, which I find became a binding contract.
11. The employment offer said that Chewters will reimburse Mr. Xu's Chartered Professional Accountant (CPA) course expenses up to \$2,400 annually in compliance with its education reimbursement policy. The parties agree that Mr. Xu was provided with an employee handbook on his first day of employment which also refers to Chewters' education reimbursement policy.
12. Chewters says its education reimbursement policy was part of the employment contract and binding on Mr. Xu. However, Mr. Xu says that the policy did not apply to him because he did not receive it. Mr. Xu acknowledges receiving the handbook that refers to the policy, but he says that he did not receive the policy itself. Chewters says that its policies are stored on a computer directory which Mr. Xu had access to. Since Mr. Xu does not dispute this, I accept this as accurate. Further, the employment handbook described the policy's location at page 12. Chewters also argues that Mr. Xu would have been aware of the policies through his job duties, which included human resource responsibilities. Mr. Xu says that this was not part of his job duties, which is supported by Chewters' job description form which generally lists accounting duties.

13. While I accept Mr. Xu's undisputed submission that Chewters did not directly deliver the reimbursement policy to him, on balance, I find that the policy was part of the employment contract. I reach this conclusion because I am satisfied that Mr. Xu was notified of Chewters' reimbursement policy since it was referenced in both the employment offer and the handbook. Further, I find that this policy was available to Mr. Xu because the handbook described the location of the policies in the computer network and Mr. Xu had access to these files. Based on this, I find that Mr. Xu agreed to Chewters' reimbursement policy by accepting employment and the reimbursement policy became a binding term in the employment contract.
14. The education reimbursement policy says that employees can request tuition reimbursement when the coursework is successfully completed, with proof of passing grades. The policy says that reimbursable costs includes tuition, association fees and dues, required books, and other required course materials.
15. It is undisputed that Mr. Xu submitted education expense reimbursement requests for \$1,108.31 on August 24, 2020 and for \$1,381.78 on September 9, 2020. Chewters approved both of Mr. Xu's reimbursement requests and paid Mr. Xu \$2,491.09 on September 21, 2020 for these education expenses.
16. It is undisputed that Mr. Xu's employment ended on October 23, 2020.

August 24, 2020 education expense reimbursement request for \$1,108.31

17. Chewters says that its employees BT and WB told Mr. Xu in July and August 2020 that he must work for Chewters for at least six months after the completion of each course to receive reimbursement of education expenses. It is undisputed that this alleged 6 month requirement is not stated in Chewters' offer of employment, the handbook or the education reimbursement policy. However, Chewters argues that this term was verbally agreed upon. Based on this alleged verbal agreement, Chewters argues that Mr. Xu was not entitled to the August 24, 2020 education expense reimbursement request for \$1,108.31 because his employment ended less than 6 months later on October 23, 2020.

18. Mr. Xu denies being told that there was a 6 month employment requirement for the reimbursement and he denies agreeing to this. Chewters did not provide a statement from BT or WB supporting the existence of the alleged verbal agreement. In the absence of supporting evidence, I find that Chewters has not provided sufficient evidence to prove that there was an agreement that Mr. Xu's reimbursement would be contingent on working for at least 6 months after completing his courses. So, I find that Chewters is not entitled to a refund of the August 24, 2020 education expense reimbursement request for \$1,108.31.

Transcript expense

19. Mr. Xu's August 24, 2020 education expense reimbursement request included \$105 for a transcript request from a CPA school. Chewters argues that Mr. Xu was not entitled to this reimbursement. I find that a transcript request fee is not an expense within the scope of the reimbursable costs under the contract.

20. In the CRT decision in *Interstellar Commerce Ltd. v. Trudeau*, 2020 BCCRT 419, a tribunal member held that an employer's mistake that caused an overpayment of an employee's housing allowance was a mistake of fact which the employer could recover. Although non-binding, I find that the reasoning in *Interstellar* persuasive and apply it here.

21. In this matter, Chewters says that Mr. Xu's reimbursement request for the transcript fee was mistakenly approved. Chewters says that Mr. Xu's reimbursement request was vague and did not separately itemize each expense. Mr. Xu's August 24, 2020 education expense reimbursement request described the expenses as "CPA Courses." Chewters also says that the reimbursement was approved by a new employee. Although Mr. Xu did provide an invoice for the transcript fee, on balance I find that Chewters approved the transcript fee reimbursement request based on a mistaken of fact that Mr. Xu was entitled to this reimbursement under the contract. So, I find that Mr. Xu must refund the \$105 reimbursement for this expense.

September 9, 2020 reimbursement request for \$1,382.78

22. Chewters also argues that Mr. Xu was not entitled to the September 9, 2020 reimbursement request for \$1,382.78 because this coursework was not complete when he requested reimbursement. Based on the policy's terms, I find that Mr. Xu was not eligible for reimbursement of education expenses until the coursework was complete.
23. Mr. Xu admits that he had not completed this coursework when he submitted the reimbursement expense. However, he argues that Chewters was aware that the coursework was not completed but it approved the expense anyway. Chewters says that it mistakenly granted the reimbursement request.
24. The contract says that Mr. Xu must complete the coursework to be eligible for reimbursement. Since it is undisputed that Mr. Xu had not completed the coursework relating to the education expenses claimed in his September 9, 2020 reimbursement request, I find that he was not entitled to this reimbursement under the contract.
25. As discussed above, Chewters may recover a mistaken overpayment from Mr. Xu. Chewters argues that it was not aware that the September 9, 2020 reimbursement request was for future coursework. In his request, Mr. Xu described the expenses as "CPA Courses + Textbooks." The reimbursement request form did not say which school terms the expenses related to. Mr. Xu's reimbursement request included a university invoice showing tuition and student association fees billed in July and September 2020 totaling \$1,023.08. Mr. Xu also provided an invoice dated September 4, 2020 for \$177.60 for an accounting textbook. Mr. Xu also provided a university invoice for a "BSG Participant Subscription" for \$185.56. Neither party explained what this subscription was. However, since the receipt refers to Mr. Xu's university, I infer that this subscription is education-related.
26. Mr. Xu says that Chewters was aware that reimbursement request was for future coursework because, based on the invoice dates, he could not have completed the course when he made the request. However, although the tuition fees were charged

in July and August 2020, the invoice does not say which school sessions these fees relate to. Mr. Xu also argues that the invoice for BSG refers to the university's Fall semester.

27. On balance, I find that Chewters mistakenly approved Mr. Xu's September 9, 2020 reimbursement request based on the belief that Mr. Xu was entitled to it under the contract. Although the invoices show tuition and book charges incurred just prior to the reimbursement request, I accept Chewters' submission that it relied on the vague description in Mr. Xu's reimbursement request form and mistakenly approved these reimbursements without noticing that these expenses related to future coursework. So, I find that Mr. Xu was not entitled to this reimbursement and he must refund the \$1,382.78.

28. For the above reasons, I find that Mr. Xu must refund Chewters \$1,487.78.

Interest, CRT fees and dispute-related expenses

29. The *Court Order Interest Act* (COIA) applies to the CRT. Chewters is entitled to pre-judgment interest on the \$1,487.78 refund from September 21, 2020, the date of overpayment, to the date of this decision. This equals \$5.41.

30. 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. Since Chewters was partially successful, I find it is entitled to reimbursement of one-half of its CRT fees, being \$87.50. Chewters claims reimbursement of a \$7 BC Online filing fee. However, Chewters has not explained why this fee was reasonably necessary so I dismiss this request for reimbursement of dispute-related expenses. Mr. Xu did not claim reimbursement of CRT fees or dispute-related expense.

ORDERS

31. Within 30 days of the date of this order, I order Mr. Xu to pay a total of \$1,580.69, broken down as follows:

- a. \$1,487.78 as a refund of overpaid education reimbursements,
- b. \$5.41 in pre-judgment COIA interest, and
- c. \$87.50 in CRT fees.

32. Chewters is entitled to post-judgment interest, as applicable.

33. 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 date of the end of the state of emergency declared on March 18, 2020, 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.

34. 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.

Richard McAndrew, Tribunal Member