



# Civil Resolution Tribunal

Date Issued: November 17, 2021

File: SC-2021-002237

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *RHI Holdings Ltd. v. K Trans Worldwide Logistics Ltd.*  
2021 BCCRT 1216

B E T W E E N :

RHI HOLDINGS LTD.

**APPLICANT**

A N D :

K TRANS WORLDWIDE LOGISTICS LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about shipping services. The applicant, RHI Holdings Ltd. (RHI), hired the respondent, K Trans Worldwide Logistics Ltd. (KTWL), to facilitate 3 shipments from China to Canada. RHI says KTWL overcharged it by \$1,232.67 and

failed to provide the agreed tailgate service worth \$75. RHI claims a total of \$1,307.67.

2. KTWL says RHI provided it with incorrect measurements of the shipment's palletized goods. KTWL relies on the different measurements given by its trucking company, which is what undisputedly led to the \$1,232.67 additional charge to RHI.
3. RHI is represented by its owner, Yingzi Hu. KTWL is represented by an employee, TZ.

## **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). 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.
6. Under CRTA section 42, 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 CRTA section 118, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

8. The parties submitted some evidence in Chinese, with some English translation. The CRT's rules say evidence must be submitted in English or with an English translation. I have only considered the English evidence and accept RHI's English translations because KTWL did not object to any of them.
9. Finally, RHI submitted late evidence, namely its translation of one series of emails. I admit this late evidence given the CRT's flexible mandate and because KTWL had an opportunity to respond to it and so was not prejudiced by it. Where necessary, I discuss below the relevant weight I give the evidence before me.

## **ISSUES**

10. The issues are:

- a. Did RHI provide KTWL with incorrect information for the shipments?
- b. To what extent, if any, is RHI entitled to \$1,232.67 based on alleged overcharges?
- c. Did KTWL fail to provide an agreed tailgate service, and if so, is RHI entitled to a \$75 refund?

## **EVIDENCE AND ANALYSIS**

11. In a civil claim like this one, as the applicant RHI has the burden of proving its claims, on a balance of probabilities (meaning "more likely than not"). I have only referenced below what I find is necessary to give context to my decision.
12. RHI hired KTWL in late December 2020, by email, to coordinate RHI's 3 shipments from China to Canada. It is the first shipment that is at issue, which contained 48 cartons of glassware on 6 pallets. None of this is disputed.

13. RHI says around February 5, 2021 its first shipment arrived in Vancouver. RHI submitted the December 22, 2020 bill of lading (BL) from its ocean carrier that shows the shipment was 7.217CBM (cubic meters) and weighed 599.8 kilograms. There is no suggestion that KTWL was responsible for the measurement and weight noted on the BL, and KTWL is only listed as the “notify party” on the BL.
14. At KTWL’s request, RHI pre-paid \$1,731.12 for that first shipment, including “tailgate service”. I infer tailgate refers to providing a truck with a lift-gate to facilitate delivery of the goods where there was no dock available for delivery.
15. On March 1, 2021, while KTWL was handling RHI’s second shipment, KTWL issued RHI an additional invoice for \$1,232.67 for the first shipment. KTWL’s invoice shows the same 7.217 CBM and 599.8 kilogram measurements. The body of KTWL’s invoice just says, “delivery charge” (\$1,147.67) and “handling charge” (\$85).
16. However, KTWL’s March 2, 2021 email to RHI that enclosed the March 1 invoice said its trucking company Vitran Express (Vitran) said the pallet measurements were larger than those set out on the ocean carrier’s BL. KTWL also said the trucking company did not charge the tailgate fee. KTWL explained the difference amounted to the \$1,232.67. I find the evidence clearly shows KTWL did not provide the tailgate service it invoiced and which RHI paid for, but that KTWL accounted for this when calculating the \$1,232.67 additional shipping costs.
17. On March 2, 2021, RHI agreed to pay the \$1,232.67 under protest and asked for all supporting documents, including photos, to show the pallet measurements were different as alleged. KTWL later responded that the first shipment’s invoice was updated to reflect 13.070 CBM. There is no evidence KTWL ever provided photos of the pallets on the truck and no evidence KTWL ever gave RHI any supporting documents before RHI started this dispute on March 16, 2021. More on KTWL’s evidence below.

18. RHI says the correct information was specified on the ocean carrier's BL in KTWL's possession. RHI denies Vitran's 13.070 CBM measurement was valid.
19. In contrast, KTWL says it acted only as a shipping agent. KTWL says the additional charges are valid under the parties' contract because RHI gave incorrect information that led to Vitran giving KTWL an incorrect quote originally.
20. There is no formal written contract between the parties in evidence. KTWL submitted a 1-page excerpt of a document it described as "page 4 of CIFFA-STCs-Quotations and Invoicing". There is nothing in evidence explaining the title's acronyms and KTWL does not expressly refer to the document in its submissions. That document says the "customer" warrants the accuracy of the verified gross mass of the transported goods. It says the "company" may after acceptance of goods revise charges if given notice of changes beyond the company's control, including changes in "rates of freight, carrier surcharges, or any charges applicable to the goods". Finally, it says the "customer" remains responsible for freight, duties, charges or "other expenses". The difficulty for KTWL is that I have no evidence that RHI ever agreed to the terms on this excerpted page. I place no weight on this document excerpt.
21. I do have in evidence the parties' email negotiations that led to KTWL offering a fixed price for its services plus certain delivery charges. Significantly, there is nothing in those emails that say RHI was responsible for any charges KTWL had to pay based on any measurements that were different than the ones set out on the ocean carrier's BL that RHI gave to KTWL.
22. The common law principle of privity of contract says that a contract cannot grant rights or impose obligations on individuals or companies that are not parties to the contract. Under this principle, with exceptions that do not apply here, RHI does not have any rights or obligations under KTWL's agreements with its contracted carrier Vitran. So, contrary to KTWL's apparent assertion, I find it unproven that RHI was

required to pay KTWL the additional \$1,232.67 just because KTWL paid its contractor increased amounts based on different measurements.

23. Rather, I find what matters is what the goods' measurements actually were. I find KTWL's quote was based on the measurements RHI provided, as set out in the ocean carrier's BL. So, if I find it more likely that the ocean carrier's BL was accurate, RHI is entitled to the claimed refund.

24. KTWL relies on Vitran's February 5, 2021 BL, with a warehouse in New Westminster as shipper and KTWL as the consignee. This BL shows the total weight was 1322 pounds, which equals 600 kilograms. This is essentially the same weight set out in the ocean carrier's BL. Handwritten on Vitran's BL by "Kevin" are what I infer are pallet measurements: 3 @ 40 x 48 x 71 and 3 @ 40 x 48 x 67. Elsewhere on this BL it indicates the dimensions are to be in inches. RHI submitted undisputed evidence from the warehouse saying "Kevin" was not its employee, so I find Kevin is Vitran's driver.

25. As noted, KTWL did not submit any photos or any other documentation in support of its position the goods' measurements were different than as set out in the ocean carrier's BL. KTWL solely relies on "Kevin's" handwritten notation. There is no indication in the evidence before me about how "Kevin" measured the pallets.

26. In contrast, the ocean carrier's BL is a clearly typed formal document and set out the 599.8 kg weight and 7.217 CBM. It included a detailed packing list setting out the dimensions of each carton.

27. On balance, I find the ocean carrier's BL likely accurately reflected the goods' loaded measurement when KTWL agreed to handle the shipment for the originally invoiced price based on those measurements. I say this given this document's more formal nature, the more detailed information it contains, and the fact there is no explanation for the weight being the same despite allegedly different pallet sizes.

28. So, I find there is insufficient evidence before me that RHI was required to pay more than the originally quoted price, even though Vitran may have required KTWL to pay more. It follows that the \$1,232.67 RHI paid KTWL was an overcharge. As noted, KTWL undisputedly did not provide the agreed tailgate service KTWL had invoiced and which RHI paid for. So, I find RHI is entitled to the claimed \$1,307.67.
29. The *Court Order Interest Act* (COIA) applies to the CRT. I find RHI is entitled to pre-judgment COIA interest on the \$1,307.67, calculated from March 2, 2021 to the date of this decision. This interest equals \$4.20.
30. Under CRTA section 49 and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As RHI was successful, I find it is entitled to \$150 in CRT fees. As the respondent KTWL was unsuccessful, I dismiss its claim for reimbursement of CRT fees. No dispute-related expenses were claimed.

## **ORDERS**

31. Within 21 days of this decision, I order KTWL to pay RHI a total of \$1,461.87, broken down as follows:
- a. \$1,307.67 in debt,
  - b. \$4.20 in pre-judgment interest under the COIA, and
  - c. \$150 in CRT fees.
32. RHI is entitled to post-judgment interest, as applicable. I dismiss KTWL's CRT fees claim.
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.

34. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of BC. 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 BC.

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Shelley Lopez, Vice Chair