



Civil Resolution Tribunal

Date Issued: December 3, 2021

File: SC-2020-009154

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Khalid v. Kater Technologies Inc.*, 2021 BCCRT 1268

B E T W E E N :

MUHAMMAD KHALID

APPLICANT

A N D :

KATER TECHNOLOGIES INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about wages under an employment contract. The applicant Muhammad Khalid, a taxi driver, worked undisputedly as an independent contractor

for the respondent Kater Technologies Inc. (Kater). Kater undisputedly stopped operating on November 30, 2019, which Mr. Khalid says left him unemployed. Mr. Khalid says Kater failed to provide 30 days' notice of termination required under the parties' contract. Mr. Khalid claims \$4,800 for 30 days of full-time wages he says he would have earned had he remained employed by Kater.

2. Kater says it notified Mr. Khalid on October 18, 2019 that it was terminating the existing pay structure for all contracted drivers, effective November 1, 2019. Kater says that on November 30, 2019 it then advised Mr. Khalid that all taxi operations were suspended pending Kater receiving new "ride share" licensing. Kater says that later in December it fully ceased operations because it did not get a ride-share license. Kater says Mr. Khalid's contracted payout was completed on December 18, 2019 and that Mr. Khalid agreed to the amount. Kater denies breaching the parties' contract and says it owes nothing further.
3. Mr. Khalid is represented by a community advocate JD. Kater is represented by an employee, MM.

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. Kater advised CRT staff that it was in the “process of bankruptcy”. Section 69(1) of the *Bankruptcy and Insolvency Act* (BIA) says that once a bankruptcy notice of intention is filed, no remedy or action can be pursued against a bankrupt without leave of the court. Essentially, it stays proceedings against an undischarged bankrupt. The CRT is not a court. There is no evidence before me that Kater has filed an assignment into bankruptcy and Kater submitted no evidence and no arguments to this effect. So, I find there is no evidence of a BIA stay. I find I can adjudicate this matter under the CRT’s small claims jurisdiction.

ISSUES

9. The issues are:
 - a. Did Kater fail to give Mr. Khalid the required notice under the parties’ contract?
 - b. Is Mr. Khalid entitled to the claimed \$4,800 in damages?

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, as the applicant Mr. Khalid has the burden of proving his 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. I note that apart from his application to the CRT that started this proceeding and his submitted

evidence, Mr. Khalid did not provide any written arguments despite having the opportunity to do so.

11. As noted, Mr. Khalid was an independent contractor, working as a taxi driver for Kater. He does not argue and the evidence does not show he was Kater's employee.
12. Mr. Khalid undisputedly started working for Kater in April 2019, as a part-time driver. He says he started working full-time "from the first week of November 2019". In contrast, Kater says he never worked full-time. More on his November 2019 hours below.
13. I turn then to the parties' formal April 2019 agreement in evidence before me. Mr. Khalid relies on the following relevant terms:
 - a. *Article 2*: The agreement is effective for 2 years from the April 19, 2019 "Effective Date", unless terminated under Article 17 or Article 18. Article 18 relates to termination for a "material violation" such as personal injury or property damage and there is no suggestion Article 18 is at issue.
 - b. *Article 17*: Either party can terminate the agreement at any point by giving 30 days' written notice. At Kater's sole discretion, Kater may accelerate the notice period by giving Mr. Khalid payment in lieu of notice in the amount equal to the "Service fees" that would have otherwise been payable for the contract's duration.
 - c. *Schedule A – "Service Fee"*: Mr. Khalid as the contractor will receive the greater of a) 65% of all trip fares received by Kater for each trip Mr. Khalid completes during a pay period, or b) \$20/ hour for all hours worked by Mr. Khalid during a biweekly pay period.
14. On October 18, 2019 Kater emailed Mr. Khalid (and all other contracted drivers) that the taxi driver "pay structure" was ending as of November 1, 2019. I find the content of the October 18, 2019 email was clear that Kater was giving notice that it was

terminating the relevant terms in the parties' April 2019 contract. In other words, I find Kater's October 18, 2019 email gave Mr. Khalid notice the existing April 2019 agreement would end. Based on the emails in evidence, I find the parties agreed to a new agreement, effective November 1, 2019, which did not include the Article 17 terms about a minimum of \$20 per hour or that 30 days' written notice was required.

15. However, I do not accept Kater's position that the termination was legitimately effective November 1, 2019, because November 1 was only 14 days after October 18, not the 30 days required in Article 17.
16. Yet, Kater's October 18, 2019 email did give Mr. Khalid more than 30 days' notice that the April 2019 agreement was ending before Kater undisputedly suspended its operations on November 30, 2019. On October 19, 2019, Mr. Khalid emailed Kater acknowledging the October 18 email, suggesting Kater discuss changes with drivers first. So, I find Mr. Khalid clearly received notice of the changes. While Mr. Khalid suggested further discussion, the evidence shows he continued to work for Kater knowing the terms set out in Kater's October 18 email.
17. Unless Mr. Khalid agreed otherwise, I find that Kater was bound to honour the terms of the April 2019 agreement up until November 17, 2019, which was 30 days after it provided notice on October 18, 2019.
18. So, the question then is whether Kater owes Mr. Khalid any additional money for work done between November 1 and 17, 2019, based on the \$20/hour "top up" in the April 2019 agreement that undisputedly did not exist in the new agreement's terms.
19. First, Mr. Khalid does not specifically argue he is owed any more money for that time period. Rather, his argument is essentially that he is owed 30 days of full-time work that he says he would have worked after November 30, 2019 had Kater not ceased operations.
20. Second, Mr. Khalid argues he worked full-time as of November 1, 2019. Based on at least \$20 per hour for the work done up to November 17, 2019. I find Mr. Khalid

has not proved he is owed any money under the parties' April 2019 contract or otherwise. As noted above, I find the agreement in place as of November 17, 2019 did not provide for any \$20 per hour minimum nor did it provide for any notice of termination. Again, Mr. Khalid was not an employee but an independent contractor and so the parties' contract governs his entitlements to pay in lieu of notice. Here, there was none as of November 30, 2019.

21. Given my conclusion above, I find I do not need to address Kater's arguments that Mr. Khalid never worked full-time or that he agreed to the final payout amount.
22. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Mr. Khalid was unsuccessful, I dismiss his claim for reimbursement of CRT fees. Kater did not pay fees or claim dispute-related expenses.

ORDER

23. I dismiss Mr. Khalid's claims and this dispute.

Shelley Lopez, Vice Chair