



# Civil Resolution Tribunal

Date Issued: January 21, 2022

File: SC-2021-006295

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Peck v. CBIG Canadian Benefits, Investments & Insurance Group Inc.*,  
2022 BCCRT 83

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

DELORES PECK

**APPLICANT**

**A N D :**

CBIG CANADIAN BENEFITS, INVESTMENTS & INSURANCE GROUP  
INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This employment dispute is about alleged wrongful dismissal and severance pay. The respondent employer, CBIG Canadian Benefits, Investments & Insurance Group Inc. (CBIG), laid off the applicant Delores Peck on March 19, 2020, due to the COVID-19 pandemic. Mrs. Peck says she was not given the option to work from home like other employees and also says she was permanently terminated on June 19, 2020. Mrs. Peck limits her claim to \$5,000 as severance based on a 7-week notice period provided for under the parties' employment agreement.
2. CBIG says it temporarily laid off Mrs. Peck on March 19, 2020 with her agreement. CBIG denies it ever permanently terminated Mrs. Peck's employment. CBIG undisputedly asked Mrs. Peck on July 17 to return to work on July 27, 2020 but Mrs. Peck refused. CBIG says Mrs. Peck effectively abandoned her job and so it owes her nothing.
3. Mrs. Peck is self-represented. CBIG is represented by BW, an employee or principal.

## **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 by 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.

### ***Employment Standards Act***

8. The CRT has no jurisdiction over an employee's claim for statutory entitlements to wages, as provided under the *Employment Standards Act* (ESA). That is within the exclusive jurisdiction of the Employment Standards Branch (ESB). See, for example, *Macaraeg v. E Care Contact Centers Ltd.*, 2008 BCCA 182.
9. However, an employee is only prevented from bringing a civil action when the employee is seeking to enforce a right that is only available under the ESA. The employee may pursue a civil remedy under the parties' contract or under the common law, such as through a CRT dispute (see the non-binding but persuasive decision in *Bellagama v. International Tentnology Corp.*, 2018 BCCRT 549). I find Mrs. Peck's claim for severance pay due to alleged wrongful dismissal arises under the parties' private employment contract and under the common law.
10. I note Mrs. Peck submits that she earlier filed a complaint with the ESB, who told her that given her role as "Securities Licensed and Insurance Licensed" the ESB had no jurisdiction. The ESB complaint is not in evidence but Mrs. Peck's submission is consistent with the *ESA Regulation* section 31 that says the ESA does not apply to a person registered under the *Securities Act*. CBIG does not disagree. Given the above, I find Mrs. Peck's claim is within the CRT's small claims jurisdiction over debt and damages.

## **ISSUE**

11. The issue is whether CBIG terminated Mrs. Peck's employment without notice or whether she quit, and if terminated is Mrs. Peck entitled to the claimed \$5,000 severance?

## **EVIDENCE AND ANALYSIS**

12. In a civil claim like this one, as the applicant Mrs. Peck has the burden of proving her claim, 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.
13. The following background facts are undisputed:
  - a. Mrs. Peck began working for CBIG in Prince George in April 2013, although she signed a new contract annually,
  - b. CBIG laid-off Mrs. Peck on March 19, 2020 due to the COVID-19 pandemic and related shortage of available work,
  - c. CBIG told Mrs. Peck on March 20, 2020 that her lay-off was temporary and on March 22 wrote that it was possible she may be recalled to work, and
  - d. March 19, 2020 was Mrs. Peck's last day worked for CBIG.
14. While I acknowledge Mrs. Peck says she was told on March 19, 2020 that she was permanently terminated, I find this unproven on the evidence before me. In any event, as noted Mrs. Peck admits and the email evidence shows she was told at 9 am on March 20, 2020 that she was only laid off, not terminated. The evidence shows that when CBIG confirmed she was only laid off and not terminated, Mrs. Peck responded, "Thank you!". I find this supports CBIG's position that Mrs. Peck did not object to the lay-off.
15. Next, I note that CBIG's March 22, 2020 letter confirmed for Mrs. Peck that she was not terminated and, if she had been, she would be entitled to severance.

16. Mrs. Peck moved away from Prince George on June 22, 2020, 3 days after her RRSP plan participation was terminated on June 19, 2020. She says the RRSP termination meant that June 19 was her “formal” termination from CBIG. More on the benefits termination letter below.
17. On June 30, 2020, Mrs. Peck wrote CBIG asking for 7 weeks’ severance as provided under the parties’ employment agreement. Notably, in this letter she referred to March 19, 2020 as being the date of termination, not June 19, 2020. Mrs. Peck also did not mention the June 19, 2020 letter about her RRSP, which I find is inconsistent with her position in this dispute that the June 19, 2020 letter amounted to termination of her CBIG employment.
18. On July 14, 2020, CBIG wrote Mrs. Peck asking her to return to work full-time on July 27, 2020. On July 24, 2021, Mrs. Peck wrote back, briefly saying she would not be returning to work in Prince George. In this dispute Mrs. Peck submits that by that point, CBIG had already terminated her employment as of the June 19, 2020 RRSP plan termination.
19. A central issue for Mrs. Peck is that she says that when she was laid off on March 19, 2020, she was not given the opportunity to work from home like 2 other employees in her department. However, Mrs. Peck submitted no evidence proving CBIG had an obligation to permit her to work at home. I find the fact that 2 employees did so is not determinative. In any event, I find nothing turns on this. Rather, what is at issue is whether Mrs. Peck quit in July 2020 when she refused to return to CBIG, or, whether she had already been “permanently terminated” on June 19, 2020 when she received notice her benefits had been terminated.
20. In contrast, CBIG says Mrs. Peck abandoned her work and effectively quit when she refused to return to work in July, and so it says she is not entitled to any severance.

21. I note the ESA says, with some exceptions, that temporary layoffs become a termination if the employee is not rehired within 13 weeks. It is not 24 weeks, or to August 24, 2020, as CBIG told Mrs. Peck in its letter. However, this does not matter since as noted above the ESA does not apply to Mrs. Peck's employment.
22. So, this dispute turns on whether the June 19, 2020 letter from the benefits company amounted to permanent termination of Mrs. Peck's employment. I find the answer is no. My reasons follow.
23. In its June 25, 2020 letter, the benefits administrator iA Financial Group (iA) wrote Mrs. Peck about her options "following your termination" of participation in an RRSP plan. There is no indication on the face of this letter that CBIG had any involvement in this letter being sent to Mrs. Peck and the letter does not say her employment was terminated. Rather, it only says her participation in the RRSP had ended. Mrs. Peck says termination of benefits only happens once the employer notifies that an employee's employment has been terminated. Yet, Mrs. Peck submitted no evidence in support of this assertion. Further, contrary to Mrs. Peck's position, on the evidence before me I cannot conclude that termination of participation in a RRSP plan is the same thing as termination of employment. Again, the ESA does not apply to Mrs. Peck, and so any provisions in the ESA about protected benefits during temporary lay-off do not apply here.
24. So, I find the June 25, 2020 letter from iA was not a permanent termination of Mrs. Peck's employment with CBIG. Further, there is notably no correspondence in evidence from CBIG to Mrs. Peck after March 20, 2020 telling her she had been permanently terminated, and no evidence it ever verbally told her this after that date. I find CBIG did not terminate Mrs. Peck's employment.
25. Next, I find Mrs. Peck quit her employment when she clearly refused to return to work for CBIG in July 2020. It follows that I dismiss Mrs. Peck's claim for severance since CBIG did not terminate her employment.

26. 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 Mrs. Peck was unsuccessful, I dismiss her claim for reimbursement of \$125 in paid CRT fees and for dispute-related expenses. CBIG did not pay fees and or claim expenses.

## **ORDER**

27. I dismiss Mrs. Peck's claim and this dispute.

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Shelley Lopez, Vice Chair