



# Civil Resolution Tribunal

Date Issued: February 22, 2022

File: SC-2021-006344

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Essama v. Patina Brewing Co. Ltd.*, 2022 BCCRT 186

B E T W E E N :

REGINA RAISSA NNOMO ESSAMA

**APPLICANT**

A N D :

PATINA BREWING CO. LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## INTRODUCTION

1. This dispute is about severance pay. The applicant, Regina Raissa Nnomo Essama, was employed by the respondent, Patina Brewing Co. Ltd. (Patina). Patina terminated Miss Essama's employment and paid her \$750.14 severance in lieu of 1 week's notice. Miss Essama says the parties' written employment agreement is void for lack of fresh consideration, so she is entitled to severance pay in lieu of 1 month's

reasonable notice under the common law. So, she claims Patina owes her an additional \$2,494.66.

2. Patina says the parties' written employment agreement is enforceable because it provided Miss Essama with fresh consideration in the form of a pay raise. Patina says the agreement provided for 1 week of pay in lieu of notice as set out in the *Employment Standards Act (ESA)*, and that it paid that amount, so it owes nothing further.
3. Miss Essama is self-represented in this dispute. Patina is represented by its Chief Executive Officer, Kyle O'Genski.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT), which 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. The Employment Standards Branch (ESB) has exclusive jurisdiction over statutory entitlements under the ESA. However, I find that the CRT, and not the ESB, has jurisdiction over this dispute. This is because, as explained below, I find Miss Essama's claimed remedy arises solely from the parties' allegedly void employment contract and under the common law, rather than the ESA. Further, the parties also had an unsuccessful WorkSafeBC mediation, and the applicant filed a claim with the BC Human Rights Tribunal (BCHRT) about bullying and harassment. However, the submitted evidence does not show that the mediation or BCHRT claim determined the outcome of this civil dispute. So, I find this dispute it is not *res judicata* (meaning "already decided"), and is within the CRT's jurisdiction.

## **ISSUES**

9. The issues in this dispute are as follows:
  - a. Is the parties' written employment contract void for lack of consideration?
  - b. Is Miss Essama entitled to \$2,494.66 in additional severance pay under the parties' contract or the common law?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, as the applicant Miss Essama must prove her claim on a balance of probabilities, meaning "more likely than not". I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.

***Is the employment contract void for lack of consideration?***

11. Miss Essama says she began her employment with Patina on June 25, 2020. Patina says she began “on or about” June 25, 2020, and also that her first shift was on June 29, 2020 as shown in a report excerpt and employment application form in evidence. I find nothing turns on whether the actual start date was June 25 or June 29, 2020, but I find Miss Essama began her employment no earlier than June 25, 2020. Patina terminated her employment, without notice and without cause, on June 24, 2021.
12. The parties did not have a written employment agreement for the first few months after Miss Essama was hired. I find the parties had an unwritten employment agreement during that initial period, under which Miss Essama’s wage was \$17 per hour.
13. On November 18, 2020, Miss Essama signed a Patina “Employee Offer Letter” dated November 2, 2020, with an “effective date” of June 27, 2020. The letter said that after Miss Essama passed her 3-month probation period, her wage would increase to \$17.75 per hour. Miss Essama had already worked for more than 3 months when she signed the letter. Pay stubs in evidence show that Patina increased her wage to \$17.75 per hour in the pay period covering November 9 to 22, 2020. Patina says, and Miss Essama does not directly deny, that it made the pay increase retroactive to the beginning of the pay period in which Miss Essama signed the letter. The pay increase was not retroactive to the agreement’s June 27, 2020 “effective date”.
14. Miss Essama says the letter she signed is not a valid employment agreement, because Patina did not provide fresh consideration with it. Specifically, she says she did not receive anything of value for signing the agreement because she “already had the job” when she signed it. So, Miss Essama says she is not bound by the letter, including its term about termination notice and severance pay, discussed below.

15. In general, for a contract to exist, there must be an offer, acceptance, and consideration, which is something of value given by each party. Fresh consideration may be needed when the parties agree to vary an existing employment contract, which essentially creates a new contract. Here, I find that Miss Essama did receive fresh consideration in return for agreeing to the offer letter. On balance, I find that Patina provided the wage increase to \$17.75 per hour as fresh consideration for Miss Essama agreeing to the letter. Miss Essama undisputedly signed the letter and continued working at a higher wage for the next several months before her termination.
16. For the above reasons, I find the signed letter was a valid employment agreement between the parties, and Miss Essama was bound by it. I discuss the letter's terms below.

***Is Miss Essama entitled to additional severance?***

17. The written agreement said, "If your employment with Patina Brewing Co. Ltd. is terminated, you will receive written notice of termination, pay in lieu of notice, or a combination of the two in accordance to this agreement and with British Columbia Employment Standards Act" (reproduced as written).
18. I find the above-quoted part of the agreement means that Miss Essama was entitled to the same amount of termination notice and severance pay as the ESA provides. I find this was not an entitlement under the ESA, but a contract term that provided the same amount of notice and severance as the ESA. As noted, I find that the written agreement was binding on the parties, so I find that the above term about termination notice and severance pay governs here, and not the common law that might have resulted in a longer notice period. I find Miss Essama is not entitled to additional pay in lieu of common law reasonable notice of termination.
19. How much severance was Miss Essama entitled to under the contract? As noted, the contract provided the same severance as the ESA. Section 63 of the ESA says that if an employer terminates employment without just cause, it must provide 1 week's

termination notice or severance pay after 3 consecutive months of employment, or 2 weeks' notice or severance after 12 consecutive months of employment. As noted, Patina terminated Miss Essama's employment on June 24, 2021. This was before the 12-month anniversary of her employment, which began no earlier than June 25, 2020. As there was no notice, I find Miss Essama was entitled to 1 week of severance pay under the contract, based on what she would have been entitled to under the ESA.

20. Miss Essama undisputedly received another pay raise to \$19.50 per hour, more than 8 weeks before her termination. As noted, Patina undisputedly paid Miss Essama \$750.14 for severance pay in lieu of notice, which it says was the equivalent of 1 week's net pay. Miss Essama says her weekly pay for severance purposes should be \$811.20, which is \$19.50 per hour plus 4% vacation pay, at 40 hours per week.
21. ESA section 63(4) says that severance pay is calculated by totalling the employee's weekly wages during the last 8 weeks of normal work, dividing by 8, and multiplying the result by the number of weeks of severance, which here is 1 week. I find this is the appropriate method of severance calculation, given that the contract allowed the same severance as provided under the ESA.
22. Miss Essama submitted undisputed pay stubs for her last 8 weeks of work. During that period and including vacation amounts, I find she received a total of \$6,323.93 in gross pay, which equalled \$5,153.82 in net pay after deductions for income tax, employment insurance, and pension. Dividing by 8, I find that 1 week of severance pay equalled \$790.49 gross, and \$644.23 net after deductions. The \$790.49 gross amount also appears in a submitted Record of Employment. Patina says its \$750.14 severance payment was the net amount after deductions, which I accept because there is no evidence showing otherwise. So, I find the amount of net severance Patina paid Miss Essama exceeds the \$644.23 required under the employment contract. I find Patina owes nothing further, and so I dismiss Miss Essama's claim.

## **CRT FEES AND EXPENSES**

23. Under section 49 of the CRTA, and the 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. Miss Essama was unsuccessful in this dispute, but Patina paid no CRT fees and neither party claims CRT dispute-related expenses. So, I order no reimbursements.

## **ORDER**

24. I dismiss Miss Essama's claim, and this dispute.

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Chad McCarthy, Tribunal Member