



Civil Resolution Tribunal

Date Issued: March 2, 2022

File: SC-2021-005955

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Elbishlawi v. Harvie*, 2022 BCCRT 229

B E T W E E N :

SHERIF ELBISHLAWI

APPLICANT

A N D :

DAVINDER HARVIE and STERLING COLLEGE LIMITED

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is over an offer of employment. The applicant Sherif Elbishlawi applied for an IT instructor position at the respondent Sterling College Limited (Sterling).

Sterling's employee, the respondent Davinder (Davie) Harvie, undisputedly rescinded an employment offer, declining to send a written offer letter that Mr. Elbishlawi had requested after Ms. Harvie had verbally made the offer during a Zoom call. Mr. Elbishlawi claims the equivalent of 4 weeks' salary, or \$4,200.

2. The respondents say Mr. Elbishlawi never accepted Sterling's offer of employment. Sterling undisputedly decided not to send the requested written offer because it had in the interim decided for business reasons it would hold off on hiring, which Ms. Harvie explained to Mr. Elbishlawi. The respondents say they owe nothing.
3. Mr. Elbishlawi is self-represented. Davie Harvie represents the respondents.

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.
8. It is undisputed Mr. Elbishlawi never did any work for Sterling and so was never its employee. So, I find this dispute is not about wages and I find the *Employment Standards Act* (ESA) does not apply (bearing in the mind the CRT has no jurisdiction to grant statutory entitlements under the ESA). I note neither party argued the ESA applied. Rather, I find this is an alleged breach of contract dispute that falls under the CRT's jurisdiction under CRTA section 118.
9. I note Mr. Elbishlawi submitted evidence past the CRT's deadline. Given the CRT's flexible mandate, I allow this late evidence and have considered it in my analysis below. I say this because the respondents had the opportunity to review the late evidence and so were not prejudiced by it.

ISSUE

10. The issue in this dispute is whether Mr. Elbishlawi had an employment contract with Sterling, and if so, whether he is entitled to the claimed \$4,200 in damages from the respondents for Sterling's decision not to hire Mr. Elbishlawi.

EVIDENCE AND ANALYSIS

11. In a civil claim like this one, as the applicant Mr. Elbishlawi has the burden of proving his claims, 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. I note Mr. Elbishlawi did not provide any final reply submissions, despite having the opportunity to do so.
12. In a submitted Statement of Facts, the parties agree:

- a. In June 2021, Sterling informed Mr. Elbishlawi it would send him an offer letter for an IT instructor position.
 - b. Sterling later decided that 1) it would hold off on hiring, and b) not send Mr. Elbishlawi the offer letter.
 - c. Mr. Elbishlawi does not have a written or verbal employment contract with either Sterling or Ms. Harvie.
13. The respondents say Mr. Elbishlawi never informed them that he was planning on accepting the offer letter or that he wanted the IT instructor position. Mr. Elbishlawi denies this. Based on the emails in evidence, I find the respondents' position is more likely accurate. My reasons follow.
14. On June 22, 2021, Mr. Elbishlawi wrote Ms. Harvie, thanking her for offering the teaching position. I infer the interview and offer over Zoom occurred earlier that day. Mr. Elbishlawi wrote, "I'm interested in pursuing this opportunity and would appreciate it if you send me the written offer. And please let me know if you have a specific timeframe in which you need me to reach a decision." Later that day, Ms. Harvie responded that she would send an offer letter "in a few days" and would advise when she required its return.
15. On Monday June 28, 2021, Mr. Elbishlawi emailed Ms. Harvie saying he had not received the offer letter and to please let him know "if you will send one as I would like to make a decision this week". Later that day, Ms. Harvie emailed back explaining Sterling's decision the previous Friday to wait on hiring and encouraged Mr. Elbishlawi to explore the "few offers on the table" Ms. Harvie said she understood Mr. Elbishlawi was considering.
16. While Mr. Elbishlawi says he gave up other job interviews following Ms. Harvie's offer over the Zoom call, I find Mr. Elbishlawi's own evidence showed that he was undecided about Sterling's offer. I find there is no evidence Mr. Elbishlawi ever accepted Sterling's employment offer, as instead he said he wanted a written offer to consider and that he would make a decision within about a week.

17. So, I find Mr. Elbishlawi had no binding contract with Sterling. I find Sterling is not bound by the verbal employment offer over Zoom, because it withdrew that offer before Mr. Elbishlawi had accepted it. Further, there is no suggestion his employment agreement was ever going to be with Ms. Harvie in her personal capacity. It follows that Mr. Elbishlawi is not entitled to any damages. I dismiss his claim.

18. 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. Mr. Elbishlawi was unsuccessful in his claim and so I find he is not entitled to reimbursement of CRT fees. The respondents did not pay CRT fees or claim dispute-related expenses.

ORDER

19. I dismiss the applicant's claims and this dispute.

Shelley Lopez, Vice Chair