Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Chohan Freight Forwarders Ltd. v. Hartley*, 2022 BCCRT 231

B E T W E E N :

CHOHAN FREIGHT FORWARDERS LTD.

APPLICANT

A N D :

ALSTON HARTLEY

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. Alston Hartley is a former employee of Chohan Freight Forwarders Ltd. Mr. Hartley worked as a long-haul trucker. Chohan says that Mr. Hartley drove erratically while hauling a load of glass, destroying the entire load. Chohan claimed the loss under its insurance but had to pay a $2,500 deductible. In this dispute, Chohan asks for an order that Mr. Hartley reimburse this deductible.

2. Mr. Hartley admits that the glass broke when he had to brake "harder than usual" in heavy traffic. It is implicit in his submissions that he denies that his driving was negligent. He asks that I dismiss Chohan's claim.

3. Chohan is represented by an authorized employee. Mr. Hartley is self-represented.

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). 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. In some respects, both sides to this dispute call into question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised. I therefore decided to hear this dispute through written submissions.

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 pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

8. I note that in his Dispute Response, Mr. Hartley says that the CRT should fine Chohan $500 to $10,000 for "illegally deducting money" from his pay and initially

withholding his final pay cheque. He provided evidence and submissions about other Chohan business practices that he disagreed with, such as its health and safety record. I find that the CRT does not have jurisdiction, or legal authority, to fine companies or consider these alleged workplace issues. Mr. Hartley did not counterclaim for any deductions Chohan withheld. I have therefore not considered these issues in this decision.

ISSUES

9. The issue in this dispute is whether Mr. Hartley must reimburse Chohan for the $2,500 deductible.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Chohan as the applicant must prove its case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

11. The basic facts are undisputed. The incident occurred on September 3, 2019, when Mr. Hartley was driving in Calgary. He was carrying a load of glass. He braked hard for traffic, which caused the load of glass to break. He did not collide with any other vehicles. Mr. Hartley immediately notified Chohan of the incident by phone. The loss was covered by Chohan's insurance, but Chohan paid a $2,500 deductible.

12. Mr. Hartley gave Chohan a written report about the incident on September 8, 2019. In the report, he said that he was in the right lane when his GPS told him he would have to turn left 800 meters later, so he moved into the middle lane. He says that he was approaching an intersection on a downhill. He said that the light at that intersection turned red, and then other motorists changed lanes in front of him, reducing the time and distance he had to stop. He said that he had to brake hard to avoid a collision, which caused the load of glass to slide forward and break.

13. For its part, Chohan says that Mr. Hartley was driving too fast, too close to other traffic, and chose a poor route.

14. With that background in mind, Chohan admits that employees can only be liable to employers in limited circumstances. Relying on cases from Saskatchewan, Nova Scotia, and Ontario, Chohan says that whether an employee is liable to their employer depends on the degree of the employee's fault in the context of the employment relationship. Cases from other provinces are not binding on me, but I find that British Columbia cases say essentially the same thing. I find that employers must prove that an employee's conduct went beyond "ordinary negligence", such as willful misconduct or a fundamental breach of their employment contract, to recover damages: see *Movassaghi v. Steels Industrial Products Ltd.*, 2012 BCSC 1663.

15. The BC Provincial Court applied these principles to a very similar situation to this dispute in *Teja Trucking Ltd. v. Munkaila*, 2020 BCPC 22. There, a trucking company sued an employee because it said that the employee's negligent driving had broken a load of granite countertops. The court found that even if the defendant driver had broken the countertops because of negligent driving, the trucking company's claim would still fail because the alleged driving errors amounted to ordinary negligence.

16. I find that there is only one real difference between *Teja Trucking* and this dispute. When Mr. Hartley started working for Chohan, he signed a document that included a term that said Chohan reserved the "right to deduct any outstanding or accumulated fees" that Mr. Hartley incurred during his employment. These "fees" included "freight or cargo claims" and "damages related to truck equipment or property". Given that Mr. Hartley signed this document when he was hired, I find that it was part of his employment contract.

17. Chohan relies on this term but it is unclear what Chohan says the term means. Chohan does not argue that it makes Mr. Hartley strictly liable for damage to cargo (in other words, without proof of fault), or liable for damage to cargo caused by Mr. Hartley's ordinary negligence. Instead, Chohan says that it must prove Mr. Handley

was grossly negligent. I agree with Chohan's implicit admission on this point. In this regard, I agree with the court in *Ozum Holdings Ltd. v. Young*, 2000 CanLII 19577 (SK PC), at paragraph 13, that there must be a "specific and clear contractual term" imposing liability for ordinary negligence on an employee. I find that the term does not clearly impose strict liability or liability for ordinary negligence.

18. For the purposes of this decision, I accept Chohan's argument that it could recover damages if Mr. Hartley's driving was grossly negligent. With that, I find that I do not need to determine what happened on September 3, 2019. This is because even if I accept Chohan's allegations as true, they do not prove gross negligence. Gross negligence is when a person's conduct goes beyond mere carelessness and becomes aggravated, flagrant, or extreme conduct. In the context of motor vehicle accidents, gross negligence requires a significant departure from the standards of a reasonably competent driver in circumstances where there is a risk of very serious harm. See *Doern v. Phillips Estate*, 1994 CanLII 1869 (BC SC). As mentioned above, Chohan alleges that Mr. Hartley drove too fast, followed other vehicles too closely, and selected an unwise route. I find that this alleged conduct fits comfortably within the definition of ordinary negligence in the context of driving. In coming to this conclusion, I find it particularly relevant that Mr. Hartley did not hit anyone despite being in heavy traffic.

19. If I am wrong on this point, I find that Chohan has failed to prove its account of what happened. The only evidence about the incident comes from Mr. Hartley himself. There are no other witnesses to the incident and no dashcam footage. Chohan's account appears to be entirely speculative. I find that the mere fact of a hard brake does not prove that the driver was negligent, let alone grossly negligent, as there are many non-negligent reasons a person may need to brake suddenly.

20. In summary, I find that Mr. Hartley is not liable for the $2,500 deductible. I dismiss Chohan's claim.

21. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable

dispute-related expenses. Chohan was unsuccessful so I dismiss its claim for CRT fees and dispute-related expenses. Mr. Hartley did not claim any dispute-related expenses or pay any CRT fees.

ORDER

22. I dismiss Chohan's claims, and this dispute.

Eric Regehr, Tribunal Member