



Civil Resolution Tribunal

Date Issued: March 10, 2022

File: SC-2021-006343

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Waste Connections of Canada Inc. v. Western Pacific Glass Inc.*,
2022 BCCRT 263

B E T W E E N :

WASTE CONNECTIONS OF CANADA INC.

APPLICANT

A N D :

WESTERN PACIFIC GLASS INC.

RESPONDENT

A N D :

WASTE CONNECTIONS OF CANADA INC.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about waste hauling. The applicant and respondent by counterclaim, Waste Connections of Canada Inc. (WCC), says the respondent, Western Pacific Glass Inc. (WPG), owes \$4,326.98, for \$1,792.62 for waste hauling services rendered plus \$2,534.36 as liquidated damages for breach of contract for allegedly improperly cancelling the contract. WCC claims the \$4,326.98.
2. WPG denies it owes anything. It says a sales representative assured them that rates would not increase, as discussed further below. WPG counterclaims for \$4,801.93, for alleged rate adjustment overcharges and for a “bin occupancy fee” because WCC’s bin remained on WPG’s property. WCC says the agreement permitted the rate adjustments imposed, and says it owes nothing.
3. The parties are each represented by 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). 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. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Some of the evidence in this dispute amounts to a “she said, she said” scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The

assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. CRTA section 42 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.

ISSUES

8. The issues in this dispute are:
 - a. Did WPG have an agreement with WCC, and if yes, what were its terms?
 - b. Is WCC entitled to its debt claim and liquidated damages claim?
 - c. Did WCC overcharge WPG and is WPG entitled to a "bin occupancy" fee?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant WCC must prove its claims on a balance of probabilities (meaning "more likely than not"). WPG must prove its counterclaim to the same standard. I have read all the parties' submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.
10. With that, I note WCC chose not to submit any supporting documentary evidence, despite having the opportunity to do so. This matters because I find WCC has not proved WPG owes it any money, as discussed below.

11. WPG submitted a copy of its November 9, 2015 contract with “Progressive Waste Solutions” (Progressive). This Progressive contract did not say Progressive could assign the agreement without WPG’s consent, and in fact says nothing about Progressive’s ability to assign the contract. There is no WCC contract in evidence. WPG only says that WCC became its service provider at some point, after Progressive. WCC does not address its relationship with Progressive.
12. WPG also submitted copies of invoices from 2015 issued by an incorporated company “Progressive Waste Solutions Canada Inc.” (Progressive Inc). WPG also submitted invoices from WCC, issued between 2017 and October 2019. WCC also does not address its relationship with Progressive Inc.
13. As shown on the invoices and the Progressive contract, Progressive, Progressive Inc., and WCC all have the same street address. Arguably, I could infer Progressive Inc. later became WCC and Progressive was the common business name. However, as corporations Progressive Inc. and WCC are each separate legal entities, each also distinct from its directors and officers. So, on the evidence before me I find WCC has no standing to claim under the terms of WPG’s contract with Progressive.
14. In any event, as noted there is no contract in evidence with WCC as a party. So, while I accept that WCC had some form of agreement with WPG given the submissions and invoices in evidence, I find WCC has not proved the terms of that agreement, or that WPG agreed to pay it liquidated damages. In any event, WCC provided insufficient details and no supporting evidence that WPG improperly cancelled any agreement it had with WCC, which might entitle WCC to liquidated damages. I dismiss the liquidated damages aspect of WCC’s claim, which as noted WCC valued at \$2,534.36.
15. At the same time, I find WCC has not proved WPG owes it any debt for services rendered. In its claim, WCC said that WPG owes it \$1,792.62 in debt for services provided between September 30, 2019 to February 29, 2020. Again, while WCC appears to have had some form of agreement with WPG, WCC provided no evidence

in support of this debt claim, such as delivery records or invoices for the relevant time period. So, I dismiss WCC's debt claim as well.

16. I turn to WPG's counterclaim for \$4,801.93, \$1,021.93 of which is for alleged overcharges for the period between July 31, 2017 and October 31, 2019. The balance of WPG's counterclaim is for \$3,780, which it says is an "unpaid storage fee" it charged WCC for not removing its bin from WPG's property. I pause to note that because WCC's claim was undisputedly filed in time, under section 22 of the *Limitation Act* WPG's counterclaim is not out of time even though it is for alleged overcharges dating back more than 2 years, to 2017).
17. That said, again, there is no agreement between WPG and WCC in evidence. While I accept there was some agreement between WPG and WCC, I find it unproven that WCC agreed to limit rate adjustments as WPG alleges. I say this particularly because the 2015 agreement WPG references was with Progressive and Progressive Inc issued the invoices in 2015, not WCC. I also note WPG's evidence is inconsistent on this point. In its Dispute Response filed in response to WCC's claim, WPG said that Progressive's sales representative advised that the rate increases would only be annually and would be less than 10%. Yet, in its reply submission for its own claim, WPG says the handwritten "additional provision" of "12 month price firm" on the Progressive contract meant no price adjustment for every year of the contract. The typed terms and conditions portion of the Progressive contract allows for rate adjustments. Even if the Progressive contract's terms applied to WCC's agreement with WPG, I would find it more likely that "12 month price firm" meant no rate adjustments for the 1st contract year. Given the above, I dismiss the \$1,021.93 portion of the counterclaim.
18. As for the \$3,780 portion of the counterclaim, WPG says that in September 2019 it asked for the waste bin to be removed from its storage site. On November 18, 2019, WPG emailed someone (initials AN) saying "you have to remove the bin from our property immediately" or else WPG would charge "you" \$500 per day from November 20, 2019. There is no evidence before me that WCC ever agreed to such a charge.

On March 4, 2020, WPG issued an invoice to WCC for \$3,780 for 6 “bin occupying” fees of \$600 each, “from Oct 01, 2019 to March 17, 2020”. WPG does not explain the \$600 fee or why there are 6 charges. On balance, I find WPG is not entitled to its unilaterally imposed storage fee, bearing in mind the terms of WPG’s contract with WCC are not in evidence before me. If the Progressive contract’s terms applied to WPG’s agreement with WCC, I would find WPG is not entitled to the bin occupancy fee claimed. So, given the above I dismiss this aspect of WPG’s counterclaim also.

19. 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. Both parties were unsuccessful in their respective claims and so I find the parties must bear their own CRT fees. No dispute-related expenses were claimed and I make no order for them.

ORDER

20. I dismiss the parties’ respective claims and this dispute.

Shelley Lopez, Vice Chair