Civil Resolution Tribunal

Date Issued: April 28, 2022

File: SC-2021-006442

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Brink v. Robertson,* 2022 BCCRT 492

B E T W E E N :

DONALD BRINK

APPLICANT

A N D :

DAVID ROBERTSON

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This small claims dispute is about compensation for vehicle damage. The applicant, David Brink, says that on December 31, 2019 a former employee, the respondent

David Robertson, drove Mr. Brink's 2014 Kenworth log truck & trailer without Mr. Brink's knowledge or permission and was in an accident. Mr. Brink claims $3,530.87 in damages for repairs to the other accident vehicle.

2. In his Dispute Response filed at the outset of this proceeding, Mr. Robertson said he had permission to use the truck at the material time and denied any unauthorized use. Mr. Robertson later chose not to provide any documentary evidence or submissions for this proceeding.

3. Mr. Brink is represented by a family member, MG. Mr. Robertson 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). CRTA section 2 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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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.

8. The Employment Standards Branch (ESB) has exclusive jurisdiction over statutory entitlements under the *Employment Standards Act* (ESA). However, I find that the CRT, and not the ESB, has jurisdiction over this dispute. Mr. Brink was Mr. Robertson's employer and so Mr. Brink has no standing to make a complaint to the ESB. So, I find this is a debt or damages claim within the CRT's jurisdiction under CRTA section 118. I note Mr. Robertson said in his Dispute Response that he had an open complaint about his wages with the ESB. I find that is a separate matter and is not before me in this dispute, and so I make no findings about it. That said, I note the ESB issued a November 9, 2021 letter to "DBMG Enterprises Ltd. carrying on business as Donny Brink Contracting" (DBMG) saying Mr. Robertson's complaint was resolved.

ISSUE

9. The issue in this dispute is whether Mr. Robertson used Mr. Brink's truck contrary to the terms of Mr. Robertson's employment agreement, and if so, whether he owes Mr. Brink the claimed $3,530.87 in damages for repairs to the other vehicle in Mr. Robertson's December 31, 2019 accident.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. Brink must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submitted evidence and arguments but refer only to what I find relevant to provide context for my decision. As noted, Mr. Robertson chose not to provide any documentary evidence or submissions, despite having the opportunity to do so.

11. Mr. Robertson was employed by DBMG as a truck driver. He was in an accident on December 31, 2019, at around 5:30 pm while driving Mr. Brink's truck. The accident occurred on "Kenworth Road". None of this is disputed.

Was Mr. Brink authorized to use Mr. Brink's truck at the time of the accident?

12. Here, the issue is whether Mr. Robertson's use of the truck on December 31 was with Mr. Brink's authorization and knowledge. While DBMG employed Mr. Robertson, it was undisputedly Mr. Brink's truck that Mr. Robertson was driving at the time of the accident.

13. Mr. Brink says under DBMG's employment policies, unless in the logging camp, Mr. Robertson was to have parked his truck each night at "the barn", a location on "Kelly Road". Mr. Brink also says DBMG's policies prohibited carrying passengers and that use of the truck was for work purposes only. This is supported by a copy of the DBMG "Policies and Procedures Employee Handbook" in evidence, which Mr. Robertson acknowledged receiving and agreed to on November 20, 2019. More on the handbook below.

14. Mr. Brink says that at the time of the accident Mr. Robertson had his spouse in the truck and was en route to Save On Foods, when he should have had the truck parked.

15. In his Dispute Response, Mr. Robertson said he was on the way to the barn and denied being on the way to Save On Foods. Emails in evidence show Mr. Robertson's position is that Mr. Brink did permit Mr. Robertson to "have" the truck in Mr. Robertson's possession while Mr. Brink was away. Mr. Robertson emailed that he has text messages from Mr. Brink telling him to take the truck to a shop to get a motor vehicle inspection (MVI). As noted, Mr. Robertson did not submit copies of those text messages in evidence.

16. In any event, Mr. Robertson does not explain why he was on Kenworth Road, which undisputedly is almost 9km away from "the barn", at the time of the accident. Mr.

Brink also says the authorization to get a MVI was for January 2, 2020, although Mr. Robertson's text in evidence on January 2 said that he did not know that. Even if Mr. Brink had authorized Mr. Robertson to take the truck to get a MVI on December 31, 2019, Mr. Robertson does not say the accident happened anywhere near where he might be getting the MVI and submitted no evidence that he applied for or did get a MVI.

17. I find the weight of the evidence shows Mr. Robertson's use of the truck on December 31, 2019 was not for work purposes, as required by the handbook.

18. In his Dispute Response, Mr. Robertson also denied having a passenger at the time of the accident, saying his roommate was following in a car behind him. However, Mr. Brink submitted a statement from CM, the driver of the other vehicle involved in the accident. CM wrote that a female, who said she was Mr. Robertson's wife, exited from the truck just after the accident. Again, Mr. Robertson submitted no supporting evidence, such as a statement from his roommate or spouse. On balance, I find it likely Mr. Robertson had a passenger in the truck, contrary to the handbook.

19. In short, I find Mr. Robertson's use of the truck at the time of the accident was unauthorized, because it was not for work purposes and because he had a passenger.

Liability and damages

20. As noted above, in this CRT dispute the applicant is Mr. Brink but it was his corporation, DBMG, that employed Mr. Robertson. A corporation is a legal entity distinct from its owners or shareholders.

21. ICBC's February 28, 2020 recovery letter was issued to Mr. Brink personally, as the truck's lessee. In that letter, ICBC wrote that Mr. Robertson had been held 100% responsible for the December 31, 2019 accident and that to use Mr. Brink's collision coverage for vehicle repairs it would cost $2,500 (100% of the policy's collision

deductible). I infer Mr. Brink claims $3,530.87 because he prefers not to use his insurance coverage so he can avoid increased premiums.

22. So, because Mr. Brink's claim is for reimbursement of what he had or has to pay for repairs to the other vehicle, I find Mr. Brink has standing to make this claim, even though Mr. Robertson's employment contract was with DBMG. Again, I say this because there is no dispute the truck was Mr. Brink's personally and that Mr. Robertson only had use of that truck due to his employment. More on why this matters below.

23. As noted, I have found Mr. Robertson had authorized possession of the truck on December 31, 2019, but his use at the time of the accident was unauthorized. In an email to MG, Mr. Robertson says that Mr. Brink could not sue his employee for Mr. Robertson's borrowed use of the truck.

24. As noted above, DBMG was the employer, not Mr. Brink. It was Mr. Brink's truck that Mr. Robertson was driving. In the circumstances, I find the employment agreement terms are relevant, as is Mr. Robertson's employee status. In other words, while DBMG was officially Mr. Robertson's employer, for the purpose of this dispute I find Mr. Brink and Mr. Robertson were effectively employer and employee.

25. The difficulty for Mr. Brink is that employees can only be liable to employers in limited circumstances. Whether an employee is liable to their employer depends on the degree of the employee's fault in the context of the employment relationship. In particular, an employer must prove that an employee's conduct went beyond "ordinary negligence", such as willful misconduct or a fundamental breach of the employment contract, to recover damages (see *Movassaghi v. Steels Industrial Products Ltd*., 2012 BCSC 1663).

26. The BC Provincial Court applied these principles to a 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.

27. Here, I find no evidence that the accident arose from anything other than Mr. Robertson's ordinary negligence. CM's statement does not allege any facts that would give rise to gross negligence by Mr. Robertson. So, I find Mr. Robertson's driving at the time of the accident was due to ordinary negligence.

28. I turn then to DBMG's policies handbook that includes the terms about prohibiting carrying of passengers and use for non-work purposes. As another CRT tribunal member found in the non-binding but persuasive decision in *Chohan Freight Forwarders Ltd. v. Hartley*, 2022 BCCRT 231, I agree with the court in *Ozmun Holdings Ltd. v. Young*, 2000 CanLII 19577 (SK PC). At paragraph 13 of *Ozmun*, the court found there must be a "specific and clear contractual term" imposing liability for ordinary negligence on an employee. Here, I find that the handbook's terms do not clearly impose strict liability or even any liability for ordinary negligence. I say this because the handbook expressly says it "only contains general information and guidelines" and that it is "not a binding legal contract". There is no mention of holding an employee liable for any non-permitted use of the truck. Rather, at most the handbook says that upon violation of any "company rule", the employee will be disciplined, such as with warnings, suspension, or dismissal. Yet, this dispute is a claim for compensation arising from Mr. Brink's obligation, as the truck's owner, to cover CM's damages.

29. So, I find Mr. Brink cannot succeed in his claim for damages against Mr. Robertson, bearing in mind for the purpose of this dispute I find the parties filled the roles of employer and employee respectively. This is because the parties' employment agreement did not say Mr. Robertson would be liable for his ordinary negligence or otherwise and because I find no evidence of gross negligence in his driving at the time of the accident.

30. I note Mr. Brink relies on the fact Mr. Robertson admitted in an email to MG that he hit CM's car and admitted telling her he would pay for her damages. Mr. Robertson

wrote that he did not pay because Mr. Brink had allegedly not paid an unspecified amount of outstanding wages. As noted above, I find the issue of wages is not before me in this dispute. In any event, Mr. Robertson's agreement with CM does not amount to an agreement between the parties. Again, as noted above, Mr. Robertson asserts his employer cannot recover the claimed damages from him in the circumstances here and I agree.

31. With that, it follows that I must dismiss Mr. Brink's claim. I therefore do not need to consider the amount of the claimed damages in any detail. I will note that there is no evidence Mr. Brink has in fact paid anything yet for the other vehicle's repairs but given my conclusion nothing turns on this.

32. 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 Mr. Brink was unsuccessful, I dismiss his claim for reimbursement of CRT fees and dispute-related expenses. Mr. Robertson did not pay fees or claim dispute-related expenses.

ORDER

33. I dismiss Mr. Brink's claim and this dispute.

Shelley Lopez, Vice Chair