



Civil Resolution Tribunal

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File: SC-2021-008615

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *FortisBC Energy Inc. v. A-Grade Plumbing & Heating Ltd.*,
2022 BCCRT 525

B E T W E E N :

FORTISBC ENERGY INC.

APPLICANT

A N D :

A-GRADE PLUMBING & HEATING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about recovery of repair costs. The applicant, FortisBC Energy Inc. (Fortis), says the respondent, A-Grade Plumbing & Heating Ltd. (A-Grade), damaged a gas main. Fortis claims \$1,172.18 for repair costs.
2. A-Grade admits the gas main was damaged. However, A-Grade disputes its responsibility and the amount Fortis claims, as discussed further below.
3. Fortis is represented by an employee. A-Grade is 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). 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. I note Fortis submitted a website link in its evidence, to the details of its BC 1 Call requirements. I cannot review live links as the content may change, and so I did not consider this evidence. Nothing turns on this however, since as noted below it is undisputed A-Grade was required to contact BC 1 Call before digging.

ISSUE

9. The issue in this dispute is to what extent, if any, must A-Grade pay Fortis \$1,172.18 for the repairs Fortis completed to a damaged gas main.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Fortis must prove its 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.
11. In a jointly submitted Statement of Facts, the parties agree:
 - a. A-Grade damaged a Fortis gas service line on May 18, 2021.
 - b. A-Grade did not contact “BC 1 Call” to confirm the location of the underground utilities before beginning work.
 - c. On June 21, 2021, Fortis invoiced A-Grade \$1,172.18 for repair costs, which A-Grade has not paid.
 - d. The parties disagree about whether the amounts charged for overtime hours, meals and coffees, and meal/coffee breaks are appropriate in the circumstances.

12. I turn to the applicable law. To prove liability in negligence, Fortis must show that A-Grade owed it a duty of care, that A-Grade breached the standard of care, that Fortis sustained a loss (damages), and that A-Grade's breach caused the loss: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
13. I find A-Grade clearly owed Fortis a duty of care as a business working around Fortis gas lines. I find the applicable standard of care was to take reasonable care not to damage Fortis' gas line. A-Grade was undisputedly required to contact BC 1 Call before digging, and as noted it admits it failed to do so. None of this is disputed. I also find the worker hit the gas main with a pickaxe, which is what Fortis' technician's contemporaneous report found. While A-Grade argues it was hit with a shovel, there is no evidence from the labourer to this effect. In any event, since A-Grade undisputedly did not call BC 1 Call as required to identify the gas main's location before attempting to dig, I find it breached the standard of care whether it used a pickaxe or not.
14. As noted, in its Dispute Response filed at the outset of this proceeding, A-Grade admitted it damaged Fortis' gas main. In its later argument, it said that the labourer who dug the ground to expose the gas line was not from A-Grade but was a temporary worker from a labour agency hired by the property owner. A-Grade did not identify the worker, the agency, or the homeowner. A-Grade submitted no evidence to support the worker was not its own crew member, and this assertion is inconsistent with its other admissions including in the Statement of Facts. I find A-Grade is responsible for causing the damage to the gas main.
15. The remaining and central issue in this dispute is whether A-Grade must pay the amount claimed.
16. Fortis' invoice "breakdown" (which A-Grade refers to as a "bill") described repair of a 15mm PE gas service that was damaged while "digging trench for new water service". The invoice contained the following breakdown:
 - a. 1 regular hour and 2 overtime hours for a crew leader (\$109.15 + \$250.77)

- b. 1 regular hour and 2 overtime hours for a distribution mechanic (\$100.85 + \$229.97)
 - c. 2.5 overtime hours for 1 “customer service technician 1” (\$314.20)
 - d. 5.5 hours for 1 truck and 1 van (\$80.04)
 - e. “Overtime meals/coffee” (\$87.21)
17. Fortis issued a June 21, 2021 invoice, due on receipt, to A-Grade for the above, though this contained a less detailed breakdown. Nothing turns on the differences.
18. A-Grade says Fortis never told it that it would charge for the repairs and Fortis never obtained quotations before it started to fix the gas line. Given the obvious urgency in repairing a damaged gas main, I find that Fortis was not required to seek A-Grade’s consent or obtain quotations before it commenced repairs. The fact that the claimed amount is relatively low at \$1,172.18 also supports this conclusion.
19. A-Grade also alleges an “incorrect number of hours billed” and that Fortis charged for meal and coffee breaks for its workers. Yet, A-Grade did not explain how the hours were incorrect or provide any details. I find the labour and vehicle hours billed are reasonable and I allow them as claimed.
20. However, I do not allow the \$87.12 for overtime meals/coffee. I find no legal basis to hold A-Grade responsible to pay for Fortis’ crew’s personal breaks. So, I allow \$1,085.06.
21. The *Court Order Interest Act* (COIA) applies to the CRT. I find Fortis is entitled to pre-judgment interest under the COIA on the \$1,085.06. Calculated from June 21, 2021 to the date of this decision, this interest equals \$4.24.
22. 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 Fortis was successful, I allow its claim for reimbursement of \$125 in CRT fees. No dispute-related expenses were claimed.

ORDERS

23. Within 21 days of this decision, I order A-Grade to pay Fortis a total of \$1,214.30, broken down as follows:
- a. \$1,085.06 in damages,
 - b. \$4.24 in pre-judgment interest under the COIA, and
 - c. \$125 in CRT fees.
24. Fortis is entitled to post-judgment interest, as applicable.
25. Under section 48 of the CRTA, the CRT will not provide the parties with the order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision.
26. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of BC. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of BC.

Shelley Lopez, Vice Chair