Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *So v. Jooyee Network Inc*., 2022 BCCRT 574

B E T W E E N :

CAROLINE SO

APPLICANT

A N D :

JOOYEE NETWORK INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Richard McAndrew

INTRODUCTION

1. This employment dispute is about alleged wrongful dismissal, severance pay, vacation pay, and bonus pay. The applicant, Caroline So, says the respondent, Jooyee Network Inc. (Jooyee), terminated her employment with insufficient notice. Ms. So also claims that Jooyee owes her vacation pay and bonus pay for a translation project. Ms. So claims $5,000 in damages and unpaid compensation.

2. Jooyee denies Ms. So's claims. Jooyee says that Ms. So had inadequate language translation skills and she received sufficient notice of the termination of her employment. Further, Jooyee says that it does not owe Ms. So vacation or bonus pay.

3. Ms. So is self-represented. Jooyee is represented by an employee, LC.

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. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly 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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

Employment Standards Act

8. The CRT has no jurisdiction over an employee's claim for statutory entitlements to wages, as provided under the *Employment Standards Act* (ESA). That is within the exclusive jurisdiction of the Employment Standards Branch (ESB). See, for example, *Macaraeg v. E Care Contact Centers Ltd*., 2008 BCCA 182.

9. However, an employee is only prevented from bringing a civil action when the employee is seeking to enforce a right that is only available under the ESA. The employee may pursue a civil remedy under the parties' contract or under the common law, such as through a CRT dispute (see the non-binding but persuasive decision in *Bellagamba v. International Tentnology Corp*., 2018 BCCRT 549). I find Ms. So can pursue a claim under the parties' employment contract and under the common law. So, I find Ms. So's claims are within the CRT's small claims jurisdiction over debt and damages.

Record of employment

10. In her submissions, Ms. So claims that Jooyee failed to timely submit a record of employment document which allegedly affected her Employment Insurance claim and her ability to find another job. Though the CRTA and CRT rules permit applicants to request to amend the Dispute Notice to change claims or remedies, Ms. So did not do so. I find the purpose of a Dispute Notice is to define the issues and provide notice to the respondent of the claims against them. CRT rule 1.19(3) says that the Dispute Notice will only be amended after the dispute has entered the CRT decision process where exceptional circumstances apply. I find no exceptional circumstances here that would justify adding an additional claim at this late stage in the CRT process. So, I do not make any findings about Ms. So's allegation that Jooyee failed to timely submit her record of employment.

11. Further, section 12 of the *Tax Court of Canada Act* says that the Tax Court of Canada has exclusive jurisdiction to hear disputes arising under the Canada *Employment Insurance Act*. Since the requirements relating to records of employment arise only in the *Employment Insurance Regulations* and not in the parties' employment contract, I find that the CRT would have lacked jurisdiction to hear a claim relating to Jooyee's processing of Ms. So's record of employment even if she had amended the Dispute Notice to include such a claim.

12. For the above reasons, I make no findings relating to Ms. So's allegation that Jooyee failed to timely process her record of employment document after her employment ended.

ISSUES

13. The issues in this dispute are:

    a. Did Jooyee give Ms. So sufficient notice of her employment termination? If not, how much does Jooyee owe?

    b. Does Jooyee owe Ms. So vacation pay? If so, how much?

    c. Does Jooyee owe Ms. So bonus pay? If so, how much?

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, Ms. So, as the applicant, must prove her claims on a balance of probabilities. However, Jooyee, as the employer, must prove it had just cause to dismiss Ms. So (see *Acumen Law Corporation* v*. Ojanen*, 2019 BCSC 1352 at paragraph 34).

15. I have read all the parties' evidence and arguments but refer only to what I find relevant to provide context for my decision.

16. It is undisputed that the parties signed an employment contract on September 16, 2020 (employment contract) and Ms. So started working for Jooyee on September 21, 2020 as a game arts quality assurance technician.

Reasonable notice

17. The parties exchanged multiple text messages on June 1, 2021 about Ms. So's employment. Jooyee wrote that it was reducing its workforce and asked Ms. So if whether she agreed to change her work schedule from full-time to "on call." Jooyee said that by working "on call," Ms. So would perform work as needed from time to time rather than full-time. Ms. So wrote that this schedule would breach their employment contract. Jooyee responded by notifying Ms. So that her employment would end on June 15, 2021. Based on these text messages, I find that Jooyee terminated Ms. So's employment on June 15, 2021 with 2 weeks' notice.

18. Under common law, Jooyee is not required to provide notice if it discharged Ms. So for just cause. The test for just cause is whether the employee's misconduct amounts to an irreparable breakdown in the employment relationship: *McKinley v. BC Tel*, 2001 SCC 38 and *Steel v. Coast Capital Savings Credit Union*, 2015 BCCA 127 at paragraphs 27 to 28.

19. Jooyee appears to say that it dismissed Ms. So because it did not have sufficient work for her and because her translation skills were inadequate. Incompetence may be just cause for dismissal (see *Parakin v. Bandali Medical Services Inc*., 1999 CanLII 2690 (BC SC), at paragraph 53).

20. Jooyee's vice president, HW, sent a September 8, 2021 text message to Jooyee saying that Ms. So failed a Japanese language translation test and that she refused to take additional tests. However, Ms. So says that she was hired as a quality assurance technician, not as a Japanese language translator. This is consistent with her employment contract which does not include translation services in the list of job duties. Ms. So says that she did perform a test assignment for Japanese translation skills at Jooyee to determine whether she could transfer to the Japanese translation

team if an opening developed. However, Ms. So says that she remained in her role as quality assurance technician because she did not pass the Japanese language translation test. Based on above, I find that Ms. So's employment contract did not include Japanese translation services. So, I find that Ms. So's Japanese language competency is not relevant to her work performance.

21. Further, Ms. So says that she performed her duties as a quality assurance technician adequately. Since Jooyee did not provide any evidence or submissions showing that Ms. So's quality assurance work was deficient, I find that Jooyee has not proved that Ms. So performed her work incompetently.

22. For the above reasons, I find that Jooyee has not proved that it had just cause to dismiss Ms. So based on her conduct or work performance. Rather, based on the parties' June 1, 2021 text messages, I find that Jooyee ended Ms. So's employment because it did not have enough work to continue her employment, which I find is not just cause for her dismissal.

23. Under the common law, when an employee is terminated without reasonable notice, they are entitled to damages equal to what they would have earned during the notice period (see *Matthews v. Ocean Nutrition Canada Ltd.,* 2020 SCC 26 at paragraph 59). Jooyee argues that Ms. So is not entitled to any additional notice because she did not object to her dismissal. However, I find that nothing turns on this because I find that Ms. So is entitled to reasonable notice regardless of whether she objected to her dismissal.

24. So, was Jooyee's 2 weeks' notice reasonable notice?

25. Jooyee argues that Ms. So is only entitled to 2 weeks' notice under the employment contract. Paragraph 44 of the employment contract says that "…reasonable and sufficient notice of termination of employment by the Employer is the greater of two (2) weeks or any minimum notice required by law." The contract does not say whether paragraph 44's "minimum notice required by law" refers to notice requirements under the ESA, the common law or both. In interpreting the contract, I note that the common

law does not have a “minimum notice” period. So, I find that the “minimum notice required by law” in paragraph 44 of the employment contract does not relate to the length of reasonable notice that Ms. So is entitled to under common law. Rather, I find that this provision refers to Ms. So’s potential ESA entitlements which, as discussed above, are not within the CRT’s jurisdiction. So, I make no findings relating Ms. So’s ESA entitlements and I find that she was entitled to 2 weeks’ notice under the employment contract.

26. Since it is undisputed that Ms. So has received 2 weeks’ notice of the June 15, 2021 termination date, I dismiss this claim.

Vacation pay

27. Ms. So claims she is owed an unspecified amount for unpaid vacation. As discussed above, the CRT has no jurisdiction over Ms. So’s claims for vacation pay under the ESA. So, I make no findings relating Ms. So’s ESA entitlements and only consider her rights, if any, to vacation pay under the employment contract.

28. The employment contract says that Jooyee will pay Ms. So vacation pay instead of vacation time. However, the contract does not say the amount of Ms. So’s vacation pay or provide a formula to calculate it. Further, Ms. So has not provided any evidence or submission showing the amount of any allegedly unpaid vacation pay owed under the employment contract.

29. In the absence of supporting evidence, I find that Ms. So’s claim for unpaid vacation pay under the employment contract is unproven. So, I dismiss this claim.

Bonus pay

30. Ms. So claims $533.51 for an unpaid performance-based bonus relating to a Chinese language translation project.

31. The parties exchanged text messages on April 26, 2021 discussing the project. Jooyee wrote that it would pay Ms. So a performance-based bonus calculated at the rate of $0.01 per word translated. Ms. So agreed to do so. Based on the April 26,

2021 text messages, I find that the parties entered an agreement to pay Ms. So a bonus for a translation project.

32. Ms. So provided a May 31, 2021 document called a "Payroll Deductions Calculator," which she says is a payroll estimate prepared by Jooyee. Since Jooyee does not dispute this, I accept it as accurate. The May 31, 2021 payroll estimate says that Ms. So earned a $533.51 bonus. Ms. So claims that Jooyee owes her this $533.51 bonus.

33. In contrast, Jooyee argues that the employment contract says bonuses are issued at Jooyee's sole discretion. Jooyee says that it determined that Ms. So's performance did not merit a bonus. ASD, a Jooyee employee, sent Jooyee July 28, 2021 text messages saying that Ms. So needed help performing the project, Ms. So was not familiar with Chinese culture-bound expressions and someone else needed to translate those instead. ASD also wrote that no one else on the team received a bonus for the project.

34. However, Jooyee's submission that Ms. So did not earn a bonus is not consistent with its May 31, 2021 payroll estimate that says she earned a $533.51 bonus. In the absence of an explanation of this discrepancy, I find that Ms. So did earn the $533.51 bonus stated in in Jooyee's May 31, 2021 payroll estimate. Since it is undisputed that Jooyee has not paid this bonus, I find that Jooyee owes Ms. So $533.51 for the translation project bonus.

35. For the above reasons, I find that Jooyee owes Ms. So $533.51.

Interest, CRT fees, dispute-related expenses

36. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. So is entitled to pre-judgment interest on the $533.51 debt from June 15, 2021, the date her employment ended, to the date of this decision. This equals $2.18.

37. 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. I see no reason in this case not to follow that general rule. Since Ms. So was partially successful, I find that she is entitled to reimbursement of one-half of her CRT fees. This equals $87.50. Ms. So did not claim reimbursement of dispute-related expenses.

ORDERS

38. Within 30 days of the date of this order, I order Jooyee to pay Ms. So a total of $623.19, broken down as follows:

    a. $533.51 in bonus pay,

    b. $2.18 in pre-judgment COIA interest, and

    c. $87.50 in CRT fees.

39. Ms. So is entitled to post-judgment interest, as applicable.

40. Ms. So's claims for wrongful dismissal and vacation pay is dismissed.

41. 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.

42. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. 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 British Columbia.

Richard McAndrew, Tribunal Member