



Civil Resolution Tribunal

Date Issued: May 20, 2022

File: SC-2021-006986

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Singh v. Kainth*, 2022 BCCRT 600

BETWEEN:

HARVEER SINGH

APPLICANT

AND:

GURVINDER SINGH KAINTH

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Harveer Singh, drove a taxi for the respondent, Gurvinder Singh Kainth. Mr. Kainth is the taxi's owner-operator. Mr. Singh says Mr. Kainth owes him \$492.10 for his share of taxi fares.

2. Mr. Kainth does not dispute the claimed share of fares but says Mr. Singh caused about \$3,000 in damage to the taxi. Mr. Kainth did not file a counterclaim and seeks a set-off for the damage as discussed below.
3. Both parties are self-represented. For the reasons set out below, I allow Mr. Singh's claim without any set-off.

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, the parties in this dispute call into question each other's credibility. Credibility of 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. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I 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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
8. The parties made no submissions about whether they had an employer-employee relationship. The CRT does not have jurisdiction over an employee's claim for statutory entitlements under the *Employment Standards Act*, which gives the Director of Employment Standards exclusive jurisdiction over such claims. I find that regardless of whether or not Mr. Singh was Mr. Kainth's employee, his claim is not about his potential statutory entitlements. Rather, it is about entitlement to payment in satisfaction of an agreement, whether an employment agreement or otherwise. So, I am satisfied that the CRT has jurisdiction over this claim.

ISSUE

9. Mr. Kainth does not dispute that Mr. Singh earned the claimed \$492.10 in taxi fares in August 2021. In other words, there is no dispute that Mr. Kainth was contractually obligated to pay Mr. Singh \$492.10. The issue is whether Mr. Kainth is entitled to a set-off for the taxi damage he alleges Mr. Singh caused.

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Mr. Singh must prove his claims on a balance of probabilities, meaning more likely than not. However, as the party claiming a set-off, Mr. Kainth must establish his entitlement to the set-off. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
11. It is undisputed that Mr. Kainth was the "owner/operator" of taxi 19, the taxi that Mr. Singh drove. I note that employers seeking to recover damages from employees must prove that the employee's conduct went beyond "ordinary negligence" (see *Movassaghi v. Steels Industrial Products Ltd.*, 2012 BCSC 1663). Although Mr. Singh refers to the claimed \$492.10 as "wages" he does not specifically allege an

employment relationship. For that reason, I have assumed that the parties were independent contractors and that ordinary negligence would be sufficient to recover damages. With that, I find Mr. Kainth must prove Mr. Singh was negligent. This means Mr. Kainth must prove that Mr. Singh owed him a duty of care, that Mr. Singh breached the standard of care, that Mr. Kainth experienced a loss or damage, and that Mr. Singh's breach caused the loss.

12. It is undisputed that Mr. Singh drove taxi 19 for 2 nights – August 6 and August 28, 2021. He denies damaging the taxi, and says either Mr. Kainth or the taxi's regular night driver must have damaged it.
13. Mr. Kainth alleges Mr. Singh damaged the taxi in 2 ways. First, he says Mr. Singh damaged the taxi's front passenger side. Second, he says Mr. Singh drove the taxi with the "check engine" and temperature warning lights illuminated on the dashboard, causing internal damage.
14. Mr. Kainth relies on a Carstar collision repair estimate for \$1,082.59. The estimate does not identify or speculate on the cause of damage. Mr. Kainth's only other evidence is a series of text messages between Mr. Singh and someone Mr. Kainth identifies as "the manager" of the taxi operation. In the texts, the manager provided the Carstar estimate to Mr. Singh. Mr. Singh replied that he did not understand. He denied causing damage. The manager said that Mr. Singh already "accepted" that he had damaged the passenger door and was going to get it fixed. Mr. Singh denied that too.
15. In essence, I have to weigh Mr. Kainth's assertion that the passenger door damage happened while the taxi was in Mr. Singh's control against Mr. Singh's denial. I find the manager's text message, without more, insufficient to support Mr. Kainth's assertion. For example, Mr. Kainth did not submit a statement from the manager detailing the assertion that Mr. Singh accepted responsibility for the damaged door, such as when the damage was discovered, and when the conversation happened.

16. As noted above, Mr. Kainth bears the burden of proving all elements of negligence, including that Mr. Singh caused the damage. I find Mr. Kainth has not met that burden.
17. In addition, Mr. Kainth provided no evidence or submissions about the applicable standard of care and whether Mr. Singh breached it. For example, did a passenger cause the damage by opening the door into a curb or other object, and if so, should Mr. Singh be responsible for that damage? Given the limited evidence before me, I cannot say that Mr. Singh's conduct with respect to the door damage was negligent.
18. As for internal damage, Mr. Kainth says he drove the taxi the morning of August 29 right after Mr. Singh returned it to the taxi office and he saw the warning lights on the dashboard right away. Despite seeing the warnings, Mr. Kainth says he drove the taxi for half an hour before smelling something burning. The next day he took the taxi to the repair shop. He says when he asked Mr. Singh about the lights, Mr. Singh said they came on around 10 p.m. the night before. Mr. Singh denies seeing warning lights on the dashboard and denies admitting to Mr. Kainth that the lights came on.
19. First, I find the alleged internal damage is not proven because there is no invoice or estimate from a mechanic, and no other evidence in support. Second, even if the internal damage were proved, Mr. Kainth does not explain why he drove the taxi with the warning lights on until he smelled something burning. The damage may have been caused by his own negligence.
20. I conclude that Mr. Kainth has not proved that Mr. Singh negligently damaged taxi 19, so he is not entitled to any set-off. I order Mr. Kainth to pay Mr. Singh the claimed \$492.10.
21. The *Court Order Interest* Act applies to the CRT. Mr. Singh is entitled to pre-judgment interest on the \$492.10 from September 3, 2021, the date I find Mr. Singh was entitled to payment, to the date of this decision. This equals \$1.57.
22. 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.

I find the applicant is entitled to reimbursement of \$125 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

23. Within 14 days of the date of this order, I order Mr. Kainth to pay Mr. Singh a total of \$618.67, broken down as follows:
 - a. \$492.10 in debt,
 - b. \$1.57 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125.00 in CRT fees.
24. Mr. Singh 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 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.

Micah Carmody, Tribunal Member