



Civil Resolution Tribunal

Date Issued: July 26, 2022

File: SC-2021-009392

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *ASC 360 Logic (Ontario) Inc. v. Trans BC Freightways Ltd.*,
2022 BCCRT 848

BETWEEN:

ASC 360 LOGIS (ONTARIO) INC.

APPLICANT

AND:

TRANS BC FREIGHTWAYS LTD.

RESPONDENT

AND:

ASC 360 LOGIS (ONTARIO) INC.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a shipping arrangement. The applicant and respondent by counterclaim, ASC 360 Logis (Ontario) Inc. (ASC), hired the respondent and applicant by counterclaim, Trans BC Freightways Ltd. (Trans BC), to ship its containers. ASC says Trans BC unreasonably delayed delivering and returning two containers, resulting in \$2,113.25 worth of extra charges it had to pay. Trans BC says any delays were not its fault.
2. In its counterclaim, Trans BC says ASC failed to pay for several invoices, totaling \$3,304.89. ASC admits it owes Trans BC for some invoices, but disputes the total amount owing. ASC wants its claim of \$2,113.25 set off against any amount Trans BC is owed.
3. ASC is represented by its owner, Willett Leung. Trans BC is represented by its owner, Shahid Hanif.

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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. Section 39 of the CRTA says that 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. Further, 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.

6. Section 42 of the CRTA says that 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. How much is Trans BC owed for its unpaid invoices?
 - b. Is ASC entitled to a set-off or payment for delayed shipments?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant ASC must prove its claims on a balance of probabilities (meaning “more likely than not”). Trans BC has this same burden in its counterclaim. While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision.
10. ASC’s claim about delayed shipments relates to two specific shipments, TEMU9645 (TEM) and MSMU6002331 (MSMU). ASC says Trans BC unreasonably delayed in delivering the TEM shipment, and unreasonably delayed in returning the empty shipping container for the MSMU shipment. Trans BC denies responsibility for both. In its counterclaim, Trans BC says ASC failed to pay for 5 of its invoices, totaling \$3,304.89. I will deal with Trans BC’s counterclaim first, then with ASC’s claim for reimbursement and a set-off.

Is Trans BC entitled to payment of its outstanding invoices?

11. As noted, Trans BC seeks payment of 5 invoices totaling \$3,304.89, they are as follows:
 - a. W4088 for \$350
 - b. W4003 for \$250
 - c. TBC-5366 for \$538 (though the invoice is for \$538.27)
 - d. TBC-5230 for \$1,278.62, and
 - e. TBC-5299 for \$888.27.
12. ASC admits it has not paid several invoices, and acknowledges owing \$2,819.16, subject to any set-off. TBC-5230 relates to the TEM shipment and W4088 relates to the MSMU shipment, but the other invoices are unrelated to ASC's claims of delay. So, I find the other invoices are not sufficiently tied to Trans BC's claim for invoice payment and ASC is not entitled to any set-off from those amounts.
13. Although ASC says it was never provided with the invoice for W4003, it admits owing Trans BC \$2,819.16, which I find includes payment for W4003. I find ASC must pay for W4088, W4003, TBC-5366, and TBC-5299 in full, for a total of \$2,026.54.
14. ASC raises two issues with invoice TBC-5230. First, it says the invoice is for \$1,042.62, not the \$1,278.62 claimed. The invoice in evidence is for \$1,278.62, and ASC has not explained why the lower amount should be charged.
15. Second, ASC says it should not have to pay for a \$300 "Genset" fee or a \$150 "Pre pull" fee on the invoice. ASC says these fees were charged as a result of Trans BC's own negligence for its driver getting into an accident, so ASC denied acceptance of the shipping container at its warehouse. As a result, Trans BC kept the container at its warehouse and incurred the fees, as well as delivered TEM late. It is undisputed the shipping container had to be plugged in when not attached to the truck.

16. A chronology submitted in evidence by ASC, and created by an ASC employee, notes that Trans BC's driver was in an accident and was stuck on the road. The chronology also states that PMC, who I infer from the chronology was ASC's delivery customer, "prefer driver returns to [Trans BC] yard to plug in and deliver first thing in the morning", which Trans BC agreed to do. So, I find Trans BC reasonably took the trailer to its yard, on the request of ASC or its customer, and incurred the charges. I find ASC must pay the full invoice amount of \$1,278.62.
17. In summary, I find ASC owes Trans BC \$3,305.16 for unpaid invoices. However, as Trans BC only claimed \$3,304.89, I find ASC must pay this amount.

Is ASC entitled to \$1,663.25 in detention charges?

18. ASC says that Trans BC failed to return an empty shipping container (MSMU) to the steamship line on time, resulting in a 7-day detention charge of \$1,663.25. Trans BC says it tried to return the container but was denied because of a backlog with the shipping line. ASC does not dispute that there was a backlog, but says Trans BC had an obligation to notify ASC it could not deliver the container, which it says Trans BC failed to do.
19. Trans BC says the late charges were out of its control, as it had no choice about when to return the shipping container.
20. As noted above, the burden is on ASC to prove its claims. Although ASC says Trans BC "owed a duty" to notify ASC immediately if it could not return the shipping container, ASC did not provide any expert evidence explaining the standard of care of a transportation carrier, and whether Trans BC fell below that standard. Additionally, there is no written contract before me that addresses any notification requirements. As such, I am unable to find that Trans BC breached any duty owed to ASC, and it is undisputed the shipping line would not accept the container. So, I find Trans BC is not obligated to pay the detention fee.
21. ASC's claim for the \$450 set-off on TBC-5230 for late delivery of TEM is addressed above.

22. In summary, I dismiss ASC's claims.

Interest and fees

23. Trans BC is entitled to pre-judgment interest on its invoices under the *Court Order Interest Act*, from the date of each invoice. This totals \$14.92.

24. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As Trans BC was successful in its counterclaim, I find it is entitled to reimbursement of \$125 in tribunal fees. As ASC was unsuccessful in its claim, I dismiss its claim for reimbursement of tribunal fees. Neither party claimed dispute-related expenses.

ORDERS

25. Within 30 days of the date of this decision, I order the applicant and respondent by counterclaim, ASC 360 Logis (Ontario) Inc. (ASC), to pay the respondent and applicant by counterclaim, Trans BC Freightways Ltd. (Trans BC), a total of \$3,444.81, broken down as follows:

- a. \$3,304.89 in debt for unpaid invoices,
- b. \$14.92 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in tribunal fees.

26. Trans BC is also entitled to post-judgment interest, as applicable.

27. ASC's claims are dismissed.

28. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Andrea Ritchie, Vice Chair