



Civil Resolution Tribunal

Date Issued: September 8, 2022

File: SC-2022-000317

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Vetro v. Parkland Fuel Corporation*, 2022 BCCRT 993

BETWEEN:

SALVATORE VETRO

APPLICANT

AND:

PARKLAND FUEL CORPORATION

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about allegedly contaminated fuel.
2. The applicant, Salvatore Vetro, says he purchased contaminated fuel on December 3, 2021. The fuel was supplied by the respondent, Parkland Fuel Corporation (PFC).

Mr. Vetro says his vehicle suffered severe fuel related issues as a result of the alleged contaminated fuel. Mr. Vetro claims \$1,913.97 for fuel and vehicle repairs.

3. PFC does not dispute that it supplied the fuel Mr. Vetro purchased on December 3, 2021 but denies that it was contaminated. PFC denies responsibility for any of Mr. Vetro's claimed damages.
4. Mr. Vetro is self-represented. PFC is represented by in-house legal counsel, Morgan Crilly.

JURISDICTION AND PROCEDURE

5. 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.
6. 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. 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 in the interests of justice.
7. 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.

8. 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.

Parties to this dispute

9. Mr. Vetro named PFC as the respondent in this dispute. However, Alberta Corporate Registry documents indicate that PFC changed its name to Parkland Corporation in 2020. Therefore, PFC is no longer a legal entity and the correct name for the respondent in this dispute is likely Parkland Corporation. Counsel for PFC did not specifically note this name discrepancy or raise it as a defense to Mr. Vetro's claims. PFC also referred to itself as Parkland Corporation in its Dispute Response and its submissions. However, I find it is not necessary for me to address this corporate name discrepancy further because for other reasons I dismiss Mr. Vetro's claims against PFC.

ISSUES

10. The issues in this dispute are:
 - a. Was PFC's fuel contaminated?
 - b. If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Mr. Vetro must prove his claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision.

12. Mr. Vetro says his classic 1969 Pontiac Firebird vehicle was in pristine condition and did not have any fuel related problems before he bought fuel on December 3, 2021. PFC does not dispute that it supplied the fuel Mr. Vetro purchased from a gas station on December 3, 2021. That gas station is not a party to this dispute.
13. Mr. Vetro says he travelled from Vancouver to Victoria on December 12, 2021. On the way, he says he felt severe sputtering and barely made it to the Tsawwassen ferry terminal at “40 miles per hour” on the highway. He says when he arrived at the ferry terminal, he noticed black soot on the ground where both exhaust pipes are located at the rear of his vehicle. Despite this, over the next four days, Mr. Vetro says he drove his vehicle onto the ferry, into Victoria, back to the Swartz Bay ferry terminal, and then back to Vancouver. During this time frame, Mr. Vetro says his vehicle stalled at least 10 times, was “sputtering along”, and he “prayed it would not cause an accident”.
14. Mr. Vetro did not explain why he continued to drive his pristine and “well maintained” vehicle despite the issues he says he observed on December 12, 2021. Mr. Vetro also did not say whether he noticed any issues with the vehicle when driving home from the gas station on December 3, 2021, or at any other time before December 12, 2021. Mr. Vetro says he runs his vehicle 2 times per week for 5 to 10 minutes to keep it in “top running condition”. However, he did not say whether he did so the week after December 3, 2021, or whether he noticed any issues at that time.
15. Mr. Vetro also purchased fuel three times after December 3, 2021, twice on December 12, 2021 and once on December 14, 2021. Mr. Vetro says his vehicle was using up full tanks of fuel to cover very short distances. It is unclear whether PFC supplied any of the fuel Mr. Vetro purchased on December 12, 2021 or December 14, 2021. However, Mr. Vetro does not allege that any of the fuel purchased on those dates was contaminated or contributed to his vehicle’s problems.

16. Mr. Vetro says he called Harry's Abbotsford Auto Pro Ltd. (Harry's Auto) on December 15, 2021, after he returned from Victoria, but could not get an appointment until December 17, 2021. Mr. Vetro says Harry's Auto recommended changing both fuel filters before driving to Abbotsford where it is located. Mr. Vetro says he attempted to drive from Vancouver to Abbotsford on December 17, 2021 with a full tank of fuel, but ran out of fuel on the way there. His vehicle was then towed to Harry's Auto.
17. Mr. Vetro submitted a Harry's Auto invoice for \$1,405.56 with a December 17, 2021 order date. The invoice noted that Mr. Vetro's vehicle was towed in for rough running after fueling up, and Harry's Auto drained the remaining fuel from the tank and filled it with 5L of premium fuel. It also noted "suspect failed sensor due to bad fuel".
18. At the beginning of its submissions, PFC alleges that Mr. Vetro submitted "altered evidence". PFC says Mr. Vetro provided PFC with a timeline of events when the alleged fuel contamination was first identified, but then submitted an altered version of the timeline to the CRT in evidence. In support of this allegation, PFC submitted a "blacklined" version Mr. Vetro's timeline of events document. PFC did not say why the alterations it identified were significant, and I find the blacklined document shows mostly typographical corrections, with a few other minor changes. Further, both documents are simply word documents that set out Mr. Vetro's timeline of events. I find that none of the identified discrepancies in the timeline document submitted in evidence in this dispute are substantive or inconsistent with the original timeline document Mr. Vetro submitted to PFC. So, I place no weight on PFC's allegation that Mr. Vetro submitted "altered evidence" in this dispute.
19. As noted, PFC does not dispute that it supplied the fuel Mr. Vetro purchased on December 3, 2021, but says it was not contaminated. PFC says it has a real time monitoring system on its tanks to detect water content, fuel levels, temperature and density of the fuel. PFC says the monitoring system automatically shuts down if it detects the presence of water, leaks, or certain contaminants in the tanks. PFC says after it received the complaint from Mr. Vetro, it reviewed the monitoring system data

between December 1 and 9, 2021 and there were no abnormalities or water in the tanks. The monitoring system printouts in evidence between December 1 and December 9, 2020 note “All functions normal”. So, I find they show no obvious abnormalities.

20. PFC also says it conducted a manual water drip test on December 20, 2021 to confirm the monitoring system was functioning properly and the readings were accurate. PFC says it did not get the complaint until December 20, 2021, so was unable to conduct manual tests on the fuel sold on December 3, 2021.
21. PFC also says and that each pump is equipped with a “Cim-Tek 10 micron filter”. PFC says this filter captures particulate matter and removes common contaminants, such as dust, water, and rust, from the fuel before it is dispensed. PFC says the filters prevent customers from receiving any particulate-contaminated fuel. PFC provided photographs of the pumps showing the filters attached. It also provided an information sheet with the filter specifications showing they are designed to remove particulates such as dirt, dust, and rust and to detect water in fuel. I accept this evidence as it is undisputed.
22. PFC says there were 507 fuel transactions at the gas station on December 3, 2021, totaling 14,340 litres of fuel purchased that day. I accept PFC’s undisputed evidence that it had not received any other customer complaints about fuel purchased at that site on December 3, 2021. Mr. Vetro says the lack of complaints does not mean the fuel was not contaminated. However, along with PFC’s evidence about its monitoring and filtration systems, I find the absence of other complaints supports PFC’s position that its fuel was not likely contaminated.
23. Mr. Vetro bears the burden of proving PFC’s fuel was contaminated. I find expert evidence is necessary to prove that the fuel purchased on December 3, 2021 was contaminated, because this subject matter is technical and outside ordinary knowledge. See *Bergen v. Guliker*, 2015 BCCA 238.

24. Mr. Vetro provided expert evidence from John Hafen of Peak Petroleum Testing Services, Inc. (Peak). John Hafen did not state their qualifications within the report itself. However, their resume is also included in evidence. So, I find the Peak report substantially complies with the CRT rules for expert evidence, and I allow it. PFC did not object to the report itself, but says Peak did not test or analyze any fuel in preparing the report so it should be given little weight. I agree and my reasons follow.
25. In the Peak report, John Hafen said their opinion was based on Harry's Auto invoice, and 3 spark plug photographs. John Hafen provided the following opinion:
- a. It appeared that Mr. Vetro obtained fuel that "may" have been out of specification or of poor hydrocarbon quality overall, which can lead to improper combustion and cause excessive carbonization as was observed in the spark plug photographs.
 - b. Spark plug fouling "could" cause "rough running" as was noted in the Harry's Auto invoice.
 - c. Because Mr. Vetro says the rough running happened so suddenly, it is not likely that the carbon build-up happened over the course of time. Rather, it is likely that Mr. Vetro's difficulties developed on the last tank of fuel he purchased (on December 3, 2021) before the reported sudden onset of rough running on December 12, 2021. The improper combustion of the fuel likely caused the excessive carbon buildup and inefficient performance of his vehicle.
26. The Peak report does not say that the December 3, 2021 fuel was contaminated. Rather, it says only that fuel Mr. Vetro obtained **may** have been out of specification or of poor hydrocarbon quality overall (my bold emphasis added). John Hafen's opinion was that it was likely that Mr. Vetro's vehicle difficulties developed on the last tank of fuel purchased before Mr. Vetro reported the sudden onset of "rough running". However, that opinion is based on Mr. Vetro's own evidence that his vehicle first began showing problems on December 12, 2021.

27. I find Mr. Vetro's submissions about the December 12, 2021 onset of the "rough running" unreliable for several reasons. First, he did not say anything about his vehicle's performance between December 3 and December 12, 2021. Second, two weeks passed between when Mr. Vetro says he purchased the alleged contaminated fuel on December 3, 2021 and when he took his vehicle to Harry's Auto on December 17, 2021. Third, Mr. Vetro did not provide any explanation for why he continued to drive a vehicle that he says was well-maintained and otherwise in pristine condition after observing what he described as "severe sputtering" and other significant issues on December 12, 2021.
28. Further, as noted, Mr. Vetro purchased fuel 3 times after December 3, 2021 and continued to drive his vehicle. The Peak report did not address the 3 further tanks of fuel purchased, or the effect of continuing to drive the vehicle for several days after Mr. Vetro says the "rough running" began on December 12, 2021. Therefore, even if contaminated fuel contributed to Mr. Vetro's vehicle issues, I find Peak's report does not prove that the fuel Mr. Vetro purchased on December 3, 2021 was contaminated or that it caused Mr. Vetro's vehicle issues. Given all the above, I find Peak's report unhelpful and I place little weight on it.
29. I prefer and place significant weight on PFC's evidence about its filters and monitoring system, and the lack of any evidence confirming fuel contamination in its tanks.
30. Mr. Vetro did not submit any other expert evidence. Although Harry's Auto invoice noted that it suspected bad fuel was the cause of Mr. Vetro's vehicle issues, there is no evidence Mr. Vetro or Harry's Auto kept the drained fuel, or tested it for any contamination. Further, as noted above, Mr. Vetro purchased three tanks of fuel after December 3, 2021. So, I find it unproven the drained fuel was from December 3, 2021 in any event.
31. In summary, I find the evidence does not prove that PFC's fuel was contaminated. So, I dismiss Mr. Vetro's claims.

32. 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. Mr. Vetro paid \$125 in CRT fees and claimed an additional \$652.89 in dispute-related expenses for registered mail and expert evidence. However, Mr. Vetro was unsuccessful in this dispute. Therefore, I find he is not entitled to any reimbursement, and I dismiss his fee claim and his claim for \$652.89 in dispute-related expenses. PFC did not pay any CRT fees or claim any dispute-related expenses, so I award none.

ORDER

33. I dismiss Mr. Vetro's claims and this dispute.

Leah Volkens, Tribunal Member