



Civil Resolution Tribunal

Date Issued: October 18, 2022

File: SC-2022-002114

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Weall v. The Dugout Drop-In Centre Society*, 2022 BCCRT 1135

BETWEEN:

ANTHONY WEALL

APPLICANT

AND:

THE DUGOUT DROP-IN CENTRE SOCIETY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about severance pay. The applicant, Anthony Weall, says the respondent society, The Dugout Drop-In Centre Society (Dugout), ended his employment without just cause. Mr. Weall seeks \$3,000 as his severance entitlement, also known as pay in lieu of notice.

2. Dugout acknowledges it dismissed Mr. Weall without cause. However, it says the employment contract limits Mr. Weall's severance to the minimum prescribed in the *Employment Standards Act* (ESA). Dugout says it paid Mr. Weall this amount, which equals 2 weeks' pay.
3. Mr. Weall represents himself. Dugout's director, Ryan McCracken, represents Dugout.
4. For the reasons that follow, I dismiss Mr. Weall's claims.

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.
9. As noted above, Mr. Weall claims for pay in lieu of notice. I find his claim is essentially for common law damages for breach of contract. As such, I also find that he does not claim any statutory entitlements under the ESA, which fall within the exclusive jurisdiction of the Employment Standards Branch. So, I find Mr. Weall's claims are within the CRT's small claims jurisdiction for damages even though the parties contract refers to the ESA, as discussed below.

ISSUE

10. The issue in this dispute is whether Mr. Weall is entitled to further severance pay and if so, what remedy is appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Mr. Weall as the applicant must prove his claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
12. The background facts are undisputed. A BC Registries search shows that Dugout is a registered society. It hired Mr. Weall under the terms of a signed employment agreement dated July 22, 2019.
13. The contract had the following terms. Sections 3 and 4 said that Dugout hired Mr. Weall to work as an executive director. This was a part-time position, as Dugout generally expected Mr. Weall to work 50 hours per month, with some exceptions. Mr. Weall agreed to be paid an hourly rate. Given my reasons below, the rate of pay or hours worked are not relevant to this decision.

14. Section 1 said that Mr. Weall would start work on August 1, 2019. Section 7 said that Mr. Weall had to work a probationary period until November 1, 2019. Section 8 said that at the end of the probationary period, Dugout could terminate Mr. Weall's employment without cause at any time. However, in order to do so, Dugout had to provide Mr. Weall with "the minimum notice, or pay in lieu of such notice, and any severance pay required by the *Employment Standards Act*, and no more".
15. The parties disagree on section 8's meaning. Dugout says that in order to terminate Mr. Weall's employment, it only had to pay the minimum notice and severance pay required under the ESA. In contrast, Mr. Weall says section 8 means that Dugout had to pay Mr. Weall the minimum notice required under the common law, plus severance pay required under the ESA.
16. Overall, I find section 8's wording supports Dugout's interpretation. I find that the phrase, "the minimum notice, or pay in lieu of such notice, and any required severance pay required by the *Employment Standards Act*", all refer to entitlements under the ESA. I find that, from an objective perspective, section 8 is intended to limit Mr. Weall's entitlement to notice or severance to the minimum under the ESA. This is because section 8 says Dugout only had to pay the amount specified and "no more" to terminate Mr. Weall's employment. The phrase "no more" shows it was intended to limit Mr. Weall's entitlement to notice and severance, rather than outline the minimum he was entitled to.
17. Mr. Weall also says that section 8 is ambiguous. I find he relies on the legal doctrine of "contra proferentem". That doctrine means that when a contract is ambiguous, the ambiguity should be resolved against the party who drafted the contract. Here, Dugout drafted the contract. However, I disagree that section 8 is ambiguous and find its meaning relatively clear for the reasons already outlined above.
18. As shown in a letter, Dugout ended Mr. Weall's employment on January 18, 2022, and paid Mr. Weall severance equal to 2 weeks' pay. There is no allegation that Dugout paid less than this amount.

Is Mr. Weall entitled to further severance pay?

19. Mr. Weall says section 8 is not legally enforceable. He says he is entitled to at least 1 month's pay for each year worked. Mr. Weall started work on August 1, 2019 and was dismissed on January 18, 2022, so he worked part time for approximately 2 years and 5 months. I infer his position is that this equals the claimed \$3,000, though he did not explicitly say so, or provide an underlying calculation.
20. Case law states that an employer and employee may contract out of reasonable notice periods under the common law, so long as such notice periods comply with the minimum periods prescribed by the ESA. See *Miller v. Convergys CMG Canada Limited Partnership*, 2014 BCCA 311 at paragraph 18. So, I find there is no reason to conclude that section 8 is necessarily unenforceable under the law.
21. Mr. Weall has not alleged that the contract is unenforceable for other reasons, such as fraud or duress. Given this, I find section 8 is enforceable. I find that Mr. Weall contracted for the minimum periods prescribed by the ESA.
22. Mr. Weall also says he misinterpreted section 8. He says he thought it said he was entitled to 2 weeks of pay per year worked. I find this interpretation unreasonable given the contract's language. I find no reasonable basis to hold Dugout liable for Mr. Weall's mistaken understanding.
23. Dugout says Mr. Weall is entitled to 2 weeks' pay under section 63(2) of the ESA. It is undisputed that Dugout paid this amount. Mr. Weall did not say the ESA entitled him more. So, I find Dugout has complied with the terms of the employment contract. I dismiss Mr. Weall's claims.
24. 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 dismiss Mr. Weall's claims for reimbursement of CRT fees. The parties did not claim any specific dispute-related expenses.

ORDER

25. I dismiss Mr. Weall's claims and this dispute.

David Jiang, Tribunal Member