



Civil Resolution Tribunal

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File: SC-2022-002208

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *FortisBC Energy Inc. v. Enviro-Ex Contracting Ltd.*, 2022 BCCRT 1173

B E T W E E N :

FORTISBC ENERGY INC.

APPLICANT

A N D :

ENVIRO-EX CONTRACTING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about recovery of repair costs. The applicant utility company, FortisBC Energy Inc. (Fortis), says that on July 19, 2021 the respondent,

Enviro-Ex Contracting Ltd. (Enviro), damaged a gas line in Prince George, BC. Fortis claims \$2,154.64 for repair costs. Among other things discussed below, Fortis says Enviro failed to expose the gas line in a sufficient number of places by hand-digging, before using excavation machinery.

2. Enviro says it had a valid BC 1 Call ticket. Enviro also says it hand-dug in 3 places to expose the gas line and says it reasonably believed this was sufficient and that it was safe to proceed. However, Enviro further says the damage resulted from Fortis' failure to install the gas line in a straight line as shown on Fortis' drawings. Further, Enviro disputes the amount claimed, adding that it undisputedly completed some of the repair work itself.
3. Fortis is represented by an employee. Enviro is represented by an employee or principal, WH.

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). CRTA section 2 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. CRTA section 39 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. 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.

6. CRTA section 42 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. Enviro argues that some of Fortis' submissions improperly disclose confidential settlement discussions, contrary to CRTA section 89 and the CRT's rules. It is not entirely clear to me that the referenced information falls within the confidentiality provisions in that it is unclear if it was part of a settlement discussion. In any event, Fortis in later submissions argues the referenced information is irrelevant, and so I will not address it further and have not relied on it in my decision below.
9. Next, Enviro argues that Fortis submitted false or altered evidence and should be subjected to a fine. Fortis denies improperly altering evidence (an "updated invoice") and says it simply provided an updated invoice that includes Enviro's complete name. I find it clear Fortis was not trying to mislead the CRT or Enviro given that it re-labelled the invoice in question. In any event, the CRT has no jurisdiction under the CRTA to impose a fine.

ISSUE

10. Did Enviro negligently damage Fortis' gas line, and if so, must Enviro pay Fortis \$2,154.64 for its repair?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Fortis must prove its claim on a balance of probabilities (meaning "more likely than not"). I have read the parties'

submitted documentary evidence and arguments but refer only to what I find relevant to provide context for my decision.

12. Enviro damaged Fortis' 60mm gas line while excavating with machinery on July 19, 2021 in Prince George, BC. Before using machinery, Enviro hand-dug at 3 separate locations, exposing the gas line. Fortis' supplied drawings incorrectly showed the gas line's location as being straight, when it was in fact dog-legged or bent. None of this is disputed and it is consistent with the documentary evidence before me, including Fortis' repair "sketch document", Enviro's photos of the exposed gas line, and Enviro's internal detailed "daily report" log that described the gas leak.
13. In particular, Enviro's submitted "daily report" record shows that the gas line was hit around 1023h and Fortis was on site at around 1115h, with Enviro "back to work" at 1140h. Fortis "completed the splice" by about 1300h and left the site, apart from 1 crew member who left at around 1500h. None of this is disputed and I accept it as accurate.
14. Enviro's "daily report" also notes that Fortis' supervisor on site for the repair advised he had installed the gas line in question but had changed the location due to "excavator operator error" but had not reported that change to Fortis. I also accept this detailed information as accurate, because Fortis does not dispute it and submitted no evidence to the contrary, such as a witness statement from its crew.
15. Given Fortis' incorrect drawings, Enviro says its hand-digging was sufficient under the Regulation to proceed with machinery. In contrast, because the damage occurred, Fortis says exposing the gas line at only 3 locations could not have been sufficient. For the following reasons, I agree with Enviro.
16. First, Enviro says it had a valid BC 1 Call ticket at the time of its July 19, 2021 excavation, which fulfilled the Regulation's requirement to contact Fortis before digging. The BC 1 Call ticket is essentially permission to dig, as required under the *Gas Safety Regulation* (Regulation, which falls under the *Safety Standards Act*).

17. Enviro obtained the ticket from Fortis on March 25, 2021, with a scheduled work-start date of March 31, 2021. Enviro says the ticket authorized Enviro's work on a multi-month project and that excavation work began within the 10-day period stipulated in the Regulation.
18. Fortis initially argued that because the damage occurred on July 19, 2021, Enviro no longer had a valid ticket. However, Fortis did not pursue this argument in its reply submission despite quoting Enviro's submission on the point. I find Enviro had a valid BC 1 Call ticket.
19. I turn next to the applicable law. Without using these words, Fortis essentially alleges Enviro was negligent, resulting in the damage to Fortis' gas service line. To prove liability in negligence, Fortis must show that Enviro owed it a duty of care, that Enviro breached the standard of care, that Fortis sustained a loss (damages), and that Enviro's breach caused the loss: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
20. I find Enviro clearly owed Fortis a duty of care as a trade working around Fortis gas lines. I find the applicable standard of care was to take reasonable care not to damage Fortis' gas line. For the reasons set out below, I find Enviro was not negligent and so I find it is not responsible for the gas line damage.
21. First, the applicable legislation. Section 39(5) of the Regulation required Fortis, after receiving Enviro's excavation request, to indicate the gas lines' location in a "manner that is clear and easily understood, by either providing a plan from an ascertainable point on the surface", surface staking, or surface marking. The Regulation further says that marked gas locations must be considered to lie within a "no mechanized dig zone" of 1 meter on either side of the indicated gas line.
22. Next, Regulation section 39(7) says the excavator must confirm the "indicated location" by hand digging and must expose the gas installations "at a sufficient number of locations" to determine their "exact positions and depths" before using

mechanized excavation equipment for any purpose other than “breaking the surface cover”.

23. Importantly, section 39(1) of the Regulation says a person must not excavate in the “vicinity of a gas installation” that could be damaging or dangerous to a gas line. Section 39(2) says someone intending to excavate must request from the gas company information on the location of all underground gas lines “in the vicinity” of the proposed excavation. Here, I find Enviro made that request of Fortis by contacting BC 1 Call.
24. I find the Regulation clearly does not expect perfection from Fortis in its mapping, marking, or staking. I say this because if it did, the somewhat onerous hand-digging requirement in the Regulation would be unnecessary. Rather, I find the Regulation requires Fortis’ maps or markings to be clear and easily understood but it does not require Fortis to be exact in its identification of a gas line’s location. Similarly, I find the 1-meter non-mechanized zone required under the Regulation is a buffer. Again, this is to account for the fact that the Fortis-provided maps, staking, or marking, are likely not precise. This puts a significant onus on the excavator to take particular care when digging and not rely solely on the maps for a gas line’s location. This conclusion is consistent with the warnings and instructions on the maps Fortis provided and on the BC 1 Call ticket, namely that the excavator must not rely on the maps’ information alone.
25. Here, Fortis essentially argues that Enviro must be liable simply because damage occurred. That amounts to strict liability and that is not the law and not the standard for proving negligence. While Fortis says hand-digging at 3 locations was not sufficient, Fortis does not indicate how many locations would have been sufficient. Given I find the map or drawing incorrectly showed the pipe in a straight line, I find it unproven that 3 locations was insufficient to reasonably permit Enviro to proceed with machinery. There is no expert evidence, or any evidence, to the contrary. Further, while Fortis argues it did not have any engineered drawings as they were

not required, the fact remains the sketch Fortis provided Enviro showed the gas line as being in a straight line and as noted above it was bent.

26. It follows that I do not need to discuss Fortis' claimed damages in any detail. I will say that had I found Enviro negligent, I would not have allowed all of the damages claimed. This is because the evidence undisputedly shows Enviro's crew did some of the excavation repair work. I find it would be unreasonable for Fortis to recover repair costs on a time and materials basis for work completed by Enviro's crew. Given all my conclusions above, I dismiss Fortis' claim.
27. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Fortis was unsuccessful, I find it is not entitled to reimbursement of paid CRT fees. Enviro did not pay CRT fees and no dispute-related expenses are claimed. I note Enviro stated in the Dispute Response filed at the outset of this proceeding that it incurred costs as a result of Fortis' conduct. However, Enviro did not file a counterclaim and also made no claim for dispute-related expenses. So, I make no order for fees or dispute-related expenses.

ORDER

28. I dismiss Fortis' claim and this dispute.

Shelley Lopez, Vice Chair