Civil Resolution Tribunal

Date Issued: October 27, 2022

File: SC-2022-001157

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hrytsak v. Atira Property Management Inc.*, 2022 BCCRT 1178

B E T W E E N :

ANDREA HRYTSAK

APPLICANT

A N D :

ATIRA PROPERTY MANAGEMENT INC.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: David Jiang

INTRODUCTION

1. The applicant, Andrea Hrytsak, says they worked for the respondent, Atira Property Management Inc. (Atira) Ms. Hrytsak says Atira negligently delayed paying their physician, Dr. Jay Haribhai, for a medical assessment, which Ms. Hrytsak says delayed her return to work following an illness. Ms. Hrytsak claims $1,624 for 70 hours of lost wages. In submissions they claim additional amounts, which I discuss below.

2. Atira denies delaying Ms. Hrytsak's return to work and says it acted reasonably.

3. Ms. Hrytsak is self-represented. Atira's general manager represents it.

4. For the reasons that follow, I dismiss Ms. Hrytsak'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. Some of the evidence in this dispute amounts to a "they said, they said" scenario. The credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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.

Ms. Hrytsak's Claims for Additional Wages

9. As noted above, in submissions Ms. Hrytsak claims for a higher amount than specified in the Dispute Notice. They claim for 1) compensation for 20 additional hours and 2) for a raise to apply to their claim for work missed in January 2022, even though the raise took effect on February 1, 2022. Ms. Hrytsak says her claims now total $2,362.50.

10. Previous CRT decisions have held that deciding issues not included in the Dispute Notice may be a breach of procedural fairness. This is because the Dispute Notice defines and provides notice of the issues. See, for example, my non-binding decision of *Armstrong v. The Owners, Strata Plan NW 3008*, 2021 BCCRT 1255. I find this approach appropriate.

11. Had Ms. Hrytsak proven negligence, I would have limited their claim to the $1,624 set out in the Dispute Notice. However, as I dismiss their claim against Atira for negligence, nothing turns on this.

ISSUE

12. The issue in this dispute is whether Atira was negligent, and if so, what remedies are appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, Ms. Hrytsak as the applicant must prove their 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. I note that CRT staff provided Ms. Hrytsak the opportunity to provide final reply submissions in response to Atira's submissions. Ms. Hrytsak chose not to do so.

14. I begin with the undisputed background. Ms. Hrytsak worked as a maintenance painter for Atira from May 4, 2020 to May 12, 2022. They were hired under the terms of an April 23, 2020 offer letter. They agreed to follow Atira's written policies, which I find include the sick leave policy discussed below.

15. Ms. Hrytsak's absence began on Monday, January 10, 2022. Medical documents show Ms. Hrytsak visited the hospital's emergency department on January 18, 2022, with flu-like symptoms. I find they were ill since January 10, 2022, and nothing turns on the exact diagnosis.

16. Atira's sick leave policy said that if an employee such as Ms. Hrytsak missed more than 3 consecutive workdays, Atira required a medical certificate. The certificate had to have information including a prognosis for recovery and the estimated return to work date for long-term illnesses. The policy did not say what the medical certificate was required for. However, Ms. Hrytsak signed a consent form on January 19, 2022, to authorize treatment providers to release their personal information. The form indicates that Atira would use the medical information, which I find includes the medical certificate, to develop a return-to-work plan, confirm the anticipated duration of the sick leave, and determine the type of work suitable for any given medical restrictions.

17. Given the combined wording of the policy and consent form, I find that the parties agreed that the medical certificate was required before Ms. Hrytsak could return to work. Atira needed the information to ensure it could accommodate any medical disabilities. I also find the parties reasonably expected Atira to keep sick employees out of the workplace, to prevent the spread of illness. Further, neither party suggested that Ms. Hrytsak was entitled to return to work before Atira obtained the medical certificate.

18. Atira sent a request to Ms. Hrytsak's physician, Dr. Haribhai, on January 18, 2022, for the information required in the medical certificate. Atira marked the request urgent in its cover letter. Dr. Haribhai faxed a copy of the invoice for this service to Atira on January 24, 2022. Internal emails show that Dr. Haribhai required payment before completing the assessment. However, Dr. Haribhai did not immediately forward the invoice, so I find none of the delay up to January 24, 2022 was Atira's fault.

19. Atira's internal emails show that around January 19, 2022, Ms. Hrytsak advised Atira that they wished to return to work on Monday, January 24, 2022.

20. Atira's internal emails and its emails to Dr. Haribhai's office show the following. Atira advised that it needed the assessment for Ms. Hrytsak's return to work. It offered to send payment by different methods, such as by direct deposit on January 26 and credit card on January 28, 2022. Atira submits that Dr. Haribhai's staff advised on January 28, 2022, that Dr. Haribhai would only accept the slowest payment method, a cheque. I find this supported by a January 31, 2022 email from Dr. Haribhai's staff that reiterates this. The cheque arrived on January 31, 2022. Given Atira's efforts, I find it unproven that Atira could have reasonably sent payment faster.

21. After payment, Dr. Haribhai completed a January 31, 2022 assessment. Dr. Haribhai noted that Ms. Hrytsak's most recent visit was January 31, 2022. Dr. Haribhai said the expected return to work date was February 2, 2022. It is undisputed that Ms. Hrytsak returned to work early, on February 1, 2022.

Was Atira negligent?

22. Ms. Hrytsak alleges negligence. To prove negligence, Ms. Hrytsak must show that Atira owed them a duty of care, Atira breached the standard of care, and that the breach caused or contributed to reasonably foreseeable damage. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3.

23. Atira admits it owes its employee Ms. Hrytsak a duty of care. I find the applicable standard of care is that of a reasonably prudent employer. I find that Atira did not breach the standard of care for multiple reasons.

24. First, the alleged delay originated with Dr. Haribhai's requirement for payment in advance of providing services. So, I find this was a situation created by Dr. Haribhai and not Atira.

25. Second, I have already found that Dr. Haribhai delayed sending their invoice to Atira. I also find Dr. Haribhai refused Atira's reasonable offers to pay through credit card or by direct deposit to quicken the process. I find that in the circumstances, Atira acted reasonably and did not delay.

26. Third, text messages show that on January 19, 2022, Atira's employee texted Ms. Hrytsak that "Atira will reimburse you the cost" of the medical documents. So, I find it was open to Ms. Hrytsak to pay for Dr. Haribhai's service to quicken the process and seek reimbursement from Atira. Ms. Hrytsak did not do so. I therefore find Ms. Hrytsak decided to accept the risk of delay by waiting for Atira to pay Dr. Haribhai directly.

27. Finally, Dr. Haribhai wrote that Ms. Hrytsak's expected return to work date was February 2, 2022. There is no medical evidence that suggests Ms. Hrytsak could have returned to work earlier. As stated above, Ms. Hrytsak had flu-like symptoms that required an emergency room visit. I find that even if Ms. Hrytsak felt fine as of January 24, 2022, an employer acting reasonably would delay Ms. Hrytsak's return to work to prevent the spread of illness. So, I find it unproven that Atira's conduct caused any reasonably foreseeable damage, as I find Atira could have reasonably delayed Ms. Hrytsak return to work to February 2, 2022 in any event.

28. For all those reasons, I find it unproven that Atira was negligent. I dismiss Ms. Hrytsak's claim.

29. 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. Ms. Hrytsak did not pay any CRT fees. Neither party claims reimbursement for any dispute-related expenses. So, I make no orders for reimbursement.

ORDER

30. I dismiss Ms. Hrytsak's claims and this dispute.

David Jiang, Tribunal Member