Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Bizzybody Enterprises Inc. v. Murphy*, 2022 BCCRT 1198

B E T W E E N :

BIZZYBODY ENTERPRISES INC.

APPLICANT

A N D :

BRIN MURPHY

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. The applicant, Bizzybody Enterprises Inc. (Bizzybody), employed the respondent, Brin Murphy, for around 6 weeks. Bizzybody says it loaned Ms. Murphy $1,000 in 2 loans of $500 each that she never repaid. Bizzybody claims $1,000 in debt. Bizzybody

further says it overpaid Ms. Murphy for several days and partial days that she did not work. Bizzybody claims $3,500 for overpayment of wages. Bizzybody is represented by its principal, Jocelyn Eisert.

2. Ms. Murphy says the alleged $1,000 loan was actually a signing bonus that she is not required to repay. She admits she was overpaid wages for a few days after she quit, but otherwise denies being overpaid wages. Ms. Murphy represents herself.

JURISDICTION AND PROCEDURE

3. 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.

4. 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. In some respects, the parties in this dispute call into question each other's credibility. Credibility of 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. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I can assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.

5. 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.

6. 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.

Employment Standards Act complaint

7. On August 26, 2021, before Bizzybody started this CRT dispute, Ms. Murphy filed a complaint with the Employment Standards Branch (ESB) under the *Employment Standards Act* (ESA). The complaint was about $1,000 that Bizzybody deducted from her final paycheque. Following the complaint, Bizzybody returned the $1,000 to Ms. Murphy. On April 20, 2022, 2 days after Bizzybody filed its application to the CRT, a delegate of the Director of Employment Standards (Director) wrote to Ms. Murphy that because she received $1,000 "in full satisfaction of [her] complaint", ESB would take no further action and considered the complaint resolved.

8. Although Ms. Murphy says the result of her ESB complaint was that Bizzybody "had to" repay her the $1,000, there is no evidence that the Director issued a determination, made any findings of fact, or required Bizzybody to pay anything. I find Bizzybody made a voluntary payment. I also find that an employer's ability or inability to unilaterally make deductions from an employee's wages under the ESA is a separate issue from the issues before me, which are whether certain payments were loans or bonuses, and whether wages were overpaid. So, I find the claims in this dispute are not *res judicata*, meaning already decided. I find it is appropriate to hear this dispute.

ISSUES

9. The issues in this dispute are:

a. Were the $500 payments Bizzybody made to Ms. Murphy loans or signing bonuses? If bonuses, were they contingent on Ms. Murphy signing a written contract?

b. To what extent did Bizzybody overpay Ms. Murphy and are those overpayments recoverable?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Bizzybody must prove its claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.

11. Bizzybody is in the business of "coaching, facilitating and training." Bizzybody hired Ms. Murphy as an employment strategist and program facilitator. Ms. Murphy's exact start date is unclear from the evidence, but the parties agree that Bizzybody employed Ms. Murphy for approximately 6 weeks, from late June to early August 2021. The parties did not sign a written employment contract. Ms. Murphy quit on August 3, 2021. None of this is disputed.

Alleged loan and signing bonus - $1,000 claim

12. On June 1, 2021, before Ms. Murphy's employment started, Bizzybody paid her $500 by e-transfer. On June 17, 2021, Bizzybody e-transferred Ms. Murphy another $500. It is undisputed that these payments were not regular wages. Ms. Murphy says the payments were a signing bonus. In the Dispute Notice, Bizzybody said the payments were a $1,000 loan. In later submissions, Bizzybody's position is that the first $500 payment was a loan and the second $500 payment was a bonus contingent on Ms. Murphy signing an employment contract.

13. Ms. Murphy acknowledges that on June 1, 2021, she asked Bizzybody for the first $500 as a loan. This is confirmed in text messages between Ms. Murphy and Ms. Eisert. Ms. Murphy was transitioning employment and said she would return the money "ASAP".

14. Ms. Murphy says, however, that a few days later Ms. Eisert verbally told her she did not have to repay the $500 loan and could consider it half of her $1,000 signing bonus.

15. Bizzybody says only the second $500 payment, on June 17, 2021, was a signing bonus. It says the bonus was contingent on Ms. Murphy signing an employment contract. Ms. Murphy undisputedly did not sign any employment contract, so Bizzybody says she breached the contract for the bonus and must repay the $500 bonus as well as the $500 loan.

16. I find Bizzybody's submissions ignore several pieces of evidence that contradict its position. First, the parties discussed a signing bonus before Ms. Murphy was hired. Ms. Eisert texted Ms. Murphy on May 27, 2021, "So… are we hiring you…?" and "Like did you want me to send you this promised signing bonus?" Ms. Murphy expressed hesitance, and Ms. Eisert said, "You let me know when I can send it." This indicates it was always Bizzybody's intention to pay Ms. Murphy a signing bonus of some kind, despite the loan request made in urgent circumstances.

17. Second, in a June 16, 2021 text, Ms. Eisert told Ms. Murphy, "I sent the $500 *additional* signing bonus today" (emphasis added). There is no record or suggestion of any other bonus payments that the word "additional" could refer to other than the initial $500 loan. The text supports Ms. Murphy's evidence that the parties agreed to consider the initial $500 payment part of her signing bonus rather than a loan.

18. Third, Ms. Eisert does not specifically deny agreeing that the initial loan would be treated as a signing bonus. Ms. Murphy's evidence on that point stands unchallenged other than Bizzybody's general assertion that the $500 was a loan. In the circumstances, I see no reason not to accept that the parties agreed to treat the initial $500 loan as a signing bonus.

19. Lastly, there are August 4, 2021 text messages between Ms. Murphy and C, whom Bizzybody identifies as Ms. Eisert's business partner. Ms. Murphy had just quit and asked C about outstanding pay. C deferred to Ms. Eisert but mentioned the signing bonus would need to be worked out as there was an expectation that C would stay at

least a year. I find that the fact C mentioned the bonus, but not a loan, supports a conclusion that the funds were a bonus.

20. Based on the above, I find the entire $1,000 payment was a signing bonus.

21. I pause to note that Bizzybody does not argue that the signing bonus was contingent on Ms. Murphy staying with Bizzybody for a year as C's text suggested. Given this, and the absence of any other evidence to suggest the bonus was contingent on duration of employment, I find it was not.

22. Instead, Bizzybody's argument about the signing bonus is that it was conditional on Ms. Murphy signing an employment contract, which undisputedly did not happen. I acknowledge that the parties referred to the payment as a "signing bonus", which may be taken to imply the signing of a contract. However, "signing bonus" is generally used to indicate a payment offered by an employer to persuade someone to take a job (see the Cambridge Dictionary online). A signing bonus may be still payable if employment begins even if the employment contract is not signed (see *Vici Interactive Multimedia Solutions Corporation (Re)*, 2002 CanLII 78486 (BC EST).

23. Here, the signing bonus was first mentioned before Ms. Murphy's employment started and before the contract was drafted. However, the written contract in evidence is dated July 26, 2021, more than a month after Bizzybody completed the second bonus payment. There is no record that Bizzybody ever asked Ms. Murphy to sign an employment contract at any point. Ms. Eisert does not say she asked Ms. Murphy to sign the contract in exchange for the bonus, and Ms. Murphy denies it. In the circumstances, I find the signing bonus was an enticement for Ms. Murphy to join Bizzybody and not contingent on her signing the written contract.

24. Bizzybody alternatively argues that Ms. Murphy was unjustly enriched by $1,000. The legal test for unjust enrichment is that Bizzybody must show: a) that Ms. Murphy was enriched, b) that it suffered a corresponding deprivation or loss, and c) that there is no "juristic reason" or valid basis for the enrichment (see *Kerr v. Baranow*, 2011 SCC

10). I find the enticement to take a position of employment with Bizzybody was a valid reason for the enrichment. On that basis, the unjust enrichment argument fails.

25. Given the above, I dismiss Bizzybody's $1,000 claim.

Alleged wage overpayments - $3,500 claim

26. Bizzybody says it paid Ms. Murphy for various days between June 25 and July 31, 2021, when she did not attend work, did not work the full day, or was otherwise not entitled to pay. Bizzybody claims 83 hours or $2,324 that Ms. Murphy was overpaid in that period. Bizzybody also undisputedly continued to pay Ms. Murphy after she quit on August 3. Bizzybody seeks to recover the wages it paid from August 4 to August 11, 2021, a total of 42 hours, or $1,176. In short, Bizzybody claims a total of $3,500 for alleged wage overpayments.

27. Ms. Murphy denies Bizzybody's assertions that she missed work or was overpaid for the days before she quit. She says she often worked outside of the "9-5 workday," with Ms. Eisert's approval or at her request, but Ms. Eisert told her it would "all even out". She also says some of the days Bizzybody claims she should not have been paid were paid vacation days taken with Ms. Eisert's permission. Ms. Eisert does not specifically deny making these statements.

28. Further, Fridays were undisputedly "personal development days", where staff were not required to attend the workplace. Bizzybody says Ms. Murphy did not qualify for personal development days as she failed to complete her responsibilities during the week and failed to provide a summary of her personal development activities for the Fridays. However, Bizzybody provided no supporting evidence, such as company policies about personal development days, communication with Ms. Murphy about personal development days, or disciplinary records for failing to complete work responsibilities. In contrast, Ms. Murphy's evidence is consistent with the texts, vacation request forms and statements from a former employee, AP. In short, I accept Ms. Murphy's evidence about her hours and flexible work arrangements.

29. It is undisputed that Bizzybody did not require Ms. Murphy to track her time, and there is no evidence that Bizzybody tracked Ms. Murphy's time. It is unclear how Bizzybody reached the conclusions it did about what days Ms. Murphy did not work. For these reasons, I find Bizzybody has not established that it overpaid Ms. Murphy at all from June 25 to July 30, 2021.

30. As for the wages for the days after Ms. Murphy quit, Ms. Murphy says she did not know why they were included in her final pay until she saw that Bizzybody had deducted $1,000 from the wages, leaving her with $45.87. At the time, Bizzybody was undisputedly receiving a "work experience wage subsidy" through WorkBC Employment Services. The subsidy covered 50% of Ms. Murphy's wages plus other employer costs. Ms. Murphy says Bizzybody inflated her hours in August in order to deduct the $1,000 while still collecting the wage subsidy. She says if she is required to reimburse Bizzybody for any wage overpayments, it should be limited to what the subsidy did not cover.

31. Employment overpayment claims typically proceed under 1 of 2 common law doctrines – mistake of fact or unjust enrichment. Although Bizzybody only argued unjust enrichment, I will consider both doctrines. Ultimately, I find Bizzybody cannot recover under either.

32. Ms. Murphy's August 1-15 wage statement indicated that her gross pay was $1,269. She undisputedly worked only 7 hours on August 3, amounting to $196. The difference is $1,073. There is no dispute that Ms. Murphy was enriched by, and Bizzybody was deprived of, this amount of gross wages. I also find there was no valid basis for the enrichment.

33. However, a party claiming unjust enrichment must have "clean hands," meaning that courts (or the CRT) have discretion to deny unjust enrichment claims where the party's conduct involves bad faith (see *Craiggs v. Owens*, 2012 BCSC 29). Bizzybody has provided no explanation for why it added to Ms. Murphy's final wage statement $1,073 in wages she did not earn. The only conclusion I can reach is that it did so to unilaterally recover, with no legal basis, the $1,000 bonus it paid Ms. Murphy, relying

in part on the WorkBC subsidy that covered half the wages and additional employer costs. I find Bizzybody does not have clean hands and so its claim based on unjust enrichment cannot succeed.

34. Mistake of fact requires Bizzybody to show, among other things, that the mistake was honest (see *Dyson et al. v. Moser*, 2003 BCSC 1720, at paragraph 43). By failing to provide any explanation for the overpayment, Bizzybody has not shown that the mistake was honest.

35. For these reasons, I dismiss Bizzybody's wage overpayment claim.

36. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. Ms. Murphy was successful but did not pay CRT fees or claim expenses. I dismiss Bizzybody's claims for reimbursement of CRT fees, $1,500 for "support letters", $700 for "obtaining documents from other parties" and $50 for printing costs. I would not have allowed these claims even if Bizzybody had been successful given that Bizzybody provided no supporting invoices or receipts.

ORDER

37. I dismiss Bizzybody's claims and this dispute.

Micah Carmody, Tribunal Member