



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *2 Burley Men Moving Ltd. v. Mazurkiewicz*, 2022 BCCRT 1287

B E T W E E N :

2 BURLEY MEN MOVING LTD.

APPLICANT

A N D :

CHRISTOPHER MAZURKIEWICZ

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This dispute is about moving services. The respondent, Christopher Mazurkiewicz, hired the applicant, 2 Burley Men Moving Ltd. (Burley), for an April 14, 2022 residential move from Vancouver Island to the lower mainland. Burley says it completed the move but has only received partial payment from Mr. Mazurkiewicz. It claims \$993.02.

2. Mr. Mazurkiewicz says Burley overcharged him for the move. He has undisputedly already paid Burley \$2,350, so, Mr. Mazurkiewicz says he owes nothing further.
3. Burley is represented by an employee or principal. Mr. Mazurkiewicz represents himself.

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). 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.
5. 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.
6. 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.
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.

ISSUE

8. The issue in this dispute is whether Burley is entitled to the claimed \$993.02 for moving services?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant, Burley must prove its claims on a balance of probabilities (meaning “more likely than not”). I have reviewed all the parties’ submitted evidence and argument but refer only to what I find relevant to provide context for my decision.
10. The evidence shows as follows. On March 12, 2022, Mr. Mazurkiewicz contacted Burley for an estimate for a move from Vancouver Island to the lower mainland. The same day, Burley emailed Mr. Mazurkiewicz a written estimate for the move. In this email, Burley said the applicable rate was \$150 an hour for 2 movers plus 2 hours of travel time plus a fuel fee. Burley estimated the total cost would be \$975 to \$1,275 plus tax for 6 to 8 hours which included travel time and fuel. Mr. Mazurkiewicz responded “this is perfect” to this email and confirmed the booking with Burley.
11. In an April 22, 2022 email to Burley, Mr. Mazurkiewicz said that after he received Burley’s initial March 12, 2022 estimate, someone from Burley called him and said the cost would be a little higher because the original estimate did not consider that the move was from Vancouver Island to the lower mainland. In this email, Mr. Mazurkiewicz said Burley’s revised estimate was \$1,500 to \$1,800 including travel and fuel costs. Burley does not address this phone call in its submissions. So, I accept Mr. Mazurkiewicz uncontroverted evidence that Burley revised its estimate during this phone call.
12. Based on the parties’ March 12, 2022 email exchange, I find the parties agreed moving time would be calculated on an hourly basis, plus travel and fuel costs. I find Burley’s March 12, 2022 email was unclear about how Burley would calculate the amount of travel time it would charge. Other than Mr. Mazurkiewicz’s evidence that

the revised \$1,500 to \$1,800 estimate included travel, there is no evidence that Burley clarified at any point how travel time would be calculated or charged.

13. On balance, I find a reasonable person in Mr. Mazurkiewicz's position would have understood he was responsible for paying Burley's hourly rate for moving time and for travel time, plus associated fees. I find a reasonable person would also have understood that travel time would include actual travel time or a reasonable approximation for the travel time from Mr. Mazurkiewicz's Vancouver Island residence to his lower mainland residence, and Burley's trip back to its depot.
14. Did Burley overcharge Mr. Mazurkiewicz? Burley's April 14, 2022 waybill is also its final invoice. Under "time" on the waybill, "9-8" is noted. I infer this means Burley started Mr. Mazurkiewicz's move at 9 am and finished at 8 pm. There is no breakdown on this invoice about how much of this time was spent loading and unloading the truck versus on travel.
15. The invoice shows Burley charged Mr. Mazurkiewicz for 16 hours at \$150 per hour. Burley does not explain why it charged for 16 hours when the invoice notes the time was "9-8". Burley also charged \$175 for fuel, \$598.02 for ferry fees, and a \$50 insurance charge. With \$120 in GST, the invoice totals \$3,343.02.
16. Since there is no explanation from Burley about the time it spent on Mr. Mazurkiewicz's move, I accept Mr. Mazurkiewicz's timeline in evidence. This timeline notes that 9 am to 1 pm were spent loading the truck and then there was a 30 minute drive to the ferry. Mr. Mazurkiewicz says Burley's truck sat idle at the ferry terminal from 1:30 pm to 5:00 pm while Burley waited to board the ferry.
17. The timeline further notes Burley arrived at Mr. Mazurkiewicz's lower mainland residence at 7pm and finished unloading the truck at 8:30 pm. Burley's movers then left for the ferry. According to Mr. Mazurkiewicz's timeline, Burley should have been back to its depot by 11 pm.

18. Mr. Mazurkiewicz says he made a reservation for the ferry for his own vehicle and caught the 1 pm sailing. He says Burley should have similarly made a reservation to catch the 2 pm ferry. Mr. Mazurkiewicz says when he asked Burley about a ferry reservation, he was told that Burley never has issues getting on the ferry and did not need a reservation. So, Mr. Mazurkiewicz says he should not be responsible for the time Burley's truck sat idle waiting to board the ferry.
19. I find that in an open-ended hourly rate contract such as this, there is an implied contractual term that the hours spent were reasonably required and put to some useful purpose (see the non-binding but persuasive CRT decisions *Simple Moves North Shore Movers Inc. v. Kenney*, 2022 BCCRT 452 and *2 Burley Men Moving Ltd. v. Skorupka*, 2022 BCCRT 808). Mr. Mazurkiewicz's evidence includes information from BC Ferry's website about ferry reservations. Though Burley says it could not have obtained a ferry reservation as a commercial truck on a long weekend, on the weight of the evidence before me, I find Burley could have made a ferry reservation and it submitted no documentary evidence otherwise. I find Burley's truck sat idle for 3 extra hours, which Burley could have reasonably avoided by making a reservation. So, I find Mr. Mazurkiewicz is not responsible for these 3 extra hours.
20. I also find the total 4.5 hours Burley appears to have charged for its trip back to Vancouver Island from the lower mainland is unreasonable and not supported by any evidence, such as driver's logs or statements from the movers. On balance, I find 5.5 hours of total travel time is reasonable based on Mr. Mazurkiewicz's undisputed timeline evidence.
21. I further find Burley was entitled to charge 5.5 hours of actual move time, as well as \$175 for fuel and \$598.02 for ferry fees. However, for the following reasons, I find Burley is not entitled to the \$50 insurance fee it charged. Burley's evidence includes its own internal appointment confirmation that notes an "ICBC fee". However, there is no evidence that Mr. Mazurkiewicz ever saw this appointment confirmation. So, in the absence of any other evidence about the insurance fee, I find Burley has failed to

prove that it ever discussed this insurance fee with Mr. Mazurkiewicz before he received Burley's invoice.

22. In total, I find Burley was entitled to charge \$2,505.52 for the move including all fees and taxes. Since he has already undisputedly paid \$2,350, I order Mr. Mazurkiewicz to pay Burley the remaining \$155.52.
23. The *Court Order Interest Act* (COIA) applies to the CRT. Burley is entitled to pre-judgment interest on the \$155.52 from April 14, 2022, the date of the move, to the date of this decision. This equals \$1.25.
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. As Burley was partially successful, I find it is entitled to reimbursement of half its paid CRT fees, which equals \$62.50. The parties do not claim any dispute-related expenses.

ORDERS

25. Within 21 days of the date of this decision, I order Mr. Mazurkiewicz to pay Burley a total of \$219.27, broken down as follows:
 - a. \$155.52 in debt,
 - b. \$1.25 in pre-judgment interest under the COIA, and
 - c. \$62.50 for CRT fees.
26. Burley is entitled to post-judgment interest, as applicable.

27. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Nav Shukla, Tribunal Member