



# Civil Resolution Tribunal

Date Issued: December 28, 2022

File: SC-2022-004597

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kim v. Keylink Transport Inc.*, 2022 BCCRT 1368

Default decision – non-compliance

B E T W E E N :

TONG JIN KIM

**APPLICANT**

A N D :

KEYLINK TRANSPORT INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This final decision of the Civil Resolution Tribunal (CRT) has been made without the participation of the respondent, Keylink Transport Inc., due to the respondent's non-compliance with the CRT's mandatory directions as required, as discussed below.

2. The applicant, Tong Jin Kim, claims the respondent failed to pay wages and fees owed to the applicant. In their application, the applicant claimed \$2,221 as compensation for extra work, waiting time, a layover, emotional stress and to reimburse the applicant for paid company expenses, a USA violation ticket, and their hourly time spent on this dispute. In their submissions, the applicant reduced their claimed damages to \$1,334, including paid CRT fees.
3. In its Dispute Response, the respondent denies hiring the applicant as an employee. Rather, the respondent says the applicant worked as an owner/operator through another company, FL or HL, which is not a party to this dispute. So, the respondent says it owes the applicant nothing.
4. The applicant is self-represented. The respondent is represented by an owner or employee.

## **JURISDICTION AND PROCEDURE**

5. Section 36 of the *Civil Resolution Tribunal Act* (CRTA) applies if a party to a dispute fails to comply with the CRTA or its regulations. It also applies if a party fails to comply with CRT rules in relation to the case management phase of the dispute, including specified time limits, or an order of the CRT made during the case management phase. After giving notice to the non-compliant party, the case manager may refer the dispute to a CRT member for resolution and the CRT member may:
  - a. Hear the dispute in accordance with any applicable rules.
  - b. Make an order dismissing a claim in the dispute made by the non-compliant party, or
  - c. Refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.

6. The case manager has referred the respondent's non-compliance with the CRT's rules to me for a decision as to whether I ought to hear the dispute, refuse to resolve it, or dismiss it.
7. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the CRTA. 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
8. Where permitted under section 118 of the CRTA, the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
9. For the reasons that follow, I have allowed the applicant's claims.

## **ISSUES**

10. The first issue is whether the respondent is non-compliant with the CRTA and the CRT's rules.
11. If the respondent is non-compliant, the second issue is whether I should decide this dispute without the respondent's further participation, refuse to resolve it, or dismiss it.

## **EVIDENCE AND ANALYSIS**

### ***Non-compliance***

12. My December 2, 2022 summary decision to hear the dispute without the respondent's participation due to the respondent's non-compliance was previously communicated to the parties by email through the case manager. The details supporting that decision are set out below.

13. The respondent is the non-compliant party in this dispute and has failed to participate in the case management phase, as required by sections 25 and 32 of the CRTA and CRT rules 1.3(1) and 5.1 to 5.3, despite multiple attempts by the case manager to contact them with a request for a reply.
14. The respondent filed its Dispute Response on August 15, 2022, which included a contact name, email address, mailing address, and telephone number to be used for this dispute. The case manager then made the following attempts at contact:
  - a. In an October 26, 2022 email, the case manager canvassed the respondent's interest in providing a settlement offer to the applicant and asked the respondent's contact to provide their preferred pronouns and form of address. The case manager asked for a response by October 28, 2022 at 9 am.
  - b. On October 28, 2022 the case manager emailed the respondent, noting she had not received a response to her October 26, 2022 email. The case manager asked for a response by November 1, 2022 at 9 am.
  - c. On November 1, 2022 the case manager telephoned the respondent on the contact's cell phone number, but there was no answer. The case manager was unable to leave a voicemail message as the voicemail box was full.
  - d. On the same date, the case manager telephoned the respondent's business at the telephone number on the Dispute Response. The case manager left a message with the receptionist, asking the respondent's contact to respond to the case manager's email messages.
  - e. The case manager followed up again with the respondent by email on November 3, 2022. She asked for a response by Monday, November 7, at 4 pm.
  - f. On November 7, 2022, the case manager called the respondent contact's cell phone number but received no answer. The case manager did not leave a voicemail because the voicemail box was full.

- g. In a November 7, 2022 email the case manager asked the respondent to respond to her inquiry whether it would be making any settlement offer. The case manager reminded the respondent it was expected to comply with the case manager's instructions throughout the dispute resolution process. She warned the respondent that, if it did not respond, it could be found non-compliant and referred to section 36 of the CRTA. The case manager explained that meant a tribunal member could decide the dispute without the respondent's further participation. She requested a response by November 17, 2022, by email or telephone.
  - h. The case manager also sent the respondent a letter by regular mail on November 7, 2022. The letter included the same warning and same deadline as the November 7, 2022 email.
15. The case manager then referred the matter of the respondent's non-compliance with the CRT's rules to me for a decision as to whether I should hear the dispute without the respondent's participation.

***Should the CRT hear the applicant's dispute without the respondent's participation?***

16. I find the case manager's emails, letter, and telephone call to the business were all directed to the addresses and telephone number listed by the respondent on its Dispute Response. I find the case manager made a reasonable number of contact attempts but the respondent failed to respond.
17. The respondent has provided no explanation about why it failed to communicate with the CRT as required. The respondent was informed in writing at the beginning of the facilitation process that it must actively participate in the dispute resolution process and respond to the case manager's communications, including emails. Given the multiple attempts at contact, I find it is more likely than not that the respondent knew about the case manager's contact attempts and failed to respond.

18. Rule 1.4(2) states that if a party is non-compliant, the CRT may:
  - a. Decide the dispute relying only on the information and evidence that was provided in compliance with the CRTA, a rule or an order,
  - b. Conclude that the non-compliant party has not provided information or evidence because the information or evidence would have been unfavourable to that party's position, and make a finding of fact based on that conclusion,
  - c. Dismiss the claims brought by a party that did not comply with the CRTA, a rule or an order, and
  - d. Require the non-compliant party to pay to another party any fees and other reasonable expenses that arose because of a party's non-compliance with the CRTA, a rule or an order.
  
19. Rule 1.4(3) says that to determine how to proceed when a party is non-compliant, the CRT will consider:
  - a. Whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute,
  - b. The stage in the facilitation process at which the non-compliance occurs,
  - c. The nature and extent of the non-compliance,
  - d. The relative prejudice to the parties of the CRT's order addressing the non-compliance, and
  - e. The effect of the non-compliance on the CRT's resources and mandate.
  
20. In the circumstances of this case, I find it is appropriate to hear the applicant's dispute without the respondent's further participation, relying on the information and evidence provided by the applicant and in the respondent's Dispute Response form. My reasons are as follows.
  
21. First, this dispute does not affect persons other than the named parties.

22. Second, the non-compliance here occurred early in the facilitation process, and the respondent has provided no evidence or submissions. The respondent effectively abandoned the process after providing a response.
23. Third, given the case manager's attempts at contact and the respondent's failure to respond despite written warning of the consequences, I find the nature and extent of the non-compliance is significant.
24. Fourth, I see no prejudice to the applicant in hearing the dispute without the respondent's participation. The prejudice to the respondent of proceeding to hear the dispute is outweighed by the circumstances of its non-compliance. If I refused to proceed to hear the dispute, the applicant would be left without a remedy, which would be unfair to them.
25. Finally, the CRT's resources are valuable. Its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party refuses to participate. I find that it would be wasteful for the CRT to continue applying its resources on this dispute, such as by making further attempts to seek the respondent's participation.
26. In weighing all of the above factors, I find the applicant's claim should be heard.

### ***Unpaid Wages and Expenses***

27. Having decided to hear the dispute without the respondent's further participation, I turn to the merits of the applicant's claims.
28. Where a respondent filed a Dispute Response but has since failed to comply with the CRT's directions, an adverse inference may be drawn against them. This means that if the respondent refuses to participate, it is generally reasonable to assume that the applicant's position is correct on the issue at hand. This is similar to where liability is assumed when a respondent has failed to provide any response to the dispute and is in default.

29. Having said that, I reviewed the Dispute Response, because it was filed before the respondent's non-compliance.
30. As noted, the respondent argued in its Dispute Response that it was not the applicant's employer, and so owed the applicant no wages, expense, or other damages. However, given the respondent's non-compliance I find it reasonable to draw an adverse inference against it and find the respondent likely was the applicant's employer. Further, the applicant provided text messages showing someone agreed to pay the applicant's claimed long-haul trucking expenses. I infer the text messages are from a respondent employee or owner. On balance, I am satisfied the applicant is entitled to reimbursement for their claimed trucking expenses.
31. Based on the applicant's submitted receipts, I find they spent \$61.70 in US dollars plus received a \$440 motor vehicle ticket around April 23, 2021. I find this equals \$626.57, using the Bank of Canada's April 23, 2021 exchange rate. Combining this with the \$250 layover fee the applicant is entitled to, I find the applicant is entitled to reimbursement of \$876.57.
32. Although the applicant claims unpaid wages for working an "intown" trip of 6.25 hours on April 21, 2021, they submitted no evidence or explanation setting out their usual hourly wage rate, or amount owing. So, I find the applicant has not proven their damages for any unpaid wages.
33. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the \$876.57 in work expenses and layover payment from April 23, 2021 to the date of this decision. This equals \$12.08.
34. 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. Since the applicant is successful in this dispute, they are entitled to reimbursement of \$125 for CRT fees.



## ORDERS

35. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$1,013.65, broken down as follows:
- a. \$876.57 for work expenses,
  - b. \$12.08 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 in CRT fees.
36. The applicant is entitled to post-judgment interest, as applicable.
37. 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.

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Sherelle Goodwin, Tribunal Member