



Civil Resolution Tribunal

Date Issued: February 17, 2023

File: SC-2022-001565

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Trans Can Trucking Ltd. v. Rana*, 2023 BCCRT 152

BETWEEN:

TRANS CAN TRUCKING LTD.

APPLICANT

AND:

YASHDEV SINGH RANA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Trans Can Trucking Ltd. (TCT), employed the respondent, Yashdev Singh Rana, as a long-haul truck driver. TCT says Mr. Rana damaged a mirror on one of TCT's trucks, for which it claims \$854.83. TCT also wants an order that Mr.

Rana pay back his “April 2021 bonus,” which it says was \$795.48. In total, TCT claims \$1,650.31.

2. Mr. Rana disagrees with TCT’s claims for various reasons I address below.
3. TCT is represented by its owner, Gurmeet Singh Giran. Mr. Rana is represented by a non-lawyer consultant, Andrew Roznicki.

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.

Jurisdiction

8. In the Dispute Response, Mr. Rana said the CRT does not have jurisdiction over the dispute, arguing that it falls under the *Canada Labour Code* (CLC), or alternatively the BC *Employment Standards Act* (ESA). The parties made submissions on this issue and in a September 27, 2022 preliminary decision, a CRT vice chair concluded that the CRT had jurisdiction to decide the dispute.
9. In submissions before me, Mr. Rana says he does not accept the conclusions in the preliminary decision. He largely repeats the arguments he made at the preliminary stage. I considered Mr. Rana's submissions, but ultimately I agree with the reasoning in the 25-paragraph preliminary decision.
10. In brief, Mr. Rana says long-haul trucking is under federal jurisdiction. The general rule is that labour and employment relations fall under provincial, not federal, jurisdiction. However, interprovincial and international trucking is a federal undertaking, and employers regularly and continuously engaging in that undertaking may fall under federal labour jurisdiction (see *Actton Transport Ltd. v. Director of Employment Standards*, 2008 BCSC 1495). Regardless of which statute applies, I find this dispute is not about rights under the CLC or the ESA. Rather, this dispute is about debt or damages arising under the employment contract and the law of negligence. The CRT has small claims jurisdiction over such debt and damages claims. Moreover, neither the CLC nor the ESA provide a forum for employers to seek remedies from employees.
11. My conclusion is supported by *Teja Trucking Ltd. v. Munkaila*, 2020 BCPC 22, a case Mr. Rana relies on. There, the BC Provincial Court had jurisdiction over an interprovincial trucking employer's negligence claim against a former employee. The CRT's jurisdictional provisions are functionally identical to those applicable to the Provincial Court under the *Small Claims Act*. So, I find the CRT has jurisdiction over these claims.

12. Mr. Rana also argues that the CLC (or the ESA) prohibits employers from making unilateral deductions from employees' wages. I agree with the vice chair's finding that these statutory protections for employees do not preclude legal claims for damages arising under the employment contract (or, I would add, negligence). The BC Court of Appeal has indicated that while the ESA prevents employers from making unilateral wage deductions, it does not prevent employers from bringing legal claims against employees (see *Health Employers Assn. of B.C. v. B.C. Nurses' Union*, 2005 BCCA 343, at paragraph 67). For these reasons, I find the CRT has jurisdiction to consider TCT's claims in this dispute.

ISSUES

13. The issues in this dispute are:

- a. Is TCT entitled to \$854.83 for mirror damage?
- b. Is Mr. Rana required to repay his April 2021 bonus of \$795.48?

EVIDENCE AND ANALYSIS

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

15. TCT employed Mr. Rana as a long-haul truck driver from October 8, 2020 to January 20, 2022. According to the offer letter, Mr. Rana's starting wage rate was "CAD 23.00 / Hourly i.e CAD 0.26 cents per mile." Mr. Rana says, and TCT does not dispute, the per mile rate was in addition to the hourly rate and was 26 cents, not 0.26 cents,

16. The offer letter also said Mr. Rana would be paid a bonus of ".04 cents per mile", subject to his meeting various conditions, including not damaging company equipment and avoiding traffic tickets.

Mirror damage

17. TCT claims \$854.83 for damage to a passenger side mirror. It is not clear whether TCT's claim is based in negligence or breach of contract, so I address both.
18. According to a November 15, 2021 "warning notice" from TCT to Mr. Rana, TCT believed Mr. Rana damaged the mirror "due to negligence and rash driving" on August 12, 2021. TCT's notice said that although Mr. Rana claimed the damage happened while his truck was parked, TCT had "dash cam" footage proving otherwise. In this dispute, TCT submitted a 3-minute dash cam video. From 1:06 to 1:09 it appears that the passenger mirror comes close to and possibly contacts some fencing in a narrow area of a road under construction. However, the mirror does not move, and the video has no sound, so it is not possible to confirm if the mirror contacted the fencing. I find the video does not show any damage occurring to the passenger side mirror.
19. In *Teja*, a trucking company alleged that an employee's negligent driving had broken a load of granite countertops. The BC Provincial Court found that even if the driver had broken the countertops because of negligent driving, the trucking company's claim would still fail because the alleged driving errors amounted to ordinary negligence. Employers generally must prove that an employee's conduct went beyond ordinary negligence, such as willful misconduct or a fundamental breach of their employment contract, to recover damages (see *Movassaghi v. Steels Industrial Products Ltd.*, 2012 BCSC 1663).
20. Here, even if I accepted that the video showed mirror damage occurring, I would not find that Mr. Rana's driving at the time was anything beyond ordinary negligence. I find the video does not show unsafe driving given that the fencing was close to the narrow road in a construction zone.
21. I turn to the employment contract. The only reference to equipment damage in the offer letter is where it says avoiding such damage is a condition of entitlement to the

miles bonus. I find there is no contractual obligation for Mr. Rana to reimburse TCT for truck damage during the course of his employment.

22. Next, TCT relies on the November 15 warning notice, which Mr. Rana signed. The letter said TCT was forced to withdraw Mr. Rana's miles bonus for November 2021:

as repair cost of the damages which needs to be recovered from you by deducting your bonus amount or alternatively pay the company for the damage part or part itself to avoid the bonus deductions.

23. Mr. Rana says he did not realize what he was signing, but I find nothing turns on this. I say this because I find the letter does not make clear to which of those options, if any, Mr. Rana was agreeing. I also find that the letter's purpose, as expressed in its "warning notice" heading and content, was to warn Mr. Rana of job performance TCT considered unsatisfactory. I am not satisfied that, viewed objectively, Mr. Rana's signature indicated anything more than an acknowledgement of the warning. I find the letter is not enough to ground an agreement on Mr. Rana's part to pay TCT for mirror damage.
24. A further weakness in TCT's claim for mirror damage is that it has not proved its claimed loss. TCT did not provide any invoices or receipts so there is no objective evidence that TCT incurred any expense for the mirror. TCT does not even say it intends to replace the mirror. For all these reasons, I dismiss TCT's claim for \$854.83 for mirror damage.

April 2021 bonus

25. TCT seeks an order that Mr. Rana repay his April 2021 miles bonus of \$795.48. Although TCT provided no documentation that it paid this bonus to Mr. Rana, he acknowledges that he received it.
26. TCT does not say why Mr. Rana should have to repay the April 2021 bonus. A March 12, 2021 warning notice referred to an incident TCT alleged happened that day

resulting in trailer side body damage. The notice said TCT would withdraw the miles bonus for March 2021, subject to review on or after May 1, 2021.

27. TCT provided no evidence to prove the March 12, 2021 incident or the resulting damage. Mr. Rana says he earned the April 2021 bonus. Mr. Rana also points to a May 3, 2021 letter, in which TCT offered Mr. Rana a slight wage increase. He says this indicates TCT was happy with his performance. I find TCT's payment of the bonus, absent any other explanation such as mistake of fact, supports Mr. Rana's position. As noted, the onus is on TCT to prove its claims. On balance, I find it unproven that TCT is entitled to repayment of the April 2021 bonus.

CRT fees and dispute-related expenses

28. 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. As TCT was unsuccessful, I dismiss its claim for CRT fees. TCT did not claim any dispute-related expenses.
29. Mr. Rana was successful. He did not pay CRT fees but claims \$1,000 in dispute-related expenses. As noted, Mr. Roznicki represented Mr. Rana in this dispute with the CRT's permission, but is not a lawyer. Mr. Roznicki's November 16, 2022 invoice is for \$1,260.
30. Mr. Rana says he retained Mr. Roznicki for several reasons. He says he is "technologically challenged" and 76 years old with no experience defending himself in a court setting. He says English is his second language, which he says limits his ability to properly understand, communicate, and express himself in formal settings. Additionally, he says he is still employed as a long-haul trucker with limited access to the internet and connectivity issues, so a representative helped him respond in the CRT's online process.
31. CRT rule 9.5(3)(b) states the CRT will not order one party to pay to another party any lawyer's fees in the CRT small claims dispute process except in extraordinary circumstances. Mr. Roznicki is not a lawyer, but his invoice says he prepared Mr.

Rana's sworn statement, organized and filed evidence, and drafted and filed submissions. I find these are things a lawyer typically does when involved in a CRT proceeding, so I find rule 9.5(3)(b) applies. I have no evidence about how Mr. Roznicki was able to do these things notwithstanding the apparent conflict with section 15 of the *Legal Profession Act*, which prohibits non-lawyers from engaging in the practice of law expecting a fee. However, that issue is not squarely before me and it is not necessary to reach any conclusions. I say this because, as I explain below, I find there are no extraordinary circumstances in this dispute to warrant reimbursement of Mr. Roznicki's invoice.

32. Rule 9.5(4) states that in determining whether there are extraordinary circumstances, considerations include the dispute's complexity, the representative's degree of involvement, whether a party or the representative caused any unnecessary delay or expense, and any other factors the CRT considers appropriate.
33. This dispute involved claims for truck damage and wage overpayment. It was not overly complex, the value of the claims were relatively low, and there was limited evidence. It was not a novel issue – the CRT has decided similar claims before, such as in *Chohan Freight Forwarders Ltd. v. Hartley*, 2022 BCCRT 231.
34. I accept that Mr. Roznicki was significantly involved in preparing Mr. Rana's submissions and evidence. However, I also find Mr. Roznicki delayed the proceedings by arguing that the CRT did not have jurisdiction, which had to be addressed both in a preliminary decision and again in this decision. Mr. Roznicki advanced this position despite referring to *Chohan* and *Teja* to argue that the claims should be dismissed. I find it is inconsistent to argue that the CRT does not have jurisdiction while also relying on decisions in which the Provincial Court and the CRT necessarily had jurisdiction to decide the same type of claims.
35. Another factor I find relevant is proportionality. I find Mr. Roznicki's \$1,260 invoice is disproportionate given Mr. Rana faced a maximum liability of \$1,650.31.

36. For these reasons, I find the circumstances do not support an order for TCT to reimburse Mr. Rana for Mr. Roznicki's invoice. I dismiss Mr. Rana's claim for dispute-related expenses.

ORDER

37. I dismiss TCT's claims, Mr. Rana's claim for dispute-related expenses, and this dispute.

Micah Carmody, Tribunal Member