



Civil Resolution Tribunal

Date Issued: March 13, 2023

File: SC-2022-004037

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *GMW Freight Services (Canada) Ltd. v. Mini Royal Creations Ltd.*,
2023 BCCRT 205

B E T W E E N :

GMW FREIGHT SERVICES (CANADA) LTD.

APPLICANT

A N D :

MINI ROYAL CREATIONS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about demurrage (delayed unloading) charges applied to an import shipment. The applicant freight forwarder, GMW Freight Services (Canada) Ltd. (GMW), says the respondent, Mini Royal Creations Ltd. (MRC), has failed to reimburse it the shipping carrier's demurrage charges for a 14-day delay in unloading the container MRC had rented from the carrier to import its goods. GMW claims \$3,391.20.
2. MRC denies responsibility for the demurrage fee and says the Canada Border Services Agency (CBSA) randomly selected the container for examination and so MRC is not responsible for the delay. MRC also says that if the shipping carrier, Ocean Network Express (North America) Inc. (ONE), wants to charge a demurrage fee, that is between ONE and GMW. ONE is not a party to this dispute.
3. The parties are each represented by an employee or principal.

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). CRTA section 2 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. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. As the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.
6. CRTA section 42 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 MRC is responsible to reimburse GMW \$3,391.20 for the shipping carrier's demurrage fees.

EVIDENCE AND ANALYSIS

9. As the applicant in a civil proceeding like this one, GMW must prove its claims on a balance of probabilities (meaning "more likely than not"). I have read all the submitted evidence and arguments but refer only to what I find relevant to provide context for my decision. I note MRC chose not to submit any documentary evidence, despite having the opportunity to do so.
10. On November 10, 2020, GMW issued its \$7,831.70 invoice to MRC, which included a \$3,284.40 demurrage fee for 14 days of delayed unloading between October 24 and November 6, 2020. The demurrage charges arose because CBSA exercised its right to do a random inspection of the container that had shipped to Vancouver from overseas. None of this is disputed.
11. The evidence before me shows that ONE charged GMW \$2,380 USD for the 14-day demurrage fee on November 10, 2020. The evidence shows GMW paid ONE \$4,497.30 CAD on December 2, 2020, which included the demurrage charges. In this dispute, GMW only claims the demurrage charges. It appears the rest of GMW's November 10, 2020 invoice was paid, given GMW does not claim for more than the demurrage charges. However, there is no evidence before me of that or that it was MRC that paid it.

12. MRC's central defence is that it did not cause the delay in its shipment's unloading, as that undisputedly arose from CBSA's decision to examine the container. So, MRC says because it undisputedly did not cause the delay it should not have to pay any demurrage charges. However, MRC also says the demurrage charges are an issue between the shipping line and GMW. GMW's argument is that as the entity that received the shipment MRC is responsible for the associated charges.
13. There is no written agreement between the parties in evidence. The "origin" freight forwarder booked the container under GMW's name. GMW acted as a liaison between the shipping line ONE and the end customer, the shipment's consignee MRC. GMW says because of its liaison role, which it describes as "middle man", the charges at issue were billed to it. None of this is disputed.
14. Given the above, I find GMW and MRC had no contract or agreement directly between them and there is no evidence or argument that they did. This means I find GMW was not directly acting as MRC's agent in its handling of MRC's shipment. Rather, on the limited evidence before me and on GMW's own submission, it acted as agent for the "origin" freight forwarder hired by the shipper. Neither the "origin" freight forwarder nor the shipper are parties to this CRT dispute.
15. In the absence of an enforceable agreement between the parties, I have considered whether GMW is entitled to compensation under the law of unjust enrichment.
16. To establish unjust enrichment, GMW must show that it provided something of value to MRC who received and retained it without "juristic reason" or legal basis (see *Kerr v. Baranow*, 2011 SCC 10). Here, the evidence shows GMW paid ONE the demurrage charges for MRC's shipment. I find MRC benefitted from this because its goods sat in the rented container while CBSA did its examination and then MRC received its goods when they were unloaded.
17. So, I find the central question is whether there was a legal basis for MRC receiving that benefit without having to pay GMW for it. MRC says the fact that ONE chose to bill GMW for demurrage and that GMW chose to pay it does not mean MRC is

responsible. I agree. I say this because there is no evidence before me that MRC was ever made aware of the demurrage charges or agreed to pay them or had any opportunity to negotiate, before GMW sent MRC its invoice. While GMW submitted an email thread, the emails show they were between GMW and the “shipping broker”, rather than any with MRC. I have insufficient evidence to conclude that MRC ever authorized GMW to incur and bill it for demurrage charges, either as an agent or otherwise.

18. Given my conclusions above, I dismiss GMW’s claim.

19. Under section 49 of the CRTA and the CRT’s rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. GMW was unsuccessful and so I dismiss its claim for reimbursement of CRT fees. MRC did not pay CRT fees and neither party claimed dispute-related expenses.

ORDER

20. I dismiss GMW’s claims and this dispute.

Shelley Lopez, Vice Chair