



Civil Resolution Tribunal

Date Issued: July 26, 2023

File: SC-2022-007736

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Transworld Xpress Inc. v. Cheema*, 2023 BCCRT 624

B E T W E E N :

TRANSWORLD XPRESS INC.

APPLICANT

A N D :

HARJOT SINGH CHEEMA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about an alleged wage advance. The applicant, Transworld Xpress Inc. (Transworld), employed the respondent, Harjot Singh Cheema, as a long-haul truck driver. Transworld says it gave Mr. Cheema a \$2,928.14 advance payment that

Mr. Cheema never repaid. It claims that amount here. Transworld is represented by a consultant.

2. Mr. Cheema says Transworld's payment was for outstanding overtime wages it owed him. He asks me to dismiss the claim. Mr. Cheema represents himself.

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 am able to 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.

ISSUE

7. The issue in this dispute is whether Transworld's \$2,928.14 payment was a wage advance that Mr. Cheema must repay.

EVIDENCE AND ANALYSIS

8. As the applicant in this civil proceeding, Transworld must prove its claims on a balance of probabilities, meaning more likely than not. While I have considered all the evidence and submissions, I only refer to what is necessary to explain my decision.
9. Transworld employed Mr. Cheema as a long-haul truck driver. He worked from July 2, 2019 to November 22, 2020. Payroll records show Transworld paid out Mr. Cheema's accrued vacation pay. Transworld also says it issued Mr. Cheema's Record of Employment (ROE) around that time, which is undisputed and I accept, although there is no ROE in evidence.
10. The limited evidence before me includes a confusing email. On February 20, 2021, Mr. Cheema emailed Transworld asking it to approve his vacation from November 22, 2020 to March 31, 2021. Transworld says it received this email "suddenly," which I take to mean unexpectedly. Transworld did not immediately respond to the email but, on April 6, 2021, replied to ask Mr. Cheema why he had not returned to work. Mr. Cheema apparently did not reply. It is undisputed that he never returned to work for Transworld, so I find nothing turns on these emails or Mr. Cheema's employment status after November 22, 2020.
11. Turning to the payment at issue in this dispute, Transworld says it paid Mr. Cheema a \$2,928.14 wage advance on April 12, 2021. Transworld says Mr. Cheema wanted

to return to work and requested this specific amount because he owed the money to someone else, and he promised to repay the amount from his “first pay cheque.”

12. Mr. Cheema does not dispute receiving the payment but says it was not an advance. Instead, he says it was payment for overtime wages Transworld owed him.
13. Transworld says Mr. Cheema has not produced any evidence to support his “claim” that the payment was for overtime wages. It says he has already been paid overtime in each pay period. However, the wage statements in evidence show that Transworld paid overtime wages until June 2020, but did not pay overtime wages in the 5 months after. This is despite Mr. Cheema working over 190 hours in some of those months. I find the wage statements support Mr. Cheema’s position that the April 12, 2021 lump sum payment was unpaid overtime wages.
14. In any event, Mr. Cheema is not required to prove that the payment was for overtime wages. Transworld is the applicant here, and as the employer, had control over when and how it paid employees and former employees. If the payment was an advance, Transworld should be able to produce records identifying it as such. Other than Transworld’s assertion, there is simply no evidence that the payment was an advance. There is no documentation of Mr. Cheema’s request for payment (or to return to work) and no acknowledgment that he would have to repay the payment. Further, I find it would be unusual for an employer to advance not a rounded sum but an amount specific to the penny, which is more consistent with wages owed by the employer. In all, I find the evidence here falls short of establishing an advance, a loan, a payment in error, or any requirement for Mr. Cheema to repay the \$2,928.14.
15. For these reasons, I find Transworld has not proven its claim, and I dismiss it.
16. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mr. Cheema was successful but did not pay CRT fees. I dismiss Transworld’s claim for CRT fees. Neither party claims dispute-related expenses.

ORDER

17. I dismiss Transworld's claims and this dispute.

Micah Carmody, Tribunal Member