



Civil Resolution Tribunal

Date Issued: December 11, 2023

Files: SC-2023-000393
and SC-CC-2023-007370

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Marine Chrysler Dodge Jeep Ltd. v. Nonva*, 2023 BCCRT 1086

B E T W E E N :

MARINE CHRYSLER DODGE JEEP LTD.

APPLICANT

A N D :

MICHAEL NONVA

RESPONDENT

A N D :

MARINE CHRYSLER DODGE JEEP LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This decision is about 2 linked disputes involving a claim and counterclaim about an employment dispute. Michael Nonva worked for Marine Chrysler Dodge Jeep Ltd. (MCDJ) between December 5, 2022 and January 1, 2023, at which point he resigned. In SC-2023-000393, MCDJ says it overpaid Mr. Nonva for 1 day of work. It also says that it incurred costs to retrieve a company vehicle that Mr. Nonva used during his employment. MCDJ further says Mr. Nonva is responsible for 4 parking tickets that were issued to the vehicle. In its Dispute Notice, MCDJ claims \$790.03 in total for the alleged overpayment, parking tickets, and cost of retrieving the vehicle. In its written argument, MCDJ claims an additional \$45.14 for courier fees, bringing its total claimed amount to \$835.17.
2. Mr. Nonva says based on the terms of his employment contract, MCDJ actually underpaid him, so he owes it nothing. In SC-CC-2023-007370, Mr. Nonva claims \$3,600 for unpaid salary.
3. MCDJ is represented by an owner. Mr. Nonva 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.
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.
7. Where permitted by section 118 of the CRTA, in resolving these disputes 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.
8. As noted, in its written argument, MCDJ claims an additional \$45.14 for courier fees that it did not claim in the Dispute Notice. MCDJ says it incurred these courier fees to get vehicle and building keys back from Mr. Nonva. Mr. Nonva had an opportunity to respond to this additional remedy request, and I find the request is substantially related to MCDJ's other requested remedies. For these reasons, and given the CRT's mandate which includes flexibility, I find it appropriate to consider this additional remedy in this decision.

ISSUES

9. The issues in these disputes are:
 - a. Did MCDJ over or underpay Mr. Nonva in December 2022 and, if so, how much?
 - b. What amounts, if any, must Mr. Nonva reimburse MCDJ for the parking tickets, courier fees, and cost of retrieving the vehicle?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, MCDJ must prove its claims on a balance of probabilities (meaning "more likely than not"). Mr. Nonva must prove his counterclaim to the same standard. I have considered all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision. I note Mr. Nonva did not provide any documentary evidence in response to MCDJ's claim in dispute SC-2023-000393, despite having the opportunity to do so.

11. I turn now to the relevant background facts. On November 19, 2022, the parties entered into a written employment agreement. The agreement said Mr. Nonva would begin work with MCDJ on December 5, 2022. It also set out a payment structure which included a \$4,500 monthly base salary, and commission at 3% of gross profits over \$150,000. However, for the months of December 2022, January 2023, and February 2023, Mr. Nonva would “be paid a minimum of 7500.00 per month or the above pay plan whichever is greater” (reproduced as written). The agreement said no additional overtime wages or compensation would be paid. The agreement also set out Mr. Nonva’s vacation entitlement and said that vacations would be unpaid during the first 12 months of his employment.
12. On January 1, 2023, Mr. Nonva informed MCDJ that he was resigning, effective immediately and MCDJ accepted the resignation.

Did MCDJ over or underpay Mr. Nonva?

13. MCDJ says that it paid Mr. Nonva \$3,913.08 on December 30, 2022, and that payment included pay for December 31, 2022, despite the fact that Mr. Nonva undisputedly did not show up for work that day.
14. MCDJ says that there were 23 working days in December, and Mr. Nonva worked only 11 of those days. It is unclear how MCDJ calculated the 23 working days. However, MCDJ says that based on the 23 working days and the \$7,500 guaranteed minimum salary for the month of December, Mr. Nonva was entitled to \$326.09 for each day he should have worked in December. Since MCDJ paid Mr. Nonva \$3,913.08 for 12 working days when he only worked 11, MCDJ says it overpaid him \$326.09.
15. Mr. Nonva, on the other hand, argues that based on the terms of the employment agreement, he was entitled to \$7,500 for the month of December, regardless of how many days he actually ended up working.
16. The employment agreement does not say how many days a week or month Mr. Nonva was required to work to make the \$7,500 minimum salary for December 2022.

17. When interpreting the contract, I must consider the plain and ordinary meaning of its words within the whole of the contract, unless to do so would result in absurdity (see *Group Eight Investments Ltd. v. Taddei*, 2005 BCCA 489 at paragraphs 19 to 22 and *Athwal v. Black Top Cabs Ltd.*, 2012 BCCA 107). I find that interpreting the employment agreement as Mr. Nonva suggests would lead to the absurd result that Mr. Nonva could essentially have worked only 1 day in December, and still received the minimum \$7,500 salary. Mr. Nonva's interpretation would also mean that the term in the agreement that says vacations taken in the first 12 months of employment are unpaid would be meaningless.
18. In certain circumstances, contractual terms may be implied. Implied terms are terms that the parties did not expressly consider, discuss or write down. Generally, the court (and the CRT) will only imply a term if it is necessary to give business efficacy to the contract. Such terms are founded on the parties' common presumed intention. In other words, an implied term must be something that both parties would have considered obvious when they entered into the contract (see *Zeitler v. Zeitler (Estate)*, 2010 BCCA 216).
19. I find it likely that both parties would have considered it obvious that in order to earn his minimum \$7,500 monthly salary for December, Mr. Nonva was required to work a minimum number of days a week or for the month. The undisputed payroll records in evidence suggest that Mr. Nonva had 2 designated days off every week (typically Tuesday and Wednesday). So, I find it appropriate to imply a term here that to receive his \$7,500 minimum salary for December, Mr. Nonva was required to work 5 days a week from December 5 to December 31, other than December 25 which was a non-working statutory holiday. Accordingly, I find that Mr. Nonva was required to work 18 days between December 5 and December 31, earning \$416.67 for each day he worked, totaling \$7,500 for the month of December.
20. As noted above, it is undisputed that Mr. Nonva did not show up for work on December 31. Based on the payroll records in evidence, I find Mr. Nonva also took 3

sick days and 3 additional days off as either vacation days or days when he was unable to make it to work due to bad weather.

21. There is nothing in the agreement saying that Mr. Nonva was entitled to paid sick days in the first month of employment or to be paid for days when he could not make it to work due to bad weather. Mr. Nonva says his vacation days had been approved and agreed to before he signed the employment agreement, which I accept. However, just because his vacation days were approved by MCDJ does not mean that MCDJ agreed to pay him for those vacation days. The employment agreement specifically said vacation days would be unpaid for the first 12 months of employment. So, I find Mr. Nonva was not entitled to any paid sick or vacation days, nor was he entitled to be paid for days when he was scheduled to work but did not show up due to bad weather or other reasons.
22. So, since Mr. Nonva took 7 unpaid days off in December and was required to work 18 days in order to earn the full \$7,500 monthly salary, I find he was entitled to be paid for 11 days only. So, I find MCDJ should have paid Mr. Nonva \$416.67 a day, totaling \$4,583.37 for the 11 days he actually worked. Since MCDJ only paid him \$3,913.08, I find it underpaid Mr. Nonva \$670.29.

Is Mr. Nonva responsible for the parking tickets, courier fees, and vehicle retrieval expenses?

23. As noted above, Mr. Nonva undisputedly had use of a company vehicle while employed with MCDJ. MCDJ claims \$368.94 for parking tickets charged to MCDJ as the vehicle's owner. A parking ticket statement in evidence shows these tickets are from December 13, 14, 31, 2022 and January 2, 2023.
24. MCDJ says that the parties had an agreement that Mr. Nonva would be responsible for the vehicle's operating expenses, including parking tickets. Mr. Nonva does not dispute that he owes MCDJ for the December 13 and 14 tickets, which total \$196. So, I find there was likely an agreement between the parties that Mr. Nonva would be

responsible for any parking tickets he incurred for the vehicle. As Mr. Nonva does not dispute it, I find he must repay MCDJ \$196 for the first 2 tickets.

25. However, Mr. Nonva says that MCDJ delayed picking up the vehicle from the ferry terminal after he resigned, so he is not responsible for the other 2 tickets. The evidence shows that Mr. Nonva did not resign until January 1. So, I find he is responsible for the December 31 ticket as this ticket was incurred while the vehicle was technically still in his possession and control. This leaves the January 2 ticket.
26. In his January 1 resignation message, Mr. Nonva told MCDJ that it could either pick up the vehicle from the ferry terminal parking lot or he could return it on either Wednesday, January 4 or Thursday, January 5 when he returned back to the mainland. Based on an invoice in evidence, I find XPDT Delivery Services retrieved the vehicle from the ferry terminal for MCDJ on January 4. So, I find there were no delays by MCDJ in picking up the vehicle since Mr. Nonva would not have returned the vehicle any earlier had he done it himself. I find Mr. Nonva would have incurred the January 2 parking ticket in any event as he failed to adequately pay for parking until his expected return date. So, I find Mr. Nonva is responsible for all 4 tickets, totaling \$368.94.
27. There is no evidence before me that MCDJ told Mr. Nonva that he would be responsible for any costs it incurred to retrieve the vehicle, or for the costs it incurred to retrieve the vehicle or building keys. There is also no evidence that Mr. Nonva otherwise agreed to pay these costs. So, I find MCDJ is not entitled to the \$95 it claims for the vehicle retrieval costs or the \$45.14 in courier fees for retrieving the vehicle and building keys from Mr. Nonva.
28. In conclusion, I find MCDJ must pay Mr. Nonva \$670.29 for unpaid wages, less \$368.94 for the unpaid parking tickets. This equals \$301.35.
29. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Nonva is entitled to pre-judgment interest on the \$301.35 from December 30, 2022, the date MCDJ issued Mr. Nonva's final pay cheque, to the date of this decision. This equals \$13.38.

30. 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. Both parties paid CRT fees. MCDJ also claims \$11.60 for registered mail costs for sending the Dispute Notice for dispute SC-2023-000393 to Mr. Nonva. The parties were both partially successful in their respective disputes. In the circumstances, I decline to order reimbursement of CRT fees or dispute-related expenses.

ORDERS

31. Within 14 days of the date of this decision, I order MCDJ to pay Mr. Nonva a total of \$314.73, broken down as follows:

- a. \$301.35 for unpaid salary, and
- b. \$13.38 in pre-judgment interest under the COIA.

32. Mr. Nonva is entitled to post-judgment interest, as applicable.

33. I dismiss the parties' remaining claims.

34. 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