



Civil Resolution Tribunal

Date Issued: December 15, 2023

File: SC-2023-000442

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kurtagic v. Integrity Driving School Ltd.*, 2023 BCCRT 1107

B E T W E E N :

GORAN KURTAGIC

APPLICANT

A N D :

INTEGRITY DRIVING SCHOOL LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about a bus rental. Goran Kurtagic took driving lessons from Integrity Driving School Ltd. (Integrity). The parties' agreement included a bus rental for Mr. Kurtagic's Insurance Corporation of British Columbia (ICBC) road test. Mr. Kurtagic says Integrity's bus malfunctioned during his first 2 attempts at the road test, and ICBC would not allow him to complete the tests. Mr. Kurtagic says he had to rent a

bus from a different company to complete his road test on a third attempt. He claims \$605 for the bus rental and \$312.38 in fuel expenses for travelling to the 2 cancelled road tests, for a total of \$917.38.

2. Integrity says it repaired the bus and that it was functioning properly for Mr. Kurtagic's road tests. It says it does not owe Mr. Kurtagic anything under the terms of their agreement.
3. Mr. Kurtagic is self-represented, and Integrity is represented by its 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). 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 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 Integrity's bus malfunctioned during Mr. Kurtagic's road tests, and if so, whether he is entitled to \$917.38 in damages.

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding Mr. Kurtagic must prove his claims on a balance of probabilities, which means more likely than not. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.
10. On December 1, 2022, Mr. Kurtagic submitted his registration form to Integrity for its \$1,599 "Class 2 Silver" commercial course. The form says Mr. Kurtagic wished to rent a bus from Integrity for his ICBC road test, which was included in the cost. The registration form included several pages of terms and conditions, and Mr. Kurtagic signed the form acknowledging he had read, understood, and accepted them.
11. Mr. Kurtagic completed his classes and rented a bus from Integrity for his first ICBC road test. He says the bus's signal lights malfunctioned during the test, so ICBC prevented him from completing the test for safety reasons. Mr. Kurtagic says Integrity promised it would repair the bus's electrical issues, and rescheduled Mr. Kurtagic's road test for a later date. Mr. Kurtagic rented the same bus from Integrity for the rescheduled test. He says the bus malfunctioned again during his second road test, and ICBC again prevented him from completing it for safety reasons. Mr. Kurtagic says by that point he no longer trusted Integrity to provide him with a safely functioning bus, so he rented a bus from a different company for his third attempt at the road test on January 11, 2023. He claims \$605 for this bus rental. He also claims \$312.38 in fuel expenses for the first 2 road tests because he had to drive from his home outside of Kamloops to the test site in Abbotsford for both tests.
12. In the Dispute Notice, Mr. Kurtagic says his first road test was on January 19, 2023, and his second road test was on January 28, 2023. However, in the Dispute Notice Mr. Kurtagic also says he became aware of the claim on December 19 and 28, 2022.

On the evidence before me, including confirmation emails from Integrity to Mr. Kurtagic, I find Mr. Kurtagic's first road test was on December 19, 2022, and his second road test was on January 3, 2023.

13. Integrity denies that the bus malfunctioned during Mr. Kurtagic's road tests and says it has evidence of its bus repairs. However, I find Integrity's evidence shows it had the bus repaired on January 2, 2023, the day before Mr. Kurtagic's second road test. Integrity provided no evidence that the bus was repaired or was functioning properly before Mr. Kurtagic's first road test. The January 2, 2023 invoice says the bus's rear brake light and top rear red marker light were not working. Integrity does not dispute that it rescheduled Mr. Kurtagic's first road test, and it does not give an alternative explanation for why the test needed to be rescheduled. On balance, I accept that Integrity's bus malfunctioned during Mr. Kurtagic's first road test, which is why he was unable to complete the test and Integrity rescheduled it to January 3, 2023.
14. I turn now to Mr. Kurtagic's second road test. Integrity's January 2, 2023 invoice says a mechanic repaired the bus's rear brake light and replaced its top rear red marker light. As noted, Mr. Kurtagic says the bus's signals malfunctioned during his second road test on January 3, 2023. Integrity submitted a January 4, 2023 invoice from the same mechanic indicating that there had been complaints that the bus's signal was not working again. The invoice says the mechanic performed troubleshooting and diagnostics and determined there were no issues with the bus signal. The invoice says the student must have had the key in the wrong position during the test.
15. Mr. Kurtagic submitted emails showing he tried to obtain a statement from his ICBC driver examiner for his second road test, but ICBC told him its internal policy prevents its driver examiners from giving witness statements. He provided no other documentary evidence supporting his allegation that the bus malfunctioned during his second road test. Without more, I find Integrity's January 4, 2023 invoice from the mechanic is the best evidence of the bus's functionality during Mr. Kurtagic's second road test on January 3, 2023. I find Mr. Kurtagic has failed to establish that Integrity's bus malfunctioned during his second road test.

16. Having found Mr. Kurtagic has not proven Integrity's bus malfunctioned during his second road test, I find he is not entitled to fuel expenses on January 3, 2023, or the cost of the bus rental on January 11, 2023. However, having found Integrity's bus malfunctioned during his first road test on December 19, 2022, I must determine whether he is entitled to his fuel expenses for that day.
17. Integrity says that under the terms of the parties' agreement, it does not owe Mr. Kurtagic anything. In its submissions Integrity refers to its cancellation and refund policy. However, Mr. Kurtagic did not cancel his lessons or either of the 2 road tests, and he does not claim a refund. Rather, he claims his fuel expenses for travelling from his home to Abbotsford for the road test that ICBC cancelled because Integrity's bus malfunctioned.
18. Although Integrity does not raise this in their submissions, the parties' contract says Integrity reserves the right to reschedule a student's road test appointment due to unforeseen circumstances such as a mechanical vehicle malfunction. There is no evidence that Integrity's bus experienced electrical issues before Mr. Kurtagic's first road test or that the bus's malfunction during that road test was otherwise foreseeable. So, I find Integrity was permitted to reschedule Mr. Kurtagic's road test under the agreement. However, there is no term in the agreement limiting Mr. Kurtagic's ability to claim damages for the rescheduling. So, I find he is entitled to claim damages for his fuel expenses to travel to Abbotsford for his first road test.
19. It is unclear from Mr. Kurtagic's Dispute Notice whether he claims \$163.40 or \$148.98 for his fuel expenses on December 19, 2022. This is because, as noted above, the Dispute Notice has the wrong dates for his road tests. Mr. Kurtagic did not provide receipts for any of his claimed fuel expenses. However, Integrity does not dispute that he had to drive from his home outside of Kamloops to Abbotsford for his first road test, or that he incurred fuel expenses for that trip. On a judgment basis, I find Mr. Kurtagic is entitled to \$50 for his fuel expenses on December 19, 2022 for travelling from his home to Abbotsford for his road test that was rescheduled.

20. The *Court Order Interest Act* applies to the CRT. Mr. Kurtagic is entitled to pre-judgment interest on the \$50 owing, calculated from December 19, 2022, which was the date of his first road test, to the date of this decision. This equals \$2.27.
21. 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. I see no reason in this case not to follow that general rule. Since Mr. Kurtagic was partially successful, I find he is entitled to reimbursement of half his CRT fees, which is \$62.50. Integrity did not pay any CRT fees, and neither party claims any dispute-related expenses.

ORDERS

22. Within 15 days of the date of this order, I order Integrity to pay Mr. Kurtagic a total of \$114.77, broken down as follows:
- a. \$50 in damages for fuel expenses,
 - b. \$2.27 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.
23. Mr. Kurtagic is entitled to post-judgment interest, as applicable.
24. 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.

Sarah Orr, Tribunal Member