



Civil Resolution Tribunal

Date Issued: March 7, 2024

File: SC-2023-004633

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sandhar Trucking Ltd. v. Sandhu*, 2024 BCCRT 227

BETWEEN:

SANDHAR TRUCKING LTD.

APPLICANT

AND:

GURMEET SANDHU

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute involves an employer's claim against a former employee for "time theft".
2. The applicant, Sandhar Trucking Ltd. (Sandhar), employed the respondent, Gurmeet Sandhu, as a container truck driver between January and November 2022.

3. Sandhar says after Mr. Sandhu resigned, it investigated his daily timesheets back to the start of his employment. Sandhar says Mr. Sandhu overstated his time worked by 153.5 hours. Based on Mr. Sandhu's applicable hourly wage, Sandhar claims \$4,205.43.
4. Mr. Sandhu denies overstating his hours on his timesheets. He says he submitted his timesheets daily and Sandhar approved them before paying him. He says Sandhar's claim is in retaliation for an overtime wage complaint he made with the Employment Standards Branch (ESB). Mr. Sandhu asks me to dismiss the claim.
5. Sandhar is represented by a principal or employee. Mr. Sandhu represents himself. As I explain below, I dismiss Sandhar's claim.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has authority over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
7. 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.

8. 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 court.

ISSUE

9. The issue in this dispute is whether Mr. Sandhu breached his employment contract by overstating his hours worked, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Sandhar 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.
11. The parties agree that Mr. Sandhu was previously employed by Sandhar's "sister company," Aaron Trucking Ltd. They do not say when his employment began with Sandhar but based on his timesheets and the payroll records, I find it was January 17, 2022.
12. During his employment with Sandhar, Mr. Sandhu generally started and finished each day at the yard where Sandhar parked its trucks. At the end of each working day Mr. Sandhu submitted a timesheet to an office at the yard.
13. Sandhar says that upon hiring Mr. Sandhu, it informed him that it would pay him based on the time recorded on his timesheets, so he must accurately note his start and end times. Mr. Sandhu does not dispute this, so I accept that it was a term of his employment contract to be honest and reasonably accurate when completing the timesheets. Sandhar's payroll records show that Mr. Sandhu was paid without deduction for meal breaks, assuming any were taken, so I find it was a term of his employment contract that any breaks were paid.
14. Sandhar says in October 2022, a dispatcher noticed irregularities in Mr. Sandhu's start and end times. According to an October 26, 2022 incident report, Mr. Sandhu

had overstated his hours in October by 18.75 hours. The report said that Sandhar would not pay those hours or would deduct them from an upcoming pay period, as applicable. It said any further incident of time theft would result in immediate termination.

15. Mr. Sandhu does not dispute that Sandhar gave him the incident report in person and he refused to sign it. Mr. Sandhu initially resigned on November 3, but at Sandhar's request, agreed to continue working until his scheduled vacation abroad. Although Mr. Sandhu says he worked until November 15, his last timesheet in evidence is dated November 9, 2022. I find November 9, 2022, was his last day worked. Sandhar says it called Mr. Sandhu several times at the end of December 2022 when he was scheduled to return from vacation, but he did not respond and at that point it considered his employment at an end.
16. Sandhar says Mr. Sandhu wrote a note on his November 3 timesheet acknowledging that he overstated his hours. Mr. Sandhu denies writing the note. I find nothing significant turns on the note for 2 reasons. First, the note only says Mr. Sandhu overstated hours on his last timesheet, not any other timesheets, and it does not say how many hours were overstated. Further, Sandhar admits it required Mr. Sandhu and 2 other employees to write similar notes on their timesheets. So, assuming Mr. Sandhu wrote the note, I would not give it the same weight as a voluntary admission.
17. Sandhar says after Mr. Sandhu resigned, it decided to investigate his entire employment period for time theft. Mr. Sandhu says Sandhar only decided to investigate after he filed an overtime wage complaint with the ESB, which the parties resolved voluntarily. As noted, he suggests Sandhar's claim is in retaliation for the ESB complaint. On the evidence I cannot determine whether Sandhar's investigation was launched in response to the overtime claim or Mr. Sandhu's resignation, but as I explain below, nothing turns on this. With that background set out, I turn to the applicable law.

“Time theft”

18. Sandhar does not explain the precise legal basis for its claim, which is not uncommon in the CRT, which is meant to be a forum for efficient resolution of disputes involving participants who are usually not represented by counsel. Sandhar alleges “time theft” but does not point to any statutory or common law authority on time theft as a “cause of action” or the basis of a legal claim. There are only a handful of court decisions that use the term “time theft”. Most of them refer to time theft in the context of an employer’s assertion of just cause for dismissal based on dishonest conduct, not in the context of a claim for debt or damages.
19. As the Federal Court defined it, time theft refers to the practice of reporting for work, or “punching in”, but not starting work until later or correspondingly, leaving work before “punching out” (see *Khapar v. Air Canada*, 2014 FC 138 at paragraph 16). More broadly, time theft can refer to accepting wages from an employer for hours not actually worked. This could include taking longer-than-scheduled breaks or doing personal tasks during work hours. Taken to its extreme, time theft would include any non-work-related conversation with a colleague, or a non-work-related thought, while “on the clock”.
20. Time theft, like other forms of workplace misconduct, can therefore range from trivial to egregious, from inconsequential to cause for dismissal. In addition to the amount of time “stolen”, other factors like the employee’s intention, their role and seniority in the organization, and their subsequent conduct are relevant. They are relevant because they determine whether the misconduct irreversibly damaged the trust in the employment relationship (see *GiVogue v International Union of Elevator Constructors Local 130*, 2021 ABPC 188, at paragraph 31, and *Retail, Wholesale Department Store Union v Yorkton Cooperative Association*, 2017 SKCA 107).
21. Of course, this is not a wrongful dismissal claim. It is an attempt by an employer to recover wages paid but allegedly not earned under the employment contract. Employers have exclusive control over the payment of wages, which in my view creates a rebuttable presumption that employees earn the wages the employer pays

them. I find the presumption is stronger where, like here, the employer requires the employee to submit daily timesheets. The CRT awarded damages for time theft in *Besse v. Reach CPA Inc.*, 2023 BCCRT 27. However, in that case, the employee conceded that she recorded hours as work that she had not worked. The employee essentially did not dispute the time theft allegation. Here, Mr. Sandhu disputes the time theft allegation.

22. What Sandhar must establish is that Mr. Sandhu breached his contractual obligation to report his hours worked honestly and with reasonable accuracy. Sandhar must also prove its claimed damages – the amount it says it overpaid Mr. Sandhu. Sandhar must establish both on a balance of probabilities with evidence that is sufficiently “clear, convincing and cogent” (see *FH v McDougall*, 2008 SCC 53). As I explain below, I find Sandhar has not established either that Mr. Sandhu overstated his hours or that it overpaid him.

Did Mr. Sandhu overstate his hours worked, and if so, by how much?

23. Sandhar says Mr. Sandhu falsified his daily timesheets by stating that he started work earlier, and finished later, than he actually did. Mr. Sandhu denies this.
24. Sandhar did not have a “punch-in, punch-out” system. Mr. Sandhu says that security camera footage would provide the most accurate information about when he entered and left the yard. I accept that Sandhar only keeps its footage for 2 weeks and I find the absence of such footage is not fatal to Sandhar’s claim.
25. Sandhar relies largely on reports from Samsara, a GPS tracking system installed in its trucks. Sandhar explains that Samsara documents each truck’s location when it is turned on and again when it is turned off. Mr. Sandhu drove several trucks for Sandhar. Sandhar provided the Samsara reports for each truck for the days Mr. Sandhu drove them. Mr. Sandhu does not dispute, and I accept, that the Samsara reports generally provide an accurate account of each truck’s location at the stated times. That said, there are days where Sandhar acknowledges, without explanation, that there are no Samsara reports available.

26. Sandhar took the Samsara start and end times and compared them to the start and end times that Mr. Sandhu recorded on his timesheets. It then calculated the allegedly overstated hours for each semi-monthly pay period. Sandhar's calculations show 153.5 hours paid but allegedly not worked between January and November, 2022.
27. Sandhar says the Samsara reports verify when a driver starts and ends their shift. I disagree. As explained above, the Samsara reports verify when a driver starts and turns off their truck's engine. Sandhar implicitly acknowledges that a driver's shift does not start when the driver starts the engine, and it does not finish when the driver turns off the engine. The driver must report to the yard, receive and review their delivery assignments, plan their route and conduct a pre-trip inspection. Sandhar says drivers must turn on their truck to note down their odometer reading before conducting the pre-trip inspection, but it does not explain why or provide evidence of a policy requiring this. Sandhar's pre-trip inspection form in evidence does not indicate that drivers must complete the form in any order.
28. As for the end of a shift, Mr. Sandhu does not dispute that drivers were not required to conduct post-trip inspections. However, he still had to exit and secure the truck, complete his timesheet, and submit his paperwork to the office. Sandhar says it should take a driver no more than 5 minutes to do these things, which I accept given that Mr. Sandhu did not specifically dispute it.
29. Mr. Sandhu says the Samsara reports do not capture his start and end times because his employment duties included not only driving trucks but also loading flatbeds, assisting other drivers, and counting and inspecting containers in the yard. Sandhar does not dispute that it sometimes required Mr. Sandhu to do these things, but says that he noted his yard work on his timesheets and was paid for that time. However, I find there are days where Sandhar has not taken yard work into account in its calculations and instead has relied directly on the Samsara reports. For example, on January 17, 2022, Mr. Sandhu recorded on his timesheet that he worked in the yard until 5:00 pm, but Sandhar says he should only be paid until 4:30 pm, presumably based on the Samsara report's indication that Mr. Sandhu's truck was shut off at 4:36

pm. Sandhar does not explain why the Samsara report is better evidence of Mr. Sandhu's time working in the yard. It also does not explain how Mr. Sandhu's timesheet was approved if he reported working in the yard when he had already gone home. Sandhar does not say, for example, that there were no supervisors at the yard to notice if an employee left earlier than indicated on their timesheet.

30. Next, I find that many of the allegedly overstated hours on the timesheet are simply rounding differences. It is clear from the timesheets and from Sandhar's calculations that rounding to the nearest quarter-hour on timesheets was the accepted practice. However, at times in its calculations Sandhar has rounded down when it should round up, or failed to account for pre-trip and post-trip work, or both. For example, on January 20, 2022, Mr. Sandhu recorded that he worked from 5:30 am to 6:30 pm, for 13 hours. Sandhar says he should be paid from 5:45 am to 6:15 pm – a half-hour less. The Samsara report shows that Mr. Sandhu started his truck at 5:39 am and shut it off for the day at 6:23 pm. Sandhar does not explain why it has rounded a 6:23 pm shut-off time to a 6:15 working time, given 6:23 is closer to 6:30 than 6:15 even before factoring in 5 minutes of post-trip work. Further, adding even 5 minutes for the pre-trip inspection shows that Mr. Sandhu's timesheet is more accurate than Sandhar's calculation for that day. Much of Sandhar's time theft allegation is made up of these small, 15-minute increments on either side of the day. Given Sandhar's rounding errors and its failure to consider pre-trip and post-trip work time, I am not persuaded that any material time theft occurred on such days.

31. I also find that Sandhar has placed unreasonable reliance on the Samsara reports. An example is September 17, 2022, where Mr. Sandhu reported working 10.25 hours but Sandhar says there is no Samsara report for that day. Sandhar did not count any working hours that day in its calculation, so its implicit position is that Mr. Sandhu did not work that day. However, Mr. Sandhu's timesheet says he worked 10.25 hours, noting various pickups and deliveries. Further, a text message from a Sandhar supervisor to Mr. Sandhu on at 3:31 pm on that day instructed Mr. Sandhu to move a 48-foot truck to the yard. Based on the detailed timesheet and the text message, I find that Mr. Sandhu worked that day and that the Samsara system simply failed to

generate a report. This kind of error undermines the reliability of Sandhar's calculations.

32. I place significantly more weight on Mr. Sandhu's timesheets, which Sandhar undisputedly received daily and used to determine Mr. Sandhu's payroll. Sandhar does not dispute Mr. Sandhu's allegation that management reviewed his timesheets on a daily basis. There is no statement, for example, from a manager or an accounting employee saying that Sandhar's policy was simply to accept the hours stated on the timesheets without scrutiny. In that way, this dispute is similar to an Ontario Superior Court case where the court found the employer was well aware of the employee's presence or absence and paid his salary without complaint or deduction before making a "time theft" claim months after the employment relationship ended (see *2261897 Ontario Inc. v Quest Audio Visual Inc.*, 2015 ONSC 2428, at paragraph 71). The court said the "time theft" claim was entirely without merit and dismissed it. Like the employer in that decision, Sandhar has not provided convincing evidence to rebut the presumption that Mr. Sandhu earned the wages it paid.
33. Even if Sandhar had established that Mr. Sandhu overstated his hours, I would not award the damages it claims because I find that its calculations are unreliable. For example, Sandhar claims that it overpaid Mr. Sandhu for 6 hours between January 1 and January 15, 2022. However, as I explained above, he did not start work with Sandhar until January 17. Sandhar cannot recover alleged overpayments made by a different company. Another example of the unreliability of Sandhar's calculations is October 2022. Sandhar says that Mr. Sandhu's October timesheets document 263 hours. It says based on the Samsara reports that he actually worked 243.5 hours, so it claims an overpayment of 19.5 hours. Yet Sandhar's October payroll records show that it only paid Mr. Sandhu for 252.75 hours. Accepting Sandhar's calculations as the basis of an order would therefore result in Sandhar paying Mr. Sandhu for 233.25 October hours when it says he worked 243.5 hours. Given Sandhar's several unexplained calculation discrepancies, there is risk that any order for wage repayment would not compensate for employee time theft but instead facilitate employer wage theft.

34. Overall, I find Sandhar has failed to establish that Mr. Sandhu overreported his hours, intentionally or otherwise. Sandhar has also failed to establish that its calculations of alleged wage overpayments are reliable. It follows that I dismiss Sandhar's claim.
35. 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. Sandhu was successful but did not pay CRT fees. I dismiss Sandhar's claim for CRT fees. Neither party claims dispute-related expenses.

ORDER

36. I dismiss Sandhar's claims and this dispute.

Micah Carmody, Tribunal Member