



Civil Resolution Tribunal

Date Issued: March 7, 2024

File: SC-2023-004638

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aaron Trucking Ltd. v. Sandhu*, 2024 BCCRT 230

B E T W E E N :

AARON TRUCKING LTD.

APPLICANT

A N D :

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, Aaron Trucking Ltd. (Aaron), employed the respondent, Gurmeet Sandhu, as a container truck driver between June 2021 and January 2022.

3. Aaron says it investigated Mr. Sandhu's daily timesheets and found he overstated his time worked by 58.95 hours. Based on Mr. Sandhu's applicable hourly wage, Aaron claims \$1,473.75.
4. Mr. Sandhu denies overstating his hours on his timesheets. He says he submitted his timesheets daily and Aaron approved them before paying him. He says Aaron's claim is in retaliation for an Employment Standards Branch (ESB) overtime wage complaint he made against Aaron's "sister company", Sandhar Trucking Ltd (Sandhar), where Mr. Sandhu worked after Aaron. Mr. Sandhu asks me to dismiss Aaron's claim.
5. Aaron is represented by a principal or employee. Mr. Sandhu represents himself. As I explain below, I dismiss Aaron'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, Aaron 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 do not say exactly when Mr. Sandhu started and ended his employment with Aaron, but from the timesheets and payroll records I find he started on June 21, 2021 and finished on January 15, 2022.
12. During his employment with Aaron, Mr. Sandhu generally started and finished each day at the yard where Aaron parked its trucks. At the end of each working day Mr. Sandhu submitted a timesheet to an office at the yard.
13. Aaron 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. Aaron'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. Aaron does not explain how it came to investigate Mr. Sandhu's timesheets. It refers to Sandhar's time theft investigation, so infer that the two companies shared information.

“Time theft”

15. In *Sandhar Trucking Ltd. v. Sandhu*, 2024 BCCRT 227, Sandhar made a separate “time theft” claim against Mr. Sandhu, which I dismissed. In that decision, I described how the courts and the CRT have considered “time theft”. In short, I found that to be successful in a claim for time theft, Sandhar had to establish that its employee breached the term of their employment contract to report their hours worked honestly and with reasonable accuracy. Aaron must prove the same thing here. Like Sandhar, Aaron must also prove its claimed damages – the amount it says it overpaid Mr. Sandhu. Aaron must establish both on a balance of probabilities with evidence that is sufficiently “clear, convincing and cogent” (see *FH v McDougall*, 2008 SCC 53).
16. As I explain below, I find Aaron has not established that Mr. Sandhu overstated his hours on his timesheets or that it overpaid him.

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

17. Aaron 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.
18. Aaron 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 Aaron only keeps its footage for 2 weeks and I find the absence of such footage is not fatal to Aaron’s claim.
19. Aaron relies largely on reports from Samsara, a GPS tracking system installed in its trucks. Aaron 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 Aaron. Aaron 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 Aaron acknowledges, without explanation, that there are no Samsara reports available.

20. Aaron 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. Aaron's calculations show 59.95 hours paid but allegedly not worked between July and December 2021.
21. Aaron 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. Aaron 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. Aaron 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. Aaron's pre-trip inspection form in evidence does not indicate that drivers must complete the form in any order.
22. 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. Aaron 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.
23. 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. Aaron acknowledges 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, there are days where Aaron has not taken yard work into account in its calculations and instead has relied only on the Samsara reports. For example, on December 24, 2021, Mr. Sandhu recorded on his timesheet that he worked from 7:15 am to 2:30 pm in the yard, loading and "shunting". Aaron says he should only be paid from 8:30 am to 2:00 pm, a difference of 1.75 hours. This is presumably based on the Samsara

reports showing his truck started at 8:24 am and was shut off for the day at 1:59 pm. However, Aaron concedes that Mr. Sandhu's work included loading different types of equipment and other work in the yard, which it does not appear to have factored into its time calculations. As well, Aaron does not explain how Mr. Sandhu's timesheet was approved if he reported working in the yard for half an hour after he shut off his truck and went home. Aaron does not say, for example, that there were no supervisors at the yard to notice if an employee left mid-day, half an hour earlier than indicated on their timesheet.

24. 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 Aaron's calculations that rounding to the nearest quarter-hour on timesheets was the accepted practice. However, at times Aaron has rounded down when it should round up, or failed to account for pre-trip and post-trip work. For example, on August 17, 2021, Mr. Sandhu recorded that he worked until 9 pm. Aaron says he should be paid until 8:45 pm. Yet the Samsara report said he shut his truck off for the day at 8:53 pm. 8:53 pm is closer to 9 pm than 8:45 pm even without considering any post-trip work Mr. Sandhu had to do after shutting off his truck engine. Much of Aaron's time theft allegation is made up of these small, 15-minute increments on either side of the day. Given Aaron'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 these days.
25. Aaron has not adequately explained why the Samsara reports should be preferred over Mr. Sandhu's timesheets. There is no evidence that Mr. Sandhu was trying to conceal anything in the timesheets. The timesheets generally state when he returned to the yard and then separately state when he finished work, anywhere from 5 to 30 minutes later. Aaron concedes that Mr. Sandhu was required to perform yard checks and load different types of equipment. Without more specific evidence that Mr. Sandhu was not working at the times Aaron alleges time theft, Aaron has not met its burden of proving Mr. Sandhu overstated his hours.

26. Further, Aaron 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 Aaron'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, Aaron has not provided convincing evidence to rebut the presumption that Mr. Sandhu earned the wages it paid.
27. Even if Aaron 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, Aaron says it should be able to recover 11.75 hours of wages for Mr. Sandhu's alleged time theft in December 2021. However, Aaron labels Mr. Sandhu's December 15 and December 28 shifts "unpaid", without explanation, and the payroll records confirm he was not paid for those days. Those days total 24.25 hours that Mr. Sandhu worked without pay. Aaron has not explained why it should be permitted to recover further wages for December 2021.
28. Overall, I find Aaron has failed to establish that Mr. Sandhu overreported his hours, intentionally or otherwise. Aaron has also failed to establish that its calculations of alleged wage overpayments are reliable. It follows that I dismiss Aaron's claim.
29. 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 Aaron's claim for CRT fees. Neither party claims dispute-related expenses.

ORDER

30. I dismiss Aaron's claims and this dispute.

Micah Carmody, Tribunal Member