



Civil Resolution Tribunal

Date Issued: March 22, 2024

File: SC-2023-004480

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tomcat Demolition Ltd. v. Jalbert*, 2024 BCCRT 306

BETWEEN:

TOMCAT DEMOLITION LTD.

APPLICANT

AND:

RAYMOND JALBERT

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. Raymond Jalbert is a former employee of Tomcat Demolition Ltd. (Tomcat). Tomcat says Mr. Jalbert withdrew unauthorized cash advances from its credit card, and failed to return its tools. Tomcat claims \$2,933.50 for the cash advances and \$2,724.54 for the tools. Tomcat is represented by one of its directors, Brent Turner.

2. Mr. Jalbert acknowledges making the withdrawals and that he has not returned Tomcat's tools, but denies owing Tomcat anything. Mr. Jalbert is self-represented.

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). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
4. CRTA section 39 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 the credibility, or truthfulness, of the other. However, 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.
5. CRTA section 42 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. The CRT may also ask questions of the parties and inform itself in any other way it considers appropriate.
6. Where permitted by CRTA section 118, 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.

Previous CRT Dispute

7. Mr. Jalbert says that this is the second time these issues have come before the CRT. Tomcat acknowledges this, but says that its earlier dispute was mistakenly brought in Mr. Turner's name personally, rather than Tomcat's name. I have reviewed the CRT's reasons in that dispute, *Turner v. Jalbert*, 2023 BCCRT 273. I agree with Tomcat that that dispute was dismissed because the tribunal member found that Mr.

Turner did not personally have standing to bring it. That decision did not involve Tomcat and did not resolve the merits of the claims between Tomcat and Mr. Jalbert. So, I find this dispute has not already been decided, and is not an abuse of process.

Settlement Agreement

8. The parties undisputedly reached a settlement agreement through the Employment Standards Branch (ESB) to resolve a dispute over Mr. Jalbert's wages. In submissions, Tomcat says that Mr. Jalbert agreed to return the tools as part of that agreement. Under the *Employment Standards Act*, an ESB settlement agreement must be enforced through the BC Supreme Court. So, I asked Tomcat to provide a copy of the agreement so that I could determine whether the claim for the tools is within the CRT's jurisdiction.
9. Tomcat provided a copy of the ESB settlement agreement and various related messages. While an email from the ESB Industrial Relations Officer mentions Mr. Jalbert agreeing to return the tools, that agreement does not form part of the parties' formal ESB settlement agreement. The settlement agreement terms only address unpaid wages. So, I am satisfied that Tomcat's claim for the tools was not resolved by the ESB settlement agreement, and I have proceeded to hear it below.
10. Mr. Jalbert also says that Tomcat agreed that "everything would be dropped" if he returned the tools. Text messages in evidence show that Mr. Jalbert asked Tomcat's manager to sign a letter stating that Tomcat was "dropping all allegations" against him in exchange for the tools' return. While the manager initially agreed by text, they undisputedly did not sign the letter as Mr. Jalbert requested. Tomcat says this is because it instructed the manager not to sign the letter, as it intended to pursue a claim against Mr. Jalbert for the cash advances. Mr. Jalbert undisputedly did not return the tools in any event. So, I find the parties did not have a binding settlement agreement for the tools' return.

Claim Limit

11. As noted, Tomcat claims \$2,933.50 for the cash advances and \$2,724.54 for the tools. These two remedies together total \$5,658.04, which exceeds the CRT's small claims monetary limit of \$5,000. Further, in its Dispute Notice, Tomcat listed a total claim value of \$5,000. So, I find Tomcat waives its claim to any amount over \$5,000.

ISSUES

12. The issues in this dispute are:

- a. Whether Mr. Jalbert must reimburse Tomcat \$2,933.50 for cash advances, and
- b. Whether Mr. Jalbert must reimburse Tomcat \$2,724.54 for tools.

EVIDENCE AND ANALYSIS

13. As the applicant in this civil proceeding, Tomcat 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.

Cash Advances

14. Tomcat says that Mr. Jalbert withdrew \$2,933.50 in cash advances from a company credit card in June, July, and August 2022, when he was Tomcat's employee. These amounts are supported by credit card statements in evidence.

15. Tomcat says that Mr. Jalbert has not provided receipts for these withdrawals or any other explanation for why they were necessary. Tomcat says it has accounts with its suppliers, and does not do business in cash. So, Tomcat says Mr. Jalbert withdrew this cash for personal use, and should reimburse Tomcat for the withdrawals.

16. Mr. Jalbert does not dispute that he withdrew the \$2,933.50 in cash advances. He says that the receipts for these withdrawals were in his work truck, which Tomcat took possession of before he had an opportunity to collect them. In contrast, Tomcat says

that its staff gave Mr. Jalbert an opportunity to remove his items from the vehicle before repossessing it.

17. Even if Mr. Jalbert was not able to access the receipts, he has provided no explanation for why he withdrew cash advances. He does not dispute Tomcat's assertion that it does not do business in cash. In the absence of any further explanation for why these cash advances were required, I find Mr. Jalbert did not use this cash for business purposes on Tomcat's behalf. So, I find Mr. Jalbert must reimburse Tomcat for the unexplained \$2,933.50 in cash advances.

Tools

18. I turn to Tomcat's \$2,724.54 claim for its tools, which it says Mr. Jalbert did not return after his employment ended in August 2022. I considered ordering Mr. Jalbert to return the tools to Tomcat, as he acknowledges he still has them. However, I find it is more appropriate to award Tomcat monetary damages for the tools, for two reasons. First, the tools have undisputedly been in Mr. Jalbert's possession for over 18 months. It is not clear whether they are all still in the same condition as they were when his employment ended. Second, in submissions Mr. Jalbert says that communication has broken down between him and Tomcat, and that he has received a letter from Tomcat's lawyer asking him not to have any communication with Tomcat's management or office staff. Given the ongoing animosity between the parties and the uncertain status of the tools, I find it would be impractical to order the tools' return, and an award of monetary damages is more appropriate.
19. Tomcat provided a printout in evidence showing a list of its tools that were assigned to Mr. Jalbert. Mr. Jalbert does not dispute that the printout accurately reflects the tools that he still has. The printout includes handwritten values for each tool, which total the claimed \$2,754.94. I infer this is the replacement value of the tools, which Mr. Jalbert also does not dispute.
20. However, the tools were undisputedly used at the time Mr. Jalbert's employment ended. So, I find awarding full replacement value would overcompensate Tomcat and

put it in a better position than it would have been in if Mr. Jalbert had returned the tools. In the absence of any specific evidence about the tools' condition when Mr. Jalbert retained them, I find it is appropriate to award Tomcat 75% of the tools' replacement value. This equals \$2,066.21.

Set Off

21. In submissions, Mr. Jalbert says that Tomcat owes him overtime and storage costs. As Mr. Jalbert did not file a counterclaim, I infer he argues that these amounts should be set off against anything he owes Tomcat.
22. I have not addressed Mr. Jalbert's arguments about overtime, as I find his wage dispute was resolved by the ESB, as discussed above. Mr. Jalbert also says he is entitled to \$200 per day for storing Tomcat's tools. I find there is no evidence that Tomcat agreed to pay Mr. Jalbert for storage. So, I find Mr. Jalbert is not entitled to a set off on this basis.

CRT FEES, EXPENSES, AND INTEREST

23. The *Court Order Interest Act* applies to the CRT. Tomcat is entitled to pre-judgment interest on the cash advances from the dates its credit card bills were due to the date of this decision. This equals \$188.79. As there is no evidence before me that Tomcat has paid to replace any of the tools, I do not award interest on the damages award for the tools.
24. CRTA section 49 and the 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. I find Tomcat is entitled to reimbursement of \$175 in CRT fees. Neither party claimed dispute-related expenses.

ORDERS

25. Within 21 days of this decision, I order Mr. Jalbert to pay Tomcat a total of \$5,363.50, broken down as follows:
- a. \$4,999.71 in debt and damages,
 - b. \$188.79 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
26. Tomcat is entitled to post-judgment interest, as applicable.
27. This is a validated decision and order. Under CRTA section 58.1, 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.

Alison Wake, Tribunal Member