



# Civil Resolution Tribunal

Date Issued: April 23, 2024

File: SC-2023-005423

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sealion Cargo Inc. v. Simard Westlink Inc.*, 2024 BCCRT 384

BETWEEN:

SEALION CARGO INC.

**APPLICANT**

AND:

SIMARD WESTLINK INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Christopher C. Rivers

## INTRODUCTION

1. This dispute is about storage fees charged during a labour dispute.
2. Sealion Cargo Inc. (Sealion) was responsible for delivering a client's shipment stored at Simard Westlink Inc.'s (Simard) warehouse. Sealion hired a third party trucking

company, Scott Freight (Scott), to pick up the shipment, but says Scott was unable to do so because striking workers would not allow vehicles through to the warehouse. Sealion says it not only had to pay Scott for an unsuccessful trip to Simard, but also had to pay Simard storage fees for the additional time Simard held the shipment.

3. Sealion also says it had to pay storage fees on a subsequent client's shipment because Sealion did not pay the disputed storage fees, so Simard refused to release those goods.
4. Sealion asks for an order that Simard reimburse it for \$1,211.03, including \$735.98 for the original shipment's storage, \$370.05 for the subsequent shipment's storage, and \$105 for Scott's unsuccessful trip to Simard.
5. Simard says Scott was always able to enter its warehouse. It says the striking workers had an "information picket line" that allowed trucks through after a 1-to-5 minute information session from the picketers. Simard says Scott itself entered its warehouse to collect shipments for other customers. Simard asks me to dismiss Sealion's claims.
6. Each of Sealion and Simard are represented by employees.
7. For the reasons that follow, I allow the applicant's claim in part.

## **JURISDICTION AND PROCEDURE**

8. These are the Civil Resolution Tribunal (CRT)'s formal written reasons. The CRT has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. CRTA section 2 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.
9. CRTA section 39 says the CRT has discretion to decide the hearing's format, 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. Specifically, while the parties disagree on whether or not

Simard's picketing employees allowed trucks to enter Simard's warehouse, the documentary evidence is compelling, and I find is sufficient basis for my decision below. 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.

10. 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.

11. 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.

## **ISSUE**

12. The issue in this dispute is whether Simard must refund Sealion some or all of the storage fees it charged for Sealion's customers' shipments.

## **EVIDENCE AND ANALYSIS**

13. In a civil proceeding like this one, Sealion, as applicant, must prove its claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision. Despite being given the opportunity to do so, Sealion did not provide any final reply to Simard's submissions or evidence.

14. Sealion arranged for Scott to pick up a shipment of goods from Simard's warehouse On September 12, 2022. Sealion says that when Scott arrived at the warehouse, picketing Simard workers prevented Scott from picking up the goods. Scott charged Sealion \$105 for the "dead call," which I infer is an unsuccessful truck trip.

15. A September 12 email from a Scott employee says Simard employees were not letting any drivers into the facility, meaning Scott could not perform the pick-up. A

September 13 email from the same employee says they were not sending any drivers to the warehouse since they were resulting in dead calls.

16. Sealion was able to collect the shipment on September 19. However, Simard billed Sealion for 8 days of storage, from September 12 to 19, at \$374.02 per day, totaling \$2,992.16. The parties negotiated and Simard later reduced its bill to \$1,110 as a goodwill gesture. Simard maintains that it is entitled to that amount.
17. Sealion continued to disagree with paying Simard any of its storage fees and did not remit payment. Then, in April 2023, Simard refused to release a different client's shipment to Sealion. Sealion complained to Simard that its obligations for the later shipment were separate, but Simard said it had a nationwide directive not to remove holds until a party paid its full account. I find it apparent the hold prevented the cargo's release.
18. On April 27, Sealion paid Simard \$1,110 under protest to clear its account and allow it to collect the new shipment. Since Simard refused to release the shipment while the parties discussed the outstanding account, Sealion collected the shipment 1 day late. Simard charged Sealion \$370.05 for 1 day's storage.

***Is Sealion responsible for Simard's storage charges?***

19. Sealion says the parties did not have any specific contract. It says Simard charges a standard tariff for handling fees and terminal fees. It does not specifically say Simard charges a standard tariff for storage fees, but since Sealion disputes the circumstances around pick-up and not Simard's daily storage rate, I find it accepts the rate is accurate.
20. Despite the lack of a written contract, it is clear that for Simard to charge Sealion for storage, Sealion, or its agent, Scott, must have failed to pick up the shipment when it could have done so. If Simard was unable to release the shipment due to its own actions, including those of its employees, Simard would have no basis to charge Sealion.

21. However, Simard says trucks could enter the warehouse on September 12 after waiting in line and receiving a brief information session from picketing workers that took about 1-to-5 minutes per truck. In an October 24, 2022 email, a Simard employee estimates the total additional wait at around 10 minutes. It says its management monitored traffic to ensure trucks could access the storage facility and yard.
22. Simard says that while the Scott's trucker tasked with pickup Sealion's cargo refused to wait in line or listen to the information session, other truckers were able to do so without issue, including other truckers from Scott.
23. In support, Simard provided a list of 293 shipments that were picked up by truckers during the labour disruption of September 12 to September 16. Notably, Scott picked up 1 shipment on September 12 and 11 other shipments over the next 4 days.
24. Sealion did not name Scott as a party in this dispute. It also did not provide any written evidence from Scott's trucker, though it did provide 4 photos it says Scott's trucker took. The photos show picketing workers and a short lineup of trucks, but do not conclusively show that picketers prevented Scott's trucker from entering the warehouse. Sealion says it had a video from the trucker's dashcam but did not provide a copy of it. CRT staff tell all parties to ensure they provide the CRT with all necessary evidence. As noted above, Sealion did not respond to Simard's statement.
25. Since Sealion did not name Scott as a party in this dispute and hired them to pick up the shipment from Simard, I find Sealion was in the best position to obtain and provide evidence from Scott. This could have either been a statement from Scott's trucker, providing details about what they experienced on the day or an explanation from Scott's management, to address Simard's evidence that Scott had picked up freight throughout the labour dispute. The only statements from Scott's management are short, unsupported statements that the picketing employees would not let Scott's truckers through, and none came after Simard provided its evidence.

26. So, I find Sealion has not proven it was unable to pick up the initial shipment and I dismiss its claim for storage fees from September 12 to 19. On the same basis, I find Simard is not responsible for Scott's dead call and dismiss that part of Sealion's claim.
27. I note I have not made any findings on whether Scott is liable for the dismissed charges and nothing herein prevents Sealion from starting an action against Scott.
28. However, I find Simard has not proven it was entitled to withhold the subsequent shipment from Sealion. While Sealion may have had an outstanding account with respect to a separate transaction, I find Simard's unsubstantiated statement that it had a "directive" that prevented it from releasing cargo to Sealion was its own decision. Sealion was clearly able and willing to collect the subsequent shipment from Simard.
29. Sealion did not consent to the directive and there is no evidence it ever entered into a contract requiring it to have a clear account before Simard would release the subsequent shipment. The refusal was Simard's choice, and it cannot depend on that to issue further charges for 1 day of storage to Sealion.
30. While Sealion did not provide a receipt for the \$370.05 payment, it did provide emails confirming the amount that it sent to Simard. Simard does not deny Sealion made the payment, so I find it did. Simard must pay Sealion \$370.05 for the fees charged for 1 day's storage.
31. The *Court Order Interest Act* applies to the CRT. Sealion is entitled to pre-judgment interest on the \$370.05 payment from April 27, 2023, the date it paid the storage fees, to the date of this decision. This equals \$18.12.
32. Under 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. Here, the parties had divided success. I find Sealion is entitled to reimbursement of half of its paid CRT fees which equals \$62.50. Neither party claimed dispute-related expenses.

## ORDERS

33. Within 14 days of the date of this order, I order Simard to pay Sealion a total of \$450.67, broken down as follows:
- a. \$370.05 as reimbursement for storage fees,
  - b. \$18.12 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$62.50 in CRT fees.
34. Sealion is entitled to post-judgment interest, as applicable.
35. I dismiss Sealion's remaining claims.
36. 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.

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Christopher C. Rivers, Tribunal Member