



Civil Resolution Tribunal

Date Issued: May 28, 2024

File: SC-2023-004125

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *West v. Way to Go Traffic Solutions Ltd.*, 2024 BCCRT 483

B E T W E E N :

CANDACE WEST

APPLICANT

A N D :

WAY TO GO TRAFFIC SOLUTIONS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about termination of employment.
2. The applicant, Candace West, worked for the respondent, Way To Go Traffic Solutions Ltd. (WTG). Ms. West says WTG wrongfully terminated her employment

via text message, with no warning, after she refused to perform unsafe work. Ms. West claims \$2,850 in damages.

3. WTG says it fired Ms. West for cause, after she made false allegations against a client, and posted disparaging remarks about WTG and its client on social media. WTG also says Ms. West was still in her 3-month probationary period, so is not entitled to compensation in any event.
4. Ms. West is self-represented in this dispute. WTG is represented by a manager, LM.

JURISDICTION AND PROCEDURE

5. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims under section 118 of the *Civil Resolution Tribunal Act (CRTA)*. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. These are the CRT's formal written reasons.
6. 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. 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.
7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.
8. The Employment Standards Branch has exclusive jurisdiction over statutory entitlements under the *Employment Standards Act*. However, an employee is only prevented from bringing a civil action like this one when the employee is seeking to enforce a right that is only available under the *Employment Standards Act*. The employee may still make a claim under the parties' contract or under the common law, such as through a CRT dispute. See for example *Bellagamba v. International*

Tentnology Corp., 2018 BCCRT 549. I find Ms. West’s claim for wrongful dismissal arises under the common law, so the CRT has jurisdiction to resolve this dispute.

Allegations against R

9. In her dispute application, Ms. West says she wants someone to “do something” about R, who worked for WTG’s client, COA. Ms. West says that at WTG’s jobsite, R engaged in conduct toward her that was racist, discriminatory, and upsetting.
10. Since R is not a party to this dispute, and does not work for WTG, the CRT has no authority to make an order against them in this dispute. So, I make order about R in this decision.

ISSUES

11. The issues in this dispute are:
 - a. Did WTG wrongfully dismiss Ms. West?
 - b. If so, is Ms. West entitled to her claimed \$2,850 in damages?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, Ms. West, as the applicant, must prove her claims on a balance of probabilities. I have read the parties’ submitted evidence and arguments, but refer only to what I find relevant to provide context for my decision.
13. There is no evidence that the parties had a written employment contract. Ms. West provided copies of pay stubs showing that she was paid \$30 per hour as a traffic flagger. On January 30, 2023, Ms. West signed a document titled, “Three Month Probation Clause.” Based on that document, and the parties’ submissions, I infer that Ms. West started working for WTG on January 30, 2023.
14. Ms. West does not specifically say what her claimed \$2,850 is for. She says she was subjected to racist conduct at the jobsite by R, who swore and shouted at her. She

says that WTG's manager then yelled at her, terminated her employment, and left her alone on the road. Ms. West says she was then harassed by a truck driver. Ms. West says her life was endangered because of these incidents.

15. Ms. West also says that after firing her, WTG then discouraged other flagging companies from hiring her, so she could not obtain alternate employment.
16. WTG denies these allegations. WTG says that on April 5, 2023, the jobsite crew complained that Ms. West seemed confused and did not do the requested work. WTG provided an incident report from manager LM, dated April 5, 2023. The incident report says that when LM arrived at the jobsite, Ms. West seemed confused about what was needed, so LM took over the work and completed it, and Ms. West went home. LM wrote that later that day, Ms. West posted on Facebook that R was a racist who bullied her.
17. WTG says Ms. West was fired on April 6, 2023, because of the Facebook post.
18. As noted above, Ms. West says she was fired at the jobsite on April 5. WTG says it fired Ms. West on April 6 because of the Facebook post. I accept WTG's evidence on this point for 2 reasons.
19. First, WTG says that after leaving the jobsite on April 5, Ms. West drove home in WTG's truck. Ms. West did not dispute this point. I find it unlikely that WTG would allow Ms. West to drive home in its truck if had already fired her.
20. Second, WTG provided copies of Ms. West's Facebook posts. In these posts, Ms. West says she planned to "file a grievance." She also wrote that WTG said she was fired but then apologized and hired her back. I find these posts do not suggest that WTG dismissed Ms. West on April 5. Rather, I find Ms. West was dismissed on April 6, 2023, after she made the Facebook posts.
21. If the employer shows just cause, it may dismiss an employee without notice or pay in lieu of notice. See *Panton v. Everywoman's Health Centre Society (1988)*, 2000 BCCA 621 at paragraph 24. Just cause is conduct that is seriously incompatible with

the employee's duties, goes to the root of the employment contract and fundamentally strikes at the employment relationship (see *Panton* at paragraph 25). Put another way, the test for just cause is whether the employee's misconduct amounts to an irreparable breakdown in the employment relationship. See *McKinley v. BC Tel*, 2001 SCC 38 and *Steel v. Coast Capital Savings Credit Union*, 2015 BCCA 127 at paragraphs 27 to 28.

22. If an employer has dismissed an employee without notice, it bears the burden of proving just cause. See *Hawkes v. Levelton Holdings Ltd*, 2012 BCSC 1219, at paragraph 28, affirmed 2013 BCCA 306.

23. Based on the Facebook posts in evidence, I find WTG has established that it had just cause to terminate Ms. West's employment. In her Facebook posts, Ms. West described the incident with R, identifying that R worked for WTG's client COA. She also wrote:

- She could have sued LM.
- WTG treated her like "s**t."
- R lied, was a "racist piece of s**t", and a "f**kin dick head."
- COA's workers "can go f**k themselves they think they are all entitled f**kin a**holes."

24. Ms. West provided no evidence, such as witness statements, to support her version of events (which WTG disputes). However, even if I accepted Ms. West's version of events, I find that by making the above comments about WTG and its client in public social media posts, Ms. West's conduct was seriously incompatible with her duty to her employer. I find that by publicly criticizing and swearing about her employer, its client, and its client's employee, Ms. West's conduct fundamentally damaged the employment relationship.

25. An employee's off-duty conduct can be cause for summary dismissal where the conduct interferes with and prejudices the employer's business interests or its reputation with the public. See *Klonteig v. West Kelowna (District)*, 2018 BCSC 124 at paragraph 67.
26. I find that Ms. West's Facebook comments prejudiced WTG's business interests, particularly because she publicly criticized WTG's client. So, based on the case law set out above, I accept that WTG had just cause to dismiss Ms. West.
27. For these reasons, I find Ms. West is not entitled to any damages arising from that dismissal. I dismiss her claims.
28. 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. As Ms. West was unsuccessful, and paid no CRT fees, I order no reimbursement. WTG is the successful party. It paid no CRT fees. WTG claimed \$1,500 in dispute-related expenses, but provided no receipts or particulars for these expenses. From the documents WTG provided, it is not clear what it would have paid for. So, I dismiss this claim for dispute-related expenses.

ORDER

29. I dismiss Ms. West's claims. I dismiss WTG's claim for dispute-related expenses.

Kate Campbell, Vice Chair