



Civil Resolution Tribunal

Date Issued: May 28, 2024

File: SC-2023-006429

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Alkan Air Ltd. v. Cunningham*, 2024 BCCRT 486

BETWEEN:

ALKAN AIR LTD. and LACIA KINNEAR

APPLICANTS

AND:

LANE CUNNINGHAM

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about employee training expenses. The applicant, Alkan Air Ltd. (Alkan), says it provided flight training to the respondent, Lane Cunningham, under an agreed \$18,000 training bond. The other applicant, Lacia Kinnear, is Alkan's Chief Operating Officer.

2. Alkan says that under the bond, it credited Mr. Cunningham 1/12th of the \$18,000 bond for every completed month of employment. Alkan says that Mr. Cunningham resigned after only working 8 months, leaving \$6,000 owing. It says that, after accounting for deductions from Mr. Cunningham's final paycheck, Mr. Cunningham still owes \$3,300.30. Ms. Kinnear did not say why Mr. Cunningham is liable to her personally. The applicants both claim the balance owing.
3. Mr. Cunningham denies liability. He says the training was unnecessary, unreasonable, and the bond itself excessively large. He also says the bond agreement is not binding for various reasons. I address the specific arguments below.
4. An Alkan employee represents the applicants. Mr. Cunningham represents himself.
5. For the reasons that follow, I find Alkan as proven its claim. I dismiss Ms. Kinnear's claim.

JURISDICTION AND PROCEDURE

6. 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). Section 2 of the CRTA 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.
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. 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.
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.

9. Where permitted by section 118 of the CRTA, 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

10. The issue in this dispute is whether Mr. Cunningham must pay the applicants any of the claimed \$3,300.30 training bond balance.

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicants must prove their 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.
12. The parties signed a September 29, 2021 employment contract. Under its terms, Mr. Cunningham agreed to work as a full-time, permanent pilot for Alkan.
13. The parties also signed a separate training agreement. It said that Alkan would pay training fees of \$18,000. The parties also refer to this payment as a training bond. The agreement said the fees were for training in Alkan's business generally and Mr. Cunningham's role as a "BE02D First Officer" specifically. It is undisputed that the term BE02D refers to a type of aircraft license or qualification.
14. The training agreement specified terms about repayment of the bond. It said that if Mr. Cunningham resigned, he would repay the full \$18,000, minus \$1,500 for each month of employment completed following signing of the agreement. The agreement also said that Mr. Cunningham would not have to repay the bond following the 12-month anniversary of completing the "Pilot Check Proficiency Check Ride". This agreement also required Mr. Cunningham to stay an employee at the time of the check.
15. There is no indication that Ms. Kinnear was a party to the employment agreement or training agreement. There is also no indication she acted outside her role as an

employee or agent of Alkan in this dispute. She did not explain why Mr. Cunningham would be personally liable to her. For those reasons, I dismiss her claim, leaving only Alkan's claim.

16. I find it undisputed that Alkan provided the training to Mr. Cunningham, though he disputes its necessity and reasonableness, as discussed below. Mr. Cunningham subsequently resigned from Alkan by email on June 11, 2022. At the time he said he had accepted an offer elsewhere.
17. Alkan's June 27, 2022 internal emails show that it calculated that Mr. Cunningham still owed \$6,000 under the bond. It is undisputed that Alkan deducted \$2,699.70 from Mr. Cunningham's final paycheck as partial payment of the bond. Alkan subsequently requested payment of the balance of \$3,300.30 in letters and emails dated June 22, 27, and August 10, 2022, and emails dated January 10 and 11, 2023. Mr. Cunningham did not make the requested payment.
18. I will first consider whether the training agreement bound Mr. Cunningham. Mr. Cunningham says that such agreements limit employment and should be unenforceable. I respectfully disagree. The CRT has previously upheld similar agreements and found them to be common in the industry. See, for example, a vice chair's decisions in *Northern Thunderbird Air INC. v. Anderson*, 2018 BCCRT 915 at paragraph 13 and *ORCA AIRWAYS LTD v. Adam*, 2018 BCCRT 788.
19. Mr. Cunningham says the training agreement is unenforceable because he signed it under duress. To prove duress, Mr. Cunningham must first establish that Alkan exerted pressure to such a degree that he did not truly consent to the contract. There must be an unfair, excessive, or coercive element to the pressure. In considering whether duress exists, the CRT may consider whether Mr. Cunningham objected, whether he had another legal course of action available, and whether he took steps to avoid the contract when he could. See *Dairy Queen Canada, Inc. v. M.Y. Sundae*, 2017 BCCA 442 at paragraphs 52 to 54.

20. Mr. Cunningham says he felt pressured to sign the training agreement because he had incurred moving expenses to work for Alkan. Mr. Cunningham says that 2 months after his hiring, Alkan told him had to sign the training agreement. He says that Alkan's chief pilot told him that if he did not sign the training agreement, Alkan would terminate his employment.
21. I find this falls short of duress. There is no independent evidence that Mr. Cunningham signed the training agreement under protest. There is no indication that Mr. Cunningham took steps to avoid the training agreement, except for refusing to pay the alleged balance owing after leaving Alkan. Further, I find his recollection contradicted by the fact that he signed the employment agreement on September 29 and the training agreement on October 4, 2021. I do not find him to be a reliable historian on this particular issue. I find it unproven that Alkan "sprung" the training agreement on him.
22. Mr. Cunningham also says that the training agreement is unenforceable because of a lack of consideration. He says he did not require the training offered. I find this unproven as Mr. Cunningham's own evidence, including photos of his license, shows he lacked a BE02D license until after he started training with Alkan. Further, Alkan's training included learning about Alkan generally, which I find would have been reasonably necessary to work there.
23. Mr. Cunningham alleges that Alkan treated him unequally as other pilots did not have to sign the training agreement. I find this unproven by any independent documentary evidence.
24. Mr. Cunningham also says the bond amount was unreasonable. I find this unsupported by any evidence of industry standards and ultimately unproven. Further, Mr. Cunningham agreed to the bond amount in any event, regardless of whether it was objectively reasonable.
25. Mr. Cunningham also says that he flew "extensive hours", and Alkan should credit him more time under the training agreement, including time that exceeded federal

law. He also says Alkan benefitted from his status as a King-Air license holder. Ultimately, I find these factors irrelevant to the issue in this dispute. The training agreement only specifies months of employment as a means of reducing the training bond balance.

26. Finally, Mr. Cunningham says that due to “unforeseen circumstances” he could not participate in a training session held in Denver, Colorado. He says Alkan should be responsible for the cost of the missed training. I disagree as the agreement has no terms about missed sessions. Further, Mr. Cunningham was vague about the reason for missing training. So, I find it unproven that he was not responsible for being absent.
27. In summary, I find the training agreement is binding. I find that Mr. Cunningham resigned after 8 months, leaving \$6,000 owing under the bond and the training agreement’s terms. I find that after deductions from the final paycheck, Mr. Cunningham still owes \$3,300.30. I order him to pay this amount.
28. The *Court Order Interest Act* applies to the CRT. Alkan is entitled to pre-judgment interest on the debt of \$3,300.30 from June 11, 2022, the date of Mr. Cunningham’s resignation, to the date of this decision. This equals \$254.34.
29. Under section 49 of the CRTA and 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 dismiss Mr. Cunningham’s claim for reimbursement of a \$50 “court fee” in dispute-related expenses. I find Alkan is entitled to reimbursement of \$175 in CRT fees. Alkan did not claim any dispute-related expenses.

ORDERS

30. Within 30 days of the date of this order, I order Mr. Cunningham to pay Alkan a total of \$3,729.64, broken down as follows:
 - a. \$3,300.30 in damages for breach of contract,

- b. \$254.34 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

31. Alkan is entitled to post-judgment interest, as applicable.

32. I dismiss Ms. Kinnear's claims and Mr. Cunningham's claim for dispute-related expenses.

33. This is a validated decision and order. Under section 58.1 of the CRTA, 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.

David Jiang, Tribunal Member