

Small Claims Decisions

Besse v. Reach CPA Inc

Collection: Small Claims Decisions

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B E T W E E N :

KARLEE BESSE

APPLICANT

A N D :

REACH CPA INC.

RESPONDENT

A N D :

KARLEE BESSE

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about alleged wrongful dismissal. The applicant and respondent by counterclaim, Karlee Besse, was employed as an accountant by the respondent and applicant by counterclaim, Reach CPA Inc. (Reach), from October 12, 2021 to March 29, 2022. Miss Besse says Reach terminated her employment without just cause. She says she is entitled to \$1,371.60 for unpaid wages and \$4,166.67 for 1 month's severance pay in lieu of notice, for a total of \$5,538.27. However, she limits her claim to \$5,000, which is the Civil Resolution Tribunal's (CRT) small claims monetary limit.
2. Reach says it terminated Miss Besse's employment because she engaged in time theft. It says since it terminated her employment for cause, Miss Besse is not entitled to severance pay. Reach denies owing Miss Besse unpaid wages and counterclaims \$1,506.34 for the paid wages it says amounted to time theft. In addition, Reach says at the time it terminated Miss Besse's employment, she owed \$2,903 as the unforgiven part of an advance Reach made when she began working. After deducting \$1,806.27 from her final paycheck, Reach says Miss Besse still owes it \$1,096.73 for the advance. Reach's claims total \$2,603.07.
3. Miss Besse is self-represented. Reach is represented by its principal, FG.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. 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, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
5. 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, both parties of this dispute call into question the credibility, or truthfulness of the other. In the circumstances of this dispute, I find I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in

mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

6. 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 a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. 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.
8. The Employment Standards Branch has exclusive jurisdiction over statutory entitlements under the *Employment Standards Act* (ESA). However, the Employment Standards Regulation says the ESA does not apply to employee accountants or student accountants, so I find the ESA does not apply to Miss Besse here. In any event, I find Miss Besse's wrongful dismissal claim is not about potential statutory entitlements under the ESA. I find it is a claim that arises from her employment contract with Reach, which comes within the CRT's debt and damages jurisdiction under CRTA section 118.

Late Evidence

9. Reach submitted late evidence after the CRT's deadlines. Miss Besse was given an opportunity to review the evidence, but she did not provide any submissions on it. I find there is no prejudice in allowing this late evidence, so I allow it, which is consistent with the CRT's flexible mandate.

ISSUES

10. The issues in this dispute are:
 - a. Was Miss Besse wrongfully dismissed and is she entitled to \$4,166.67 for 1 month's severance pay in lieu of notice, or did Reach have just cause for terminating her employment?
 - b. Does Miss Besse owe Reach \$1,506.34 for time theft?
 - c. Is Miss Besse entitled to \$1,371.60 for unpaid wages?
 - d. Does Miss Besse owe Reach \$1,096.73 for the unforgiven part of the advance it made to her?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Miss Besse must prove her claims on a balance of probabilities (meaning “more likely than not”). However, where an employer alleges just cause in dismissing the employee, the employer bears the burden of proving any misconduct (see *Hawkes v. Levelton Holdings Ltd.*, 2012 BCSC 1219 at paragraph 28, affirmed 2013 BCCA 306). Reach must also prove its counterclaims to the same standard.
12. I have read all the parties’ submissions and evidence but only refer to the evidence and argument that I find relevant to provide context for my decision.
13. It is undisputed that around September 20, 2021, Reach and Miss Besse entered into an employment agreement under which Miss Besse would work remotely from home. On October 12, 2021, Miss Besse’s first day of work, the parties signed another agreement setting out terms under which Reach would forgive an advance it made Miss Besse to purchase home office equipment and pay her Chartered Professional Accountant (CPA) Professional Education Program fees. More on this below.
14. In February 2022, Miss Besse began having weekly meetings with her manager to help her better manage her files. She says she initiated the meetings because she felt unproductive and that she was not performing as well as she should have been. On February 21, 2022, Reach installed a time-tracking program called TimeCamp on Miss Besse’s work laptop.
15. On March 16, 2022, the parties met to discuss some of Miss Besse’s files that Reach said were over-budget and behind schedule, and they created a performance improvement plan. After the meeting, Reach says it became concerned about a timesheet entry Miss Besse had made for a file she had not worked on. Reach says FG then analyzed Miss Besse’s TimeCamp data between February 22, 2022 and March 25, 2022 and found 50.76 unaccounted hours that Miss Besse had reported on her timesheets but did not appear to have spent on work-related tasks.
16. The parties met on the morning of March 29, 2022, and FG explained his analysis of Miss Besse’s timekeeping, including his concerns about the unaccounted hours. FG acknowledged Miss Besse might feel like she was on the spot and offered her time to consider the information and get back to him. Miss Besse declined that opportunity. Later that day, the parties met again and Reach terminated Ms. Besse’s employment. None of this is disputed.

Wrongful dismissal or just cause for terminating employment

17. The test for just cause is whether an employee’s misconduct amounts to an irreparable breakdown in the employment relationship. Each case is decided on a contextual analysis of the facts to determine if dismissal is proportionate to the misconduct proven by the evidence (see *McKinley v. BC Tel*, 2001 SCC 38 and *Steel v. Coast Capital Savings Credit Union*, 2015 BCCA 127 at paragraphs 27 and 28).

18. Reach says its analysis of Miss Besse's timesheets and TimeCamp data identified irregularities between her timesheets and the software usage logs. Reach submitted videos showing how TimeCamp tracked Miss Besse's time and activity. It says the videos prove Miss Besse engaged in time theft by recording work time in her timesheets that was not tracked by TimeCamp.
19. In response, Miss Besse says she found TimeCamp difficult to use and she could not get the program to differentiate between time spent working and time spent on the laptop for personal use. The parties agree Miss Besse was allowed to use her work laptop for personal use during personal time.
20. The videos show where an employee opens a document or accesses a client file, TimeCamp records when and for how long they had the document open or were in the file. The videos show TimeCamp captured the detail of each of Miss Besse's activities which Reach could then use to distinguish between work and non-work activities. For example, if Miss Besse had a streaming service like Disney Plus open, TimeCamp recorded its electronic pathway and how long the service was accessed. As this was not activity associated with client work, Reach would classify it as personal. Similarly, if she accessed a client file, used software associated with client work, or printed client documents, TimeCamp recorded those electronic pathways and the time spent on each task, and Reach classified this as work activity. Miss Besse did not dispute the video evidence or Reach's classification of her activities.
21. Based on this evidence, I find Miss Besse did not have to take steps to get TimeCamp to differentiate between her work and personal activities once she was logged onto the program. I find TimeCamp automatically recorded activities in such a way that Reach could identify and classify them as work or non-work related. I also find the videos show that as tracked in TimeCamp, Miss Besse did not work on files she recorded time for in her timesheets, leading to the unaccounted hours. Miss Besse says she could not explain the 50.76 unaccounted hours since she did not fully understand how to use TimeCamp. I find this does not matter given TimeCamp's automatic tracking functionality described above. I accept the 50.76 figure based on Reach's calculation of time Miss Besse recorded in her timesheets less her work time recorded by TimeCamp.
22. Miss Besse also says she spent a significant amount of time working with paper copies of client documents that would not have been captured by TimeCamp. She says she did not tell Reach she was working in hard copy because she "knew they wouldn't want to hear that" and she was afraid. Reach provided TimeCamp data of Miss Besse's printing activity. It says the time Miss Besse spent printing shows she could not have printed the large volume of documents she would have needed to work on in hard copy. Reach also says even if she had been working on files in hard copy, she would have had to enter information into the software at some point, which the TimeCamp data did not indicate occurred.

23. Even if I accept Miss Besse was working in hard copy most of the time, there is no evidence she uploaded her work onto Reach's electronic system, or otherwise demonstrated to Reach that she spent any significant amount of time performing work-related tasks in connection with the 50.76 unaccounted hours. So, I accept Reach's explanation that Miss Besse's printing volume did not add up and that she did not upload work she did in hard copy.
24. Overall, for the reasons above, I find TimeCamp likely accurately recorded Miss Besse's work activity and that there were 50.76 unaccounted hours recorded on Miss Besse's timesheets.
25. In the video recording of the parties' morning meeting on March 29, 2022, Miss Besse appears composed, if quiet. I acknowledge the meeting was difficult for Miss Besse and that she felt "backed into a corner". In her submissions, Miss Besse says she thought it would be easier if she just told FG what she thought he wanted to hear in the hope that he would see she was struggling and needed more support. However, I find it difficult to accept she would not have taken the time Reach offered her to reflect on the allegation raised and to give her side of the story if she thought she had done nothing wrong, even if she was afraid. Instead, when confronted with information about Reach's timekeeping analysis, Miss Besse said "Honestly, I don't really think I need time to look at it, it's pretty... like, you can't fight the time [...]" She went on to say "Clearly, I've plugged time to files that I didn't touch and that wasn't right or appropriate in any way or fashion, and I recognize that and so for that I'm really sorry [...]" and repeated later "Clearly, it's, I've plugged hours that I shouldn't have plugged to files um when I wasn't working on them and like, I can't hide that" (reproduced as spoken).
26. For the reasons above and based on the evidence before me, I find Reach has proven Miss Besse engaged in time theft between February 22, 2022 and March 25, 2022. Time theft in the employment context is viewed as a very serious form of misconduct (see for example *Retail, Wholesale Department Store Union v Yorkton Cooperative Association*, 2017 SKCA 107 at paragraph 27). Given that trust and honesty are essential to an employment relationship, particularly in a remote-work environment where direct supervision is absent, I find Miss Besse's misconduct led to an irreparable breakdown in her employment relationship with Reach and that dismissal was proportionate in the circumstances. So, I find Reach had just cause to terminate Ms. Besse's employment.
27. Based on my conclusion above, I find Miss Besse was not entitled to notice of her dismissal or to the claimed \$4,667.67 for severance pay in lieu of notice. I dismiss this part of her claim.

Time theft

28. Since I find Reach had just cause for terminating Miss Besse's employment for time theft, it follows that it is entitled to compensation for the 50.76 unaccounted hours. Reach says Miss Besse's annual salary during the period of the time theft was \$55,000. I note the September 2021 employment agreement sets out an annual salary of \$50,000. However, based on Miss Besse's

final two paystubs in evidence, I find at that time her salary was \$55,000. The employment agreement indicates Miss Besse was required to work at least 2,000 hours a year, which works out to an hourly rate of \$27.50. Multiplied by 50.76 hours, this amounts to \$1,395.90. Reach then added \$79.57 for Canadian Pension Plan contributions and \$30.88 for Employment Insurance premium contributions, for a total of \$1,506.34. Miss Besse did not dispute Reach's calculation. In these circumstances, I find Reach's calculation reasonable, and I allow its claim for \$1,506.34.

Miss Besse's claim for unpaid wages

29. Miss Besse also claims \$1,371.60 for unpaid wages. She says Reach improperly withheld her \$1,806.27 final paycheck to cover some of the unforgiven part of the advance it provided her at the start of her employment.
30. Reach says it was entitled to withhold Miss Besse's final paycheck under the parties' October 12, 2021 advance agreement. The advance agreement says Reach would forgive 1/24 of the \$3,666.95 advance for every month Miss Besse was employed. If Miss Besse's employment terminated before the advance was fully forgiven, the agreement requires her to "otherwise repay the Employer should the last paycheck be insufficient". It is undisputed that at the time Reach terminated Miss Besse's employment, the unforgiven part of the advance was \$2,903.
31. However, Miss Besse argues the advance agreement is not binding. She says she had already signed the September 2021 employment agreement and started work when Reach gave her the advance agreement on October 12, 2022. She says Reach did not provide her any additional consideration in exchange for entering into the advance agreement so she does not owe any outstanding amounts.
32. I find the advance agreement was not a new agreement but rather a contractual amendment to the September 2021 employment agreement. This is because the video evidence of Miss Besse's interview with Reach shows the parties talking about if and how Reach would pay for the CPA Professional Education Program fees. So, I find the parties made the advance agreement to give effect to those interview discussions after Miss Besse confirmed the program fees. The courts have held that fresh consideration (something of value given by each party) is not required to enforce a contractual amendment (see *Rosas v. Toca*, 2018 BCCA 191). So, I find the advance agreement bound the parties, and Reach was entitled to withhold the entire amount of Miss Besse's final paycheck to cover part of the unforgiven \$2,903.
33. Given my finding above, I dismiss Miss Besse's claim for unpaid wages.

Reach's claim for the unforgiven part of the advance

34. Based on my findings above, I conclude Reach is entitled to \$1,096.73 since after withholding her final paycheck that amount was still outstanding under the advance agreement. I allow this part of Reach's claim.

35. The *Court Order Interest Act* (COIA) applies to the CRT. Reach is entitled to pre-judgment interest on \$2,603.07 from March 29, 2022, the date Reach terminated Miss Besse's employment to the date of this decision. This equals \$28.82.
36. 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 find Reach is entitled to reimbursement of \$125 in CRT fees. Reach did not claim any dispute-related expenses. As she was unsuccessful, I dismiss Miss Besse's claim for reimbursement of CRT fees and dispute-related expenses.

ORDERS

37. Within 30 days of the date of this order, I order Karlee Besse to pay Reach CPA Inc. a total of \$2,756.89, broken down as follows:
- a. \$2,603.07 in debt and damages for time theft and the outstanding part of the advance Reach made to Miss Besse,
 - b. \$28.82 in pre-judgment interest under the COIA, and
 - c. \$125 in CRT fees.
38. I dismiss Miss Besse's claims.
39. Reach is entitled to post-judgment interest under the COIA as applicable.
40. 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.

Megan Stewart, Tribunal Member