Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Engineer et al v. Bell Mobility Inc.*, 2019 BCCRT 1159

B E T W E E N :

Mukesh Engineer and Shashi Engineer

APPLICANTS

A N D :

Bell Mobility Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Julie K. Gibson

INTRODUCTION

1. The applicants Mukesh Engineer and Shashi Engineer say that the respondent Bell Mobility Inc. wrongly billed them for two cellular phone lines that they did not request or use.

2. The respondent says the applicants incurred the charges and then failed to make timely payment of their account. The respondent says it suspended the applicants' lines for non-payment. The respondent says the applicants were removed as authorized users of the account by Richmond Cabs Ltd. (RCL), the account holder who eventually paid the outstanding charges. The respondent asks that the dispute be dismissed with costs.

3. The applicants say they have suffered the following losses:

    a. loss of their cellular phone numbers,

    b. loss of data on their phone that could not be retrieved because the account was suspended abruptly,

    c. an approximate expense of $2,000 to buy replacement phones and have them activated, and

    d. negative impact on their credit score.

4. The applicants claim a total of $5,474.96, broken down as:

    a. $1,904.69 in reimbursement for the charge for the inactive lines,

    b. $1,870.27 being the hardware cost for their new phones,

    c. $1,000 in punitive damages, and

    d. $600 in legal fees.

5. While the applicants did not formally waive the amount of their claim over $5,000, I note the tribunal's monetary jurisdiction is limited to $5,000.

6. The applicants are self-represented. The respondent appears through in-house legal counsel, Kyle Elliott.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

8. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

9. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

10. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:

    a. order a party to do or stop doing something;

    b. order a party to pay money;

    c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

11. The issues in this dispute are whether the applicants are entitled to have the respondent pay them for

    a. $1,904.69 in reimbursement for the charge for two phone lines they say were "inactive",

    b. $1,870.27 being the hardware cost for their new phones,

    c. $1,000 in punitive damages, and

    d. $600 in legal fees.

EVIDENCE AND ANALYSIS

12. In this civil claim, the applicants bear the burden of proof on a balance of probabilities. That is, they must prove it is more likely than not that the respondent overcharged them for the two phone lines and is otherwise responsible to pay their claimed damages. I have reviewed the evidence and submissions but only refer to them as I find necessary to provide context for my decision.

13. Mukesh Engineer (ME) is an owner-operator of a taxi, and a former taxi operator for RCL. Shashi Engineer (SE) is a former manager with RCL.

14. In 2014, ME started working at RCL. As part of his work, Mr. M. Engineer was required to have a cell phone plan through the respondent's corporate plan with RCL. The applicants used cell phones under account number ending in 1841.

15. Form November 2015 to December 2016, the applicants used phone numbers ending in 0422, and 8700 for a combination of business and personal use.

16. From November 2015 to September 2016, the respondent also billed the applicants for numbers ending in 8756 and 7645, respectively. The applicants say they did not request or use these two lines.

17. On November 17, 2015, SE, on behalf of RCL, signed a Corporate Account Agreement with the respondent for an initial term ending October 30, 2018, for a minimum of 92 activated devices for RCL.

18. The Corporate Account Agreement contains an arbitration clause which says that all disputes under it shall be determined through arbitration. Neither party raised the arbitration clause in submissions. I infer that the parties mutually agree to resolve their dispute here, despite the arbitration clause.

19. The respondent filed documents showing that

    a. SE requested activation of 7645 and 8700 on December 2, 2015, and

    b. ME requested activation of 0422 and 8756 on November 30, 2015.

20. In January 2016, the applicants say that they noticed that they had been billed in error for the inactive lines. They say they tried to resolve the issue, to no avail.

21. The respondent says the 8756 line was cancelled February 1, 2016, that no further charges were incurred for this line after this date.

22. On December 19, 2016, the applicants told the respondent that they refused to pay for 8756 and 7645. That day, the respondent suspended service to those lines.

23. I will now address the evidence about the two contested phone lines.

7645

24. Based on the signed contract filed in evidence by the respondent, I find that, on December 2, 2015, SE activated 7645 for a 36-month period from that date to December 1, 2018. My finding is contrary to the applicants' assertion that they did not request or use this number.

25. The monthly bill dated December 2015 shows that this number was used, as shown in a list of calls. A $400 credit called a “port-in adjustment” is also applied on this account.

26. The monthly bills dated January-April 2016 show monthly charges for this line, but no usage records or additional charges.

27. The respondent’s internal log documents contain an April 14, 2016 note that says that SE and someone named AM activated line 7645 temporarily until line 0422 was activated but that 7645 remained active.

28. On April 22, 2016, this temporary activation agreement appears to be confirmed by a former employee of the respondent, AM. There is discussion about a “port in credit” to be applied.

29. The May 2016 bill shows charges but no usage for this number.

30. There is also a $400 credit for a “port in” adjustment listed on this bill.

31. The June-August 2016 bills again show monthly charges but no usage.

32. The September 2016 bill applies a $593.42 credit against the charges previously issued for 7645. I find that this credit refunds the charges from January to September 2016 for this number.

33. From the October 2016 bill onward, based on the documents filed in evidence before me, the account is no longer charged for 7645.

34. On October 3, 2016, a note appears in the internal log document saying that the applicants are to be removed from the RCL account.

35. On November 24, 2016, the respondent continues to communicate with ME to provide an explanation about what has happened to the account. The note says that the “port in” credits were applied (on the December 2015 and May 2016 invoice)” at $400 each.

36. Based on the invoices and respondent's internal log documents, I find that the respondent credited the account for charges made for periods when this phone line was not in use. As well, the promised $800 "port in" credits were applied. Given these findings, I dismiss the applicants' claim that the respondent owes any reimbursement for charges associated with this phone number.

8756

37. The respondent's internal log documents show that ME authorized the new 8756 number on November 26, 2015.

38. On February 3, 2017, the respondent's internal log document shows that its Executive Advisor, GF, reviewed the matter and found that the 8756 number was cancelled January 1, 2016 and that all adjustments were completed, as shown on the February 21, 2016 bill. Based on my review of the extensive billing records, I agree that refunds of charges were made for this number on the February 21, 2016 bill. As well, I find no evidence of overcharges that were not reimbursed by the respondent.

39. Based on the documents in evidence, I find that, on December 29, 2017, an RCL employee MAU made a payment of $1,940.69.

40. At that point, the balance on account 1841 was $0.

41. The applicants filed a chart that they prepared, showing what they describe as overpayments on the account. I have reviewed the payments included in the chart. I find that the applicants have not proven that they made any overpayments that were not already refunded to them by the respondent.

42. As well, given my findings that the applicants did not pay the $1,940.69, I find they are not entitled to reimbursement for those charges. If there was a dispute about the $1,940.69, it would be between RCL and the respondent.

43. The applicants also submitted that, because they received supportive comments on social media consistent with their concerns about the respondent, their claims should be allowed. I disagree. Social media comments about commercial dealings between non-parties and the respondent are not relevant to this contractual dispute.

44. The applicants say they are entitled to a "new hardware cost" of $1,870.27 for two phones. The only evidence to support this claim is a Rogers invoice, showing charges for new devices and an "early upgrade" fee charged to the applicants after they left RCL. The fact that the applicants went on to use a different service provider does not make the respondent legally responsible to pay for new devices or early upgrades. I dismiss the applicants' claim for new hardware costs.

45. I also find that the applicants did not prove that wrongful conduct by the respondent caused them to lose their cell phone numbers, the data on their phones or the negative impact on their credit score. I dismiss these aspects of their claims as they are not supported by the evidence.

46. The applicants claim $1,000 in punitive damages. Punitive damages are intended to punish extreme conduct worthy of condemnation and are rare in contract cases: *Vorvis* v. *Insurance Corporation of British Columbia*, [1989] 1 SCR 1085. The tribunal has jurisdiction to award punitive damages, but this remedy is reserved for malicious or high-handed extreme conduct: see *Benda* v*. Cao et al*, 2018 BCCRT 323.

47. I understand that the applicants are frustrated by the time they spent with the respondent to have the various credits applied to their accounts. Having said that, based on the evidence before me, I find that the applicants have not proven that the respondent treated them in a malicious or high-handed way. I dismiss the applicants' claim for punitive damages.

48. I dismiss the applicants' claim for legal fees because they were unsuccessful. As well, tribunal rule 123 sets out that, except in extraordinary cases, the tribunal will

not order a party to pay legal or representative fees for the dispute. This is not an extraordinary case.

49. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. The successful respondent did not pay any tribunal fees nor claim dispute-related expenses, so I make no order for them.

ORDERS

50. I dismiss the applicants' claims and this dispute.

Julie K. Gibson, Tribunal Member