

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Beaver v. Slic Laser Inc.*, 2018 NSSM 75

Claim No: SCCH 469909

BETWEEN:

Kayla Beaver

Claimant

-and –

Slic Laser Inc.

Defendant

Kayla Beaver appeared on her own behalf.

Darla Richard appeared for the Defendant, Slic Laser Inc.

Editorial Note: The electronic version of this judgment has been edited for grammar, punctuation and like errors, and addresses and phone numbers have been removed.

DECISION

(1) This matter was set for hearing on January 25, 2018, after at least one previous adjournment. The Claimant, Kayla Beaver, was employed by the Defendant, Slic Laser Inc., a laser hair removal business in Sackville, Nova Scotia. A dispute arose over payment of previous wages and the Claimant filed a complaint with the Labour Standards Division of the Nova Scotia Department of Labour and Advanced Education. Following that, she commenced her claim in Small Claims Court. When she initially appeared before me on January 11, 2018, I expressed concern with Ms. Beaver's having both matters outstanding. As requested, she provided confirmation the matter at Labour Standards has been withdrawn. The matter may now proceed on its merits.

(2) Following the hearing on January 25, I reserved judgment, although I provided oral reasons for at least part of the relief ordered in this matter. On reflection, it is appropriate to provide written reasons for judgment.

Issues

- Has the Claimant, Kayla Beaver, proven her claim for lost wages, reimbursement of the gift certificate and return of certain items?
- Has the Defendant, Slic Laser Inc. proven entitlement for services provided to the Claimant?

(3) In order to address these issues in their entirety, it is necessary to allow certain amendments to the Notice of Claim and Defence.

Amendments

(4) During the hearing, it became clear the claim for wages was net of all deductions. The evidence proves only the hours worked. The amount of statutory deductions, such as income tax, CPP and EI, were not conclusively proven before me. Likewise, there is no evidence they were paid. Furthermore, both parties are jointly and severally liable to ensure the contribution is made. Both parties acknowledge the claim ought to have included vacation pay at 4%. The claim for damages by the Claimant is amended to include vacation pay and provide for gross wages rather than net of statutory deductions.

(5) In addition to the return of an exercise ball chair, it was agreed there were other nominally valued items, such as slippers and a cup, to be returned.

(6) Ms. Richard, on behalf of the Defendant alleges she performed hair removal services for Ms. Beaver personally, as well as for her boyfriend by her request. While no defense has been filed she seeks reimbursement for these services by way of a set off against the initial claim.

(7) The pleadings are amended accordingly.

Findings

(8) I have summarized my findings below based on the evidence presented.

Wages

(9) Ms. Beaver was employed through a program sponsored by Employment Nova Scotia. Essentially, the provincial government paid the Defendant while the Defendant, paid the Claimant her wages. It is agreed by both parties Ms. Beaver worked from October 16-20 and October 24-25, 2017. There is disagreement whether she worked 50 hours or 48.5 hours. I am satisfied on the evidence Ms. Beaver worked 50 hours at \$13.52 per hour including vacation pay. Therefore she is entitled to \$676.00.

(10) Both parties proposed slightly different figures for deductions. With statutory deductions such as income tax, Canada Pension Plan and Employment Insurance, the employee is liable if the remittance by her employer is not adequate. The judgment shall be for the gross amount.

Gift Certificate

(11) Ms. Beaver purchased a \$250 gift certificate for a private draw. Apparently ticket sales did not go well and the draw was not held. Notwithstanding that, the gift certificate was never delivered to the Claimant by the Defendant. While Ms. Richard states she will honour it, it is clear that will not happen. I find the Defendant was unjustly enriched by retaining the funds. I find the Defendant liable for \$250.00.

General Damages

(12) The Claimant has suffered inconvenience as a result of her wages and refund being withheld. The last pay was to be made by cheque while the others were made by direct deposit. Ms. Richard did not deliver the cheque. She insisted Ms. Beaver pick up the cheque and then made herself unavailable. In my view, this justified an award of general damages. I award \$100.

Prejudgment Interest

(13) Ms. Beaver has been without the use of the funds since October 2017. The Small Claims Court may award interest of up to 4% per annum. I award three months interest on \$926.00.

Personal Effects

(14) Ms. Beaver left on site an exercise ball chair, a pair of slippers and a mug. She may make arrangements with the Defendant to pick up the items. It is best if the items are left near the front of her premises.

(15) The Defendant shall allow the Claimant and anyone assisting her to remove the items from her place of business. Once the items are removed, the Claimant shall not remain there for any reason. The Defendant shall not impede her access or cause damage to the items. In the event the Defendant does not provide access within that time period, the Claimant may apply to the Small Claims Court for an execution order to recover those items. In that case, the Sheriff Fees will be borne by the Defendant upon execution.

Costs

(16) Ms. Beaver shall have her filing fee of \$99.70.

Defendant's Services

(17) Both parties acknowledge that Ms. Beaver availed herself of the services of the Defendant. Ms. Richard indicated the services would have cost approximately \$1100 inclusive of a 50% discount. No evidence has been provided to substantiate that rate. I have Ms. Richard's oral evidence to show what was performed. The services were

provided in the summer and fall. No mention was made of payment for those services.

(18) In light of the scant evidence, I do not accept Ms. Richard's evidence that she intended to be paid for all of those services at any given rate. Having rejected that rate, I am prepared to select an arbitrary amount. I fix a nominal sum of \$200 on those services to be set off against the Claim.

Summary

- In summary, the Claimant shall be awarded the following:

Wages earned:	\$676.00
(October 16-20, 2017 and October 24-25, 2017 50 hours at \$13.52 per hour)	
Refund of Gift Certificate not received	\$250.00
General Damages	\$100.00
Prejudgment Interest	\$ 9.00
Costs	<u>\$ 99.70</u>
Total	\$1134.70

(19) The Defendant, Slic Laser shall be entitled to a set off of \$200.00.

(20) Therefore, the Claimant shall have judgment against the Defendant for \$934.70. The Claimant shall also be entitled to her exercise ball chair, slippers and mug.

(21) An order shall issue accordingly.

Dated at Halifax, NS,
on January 29, 2018;

Gregg W. Knudsen, Adjudicator

Original:	Court File
Copy:	Claimant (s)
Copy:	Defendant(s)