



Citation: Bito Plumbing & Heating Ltd. (Re)
2018 BCEST 80

An appeal

- by -

Bito Plumbing & Heating Ltd.
("Bito" or the "Appellant")

- of a Determination issued by -

The Director of Employment Standards

pursuant to section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113 (as amended)

PANEL: Michelle F. Good

FILE NO.: 2018A/72

DATE OF DECISION: August 14, 2018

DECISION

SUBMISSIONS

Chi Hang Ip

on behalf of Bito Plumbing & Heating Ltd.

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “ESA”), Bito Plumbing & Heating Ltd. (“Bito” or the “Appellant”) has filed an appeal of a determination issued by the Director of Employment Standards (the “Director”) on May 25, 2018 (the “Determination”).
2. In the Determination, the Director found that Bito contravened section 18 of the *ESA* by failing to pay Ruban Thievendram (the “Employee”) regular wages in the amount of \$3,078.00; section 58 by failing to pay the Employee vacation pay in the amount of \$377.64; and section 21 by withholding \$1,515.00 for its business costs. The Director imposed section 88 interest in the amount of \$91.37. The Director also levied 2 separate administrative penalties against Bito for contravention of sections 18 and 21 of the *ESA*, totalling \$1,000.00, for a total amount found owing in the Determination of \$6,062.01.
3. Bito appeals the Determination contending the Director erred in law by identifying Bito as one and the same as Babito Plumbing & Heating (“Babito”).
4. This decision is based on the Appellant’s written submissions, the section 112(5) “record” that was before the Director at the time the decision was made, the Determination and the Reasons for the Determination.

ISSUE

5. Did the Director err in law?

ARGUMENT

6. Ms. Ip, on behalf of the Appellant, argues that the Director erred in law by rendering his decision as against Bito instead of Babito; that Bito escapes liability for the breaches of the *ESA* the Director found to have occurred, claiming that Babito was the employer, not Bito.

THE FACTS

7. The Director made a finding of fact that Mr. Thievendram was hired by Babito. The Director further found as fact that during the course of Mr. Thievendram’s employment Babito changed its name to Bito Plumbing and Heating and that Ms. Ip is listed as the sole Director.
8. The Director further found there was no evidence to support Ms. Ip’s submission in the first instance that Mr. Thievendram’s employment had been terminated, as alleged, on July 3 2017. Rather the

Director found that while the name and ownership of the company changed, Mr. Thievendram was employed by Bito without interruption until October 24, 2017.

9. The Director clearly found as fact that Bito and Babito were one and the same employer and that the Employee had been continuously employed by it.

ANALYSIS

10. Section 114 of the *ESA* provides that at any time after an appeal is filed and without a hearing of any kind the Tribunal may dismiss all or part of the appeal if the Tribunal determines that any of the following apply:

- 114 (1) At any time after an appeal is filed and without a hearing of any kind the tribunal may dismiss all or part of the appeal if the tribunal determines that any of the following apply:
- (a) the appeal is not within the jurisdiction of the tribunal;
 - (b) the appeal was not filed within the applicable time limit;
 - (c) the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;
 - (d) the appeal was made in bad faith or filed for an improper purpose or motive;
 - (e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;
 - (f) there is no reasonable prospect that the appeal will succeed;
 - (g) the substance of the appeal has been appropriately dealt with in another proceeding;
 - (h) one or more of the requirements of section 112 (2) have not been met

11. Section 112(1) of the *ESA* provides that:

- 112 (1) Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds:
- (a) the director erred in law;
 - (b) the director failed to observe the principles of natural justice in making the determination;
 - (c) evidence has become available that was not available at the time the determination was being made.

Error of law

12. *In Gemex Developments Corp v. British Columbia (Assessor of Area 12 – Coquitlam)* [1998] B.C.J. No. 2275 (B.C.C.A.) the Court of Appeal defined “error of law”. The Tribunal subsequently adopted that definition as articulated below:
1. a misinterpretation or misapplication of a section of the Act [in *Gemex*, the legislation was the *Assessment Act*];
 2. a misapplication of an applicable principle of general law;
 3. acting without any evidence;
 4. acting on a view of the facts which could not reasonably be entertained; and
 5. adopting a method of assessment which is wrong in principle.
13. Unless the Director’s decision raises an error of law, the Tribunal does not have jurisdiction to reach factual conclusions that differ from the facts found by the Director: see *Britco Structures Ltd.*, BC EST # D260/03.
14. Ms. Ip, on behalf of Bito, appears to be re-arguing the position she took at the hearing before the Director that the Employer was Babito, not Bito. This was not supported on the facts at the hearing before the Director. The Director found that although there was a change of name of the business from Babito to Bito during the course of Mr. Thievendram’s employment, there was no termination of Mr. Thievendram’s employment on July 3, 2017. The Delegate found that Mr. Thievendram was continuously employed by Bito without interruption. Bito fails to identify any error of law on the part of the Director.
15. I am not persuaded the Director erred in law. I find this appeal has no reasonable prospect of success..
16. Pursuant to section 114(f) of the ESA, I dismiss the appeal.

ORDER

17. Pursuant to section 115 of the *ESA*, I order the Determination issued on May 25, 2018, be confirmed together with any further interest that has accrued under section 88 of the *ESA*.

Michelle F. Good
Member
Employment Standards Tribunal