



An appeal

- by -

Ahmad Zarei  
("Mr. Zarei")

- 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)

**TRIBUNAL MEMBER:** Carol L. Roberts

**FILE NO.:** 2018A/10

**DATE OF DECISION:** April 18, 2018

## DECISION

### SUBMISSIONS

Ahmad Zarei on his own behalf

### OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “ESA”), Ahmad Zarei has filed an appeal of a Determination issued by the Director of Employment Standards (the “Director”) on December 8, 2017.
2. On June 13, 2017, Mr. Zarei filed a complaint with the Director of Employment Standards alleging that Celine Supermarket Ltd. carrying on business as Persian Kebab and Groceries (“Celine”) contravened the *ESA* in failing to pay him wages.
3. Following a hearing, a delegate of the Director concluded that Celine had contravened sections 18, 40 and 58 of the *ESA* in failing to pay Mr. Zarei regular and overtime wages and annual vacation pay. The Director determined that Mr. Zarei was entitled to \$2,224.16, including interest. The delegate also imposed four administrative penalties in the total amount of \$2,000 for Celine’s contraventions of the *ESA*, for a total of \$4,224.16.
4. Mr. Zarei contends that the Director erred in law in making the Determination.
5. These reasons are based on Mr. Zarei’s written submissions, the section 112(5) “record” that was before the delegate at the time the decision was made, and the Reasons for the Determination.

### ISSUE

6. Whether or not Mr. Zarei has demonstrated any statutory ground of appeal.

### FACTS AND ARGUMENT

7. The delegate held a hearing into Mr. Zarei’s complaint on September 28, 2017. Mr. Zarei appeared on his own behalf along with an interpreter, Reza Zarei. Saeid Naderi appeared on behalf of Celine, along with his lawyer, Ali Dadkhah. With the consent of the parties and the approval of the delegate, Mr. Dadkhah also interpreted for Mr. Naderi. In agreeing to this arrangement, the delegate noted that Mr. Zarei also spoke Farsi and would notify the delegate of any concerns he had with the interpretation.
8. Briefly, on February 7, 2017, Mr. Zarei entered into a preliminary agreement with Mr. Naderi to operate Celine, a grocery store and restaurant business. The final agreement was never concluded.
9. According to Mr. Zarei, he informed Mr. Naderi that he was withdrawing from the partnership on February 17, 2017. He testified that Mr. Naderi accepted his decision and informed him he could continue working for Celine as an employee. Mr. Zarei testified about his duties and hours of work and provided the delegate with cheques he received from Celine.

10. Although Mr. Naderi did not dispute the work performed by Mr. Zarei, his position was that the work was performed as a partner in the business venture. Mr. Naderi contended that the parties were bound by the partnership agreement, the termination of which was prescribed by the terms of the agreement.
11. At issue before the delegate was the nature of Mr. Zarei's relationship with Celine, and, if he was an employee, what wages he was entitled to.
12. The delegate determined that the partnership ended at the end of March, not February 17, 2017, and that the work performed by Mr. Zarei prior to the opening of the store on March 2, 2017, was performed in his capacity as a business partner rather than as an employee. The delegate noted that the payments made by Celine to Mr. Zarei as of April 15, 2017, occurred after the parties agreed Mr. Zarei informed Mr. Naderi that he no longer wanted to be a partner. The delegate also noted that the payments made after April 15, 2017, recorded earnings as regular pay. Accordingly, the delegate determined that Mr. Zarei became an employee of Celine effective April 1, 2017. The parties agreed that Mr. Zarei's last day of work was May 18, 2017.
13. In response to the delegate's demand for employer records, Celine submitted a single page payroll report summary that both parties agreed was inaccurate. The delegate determined that because Mr. Zarei worked for less than three months, he was not entitled to compensation for length of service. The parties disagreed as to whether Mr. Zarei was fired or quit on May 18, 2017. The delegate was unable to find that Celine's version of events was more probable than Mr. Zarei's and concluded that Mr. Zarei's employment was terminated. The delegate also determined that Mr. Zarei was not a manager and was accordingly entitled to overtime wages. The delegate determined that Mr. Zarei was entitled to wages, overtime wages, and vacation pay as noted above.

## **ARGUMENT**

14. Mr. Zarei argues that the delegate erred in law in determining that the partnership agreement was in respect of the entire business rather than a small portion of the store; that is, a section of the grocery, not the entire deli section.
15. Mr. Zarei also makes a number of other arguments that are similar to those raised at the hearing, including the date he became an employee and his entitlement to wages.
16. Mr. Zarei further argues that the delegate failed to give sufficient weight to the evidence of two of his witnesses.

## **ANALYSIS**

17. Section 112(1) of the *ESA* provides that a person may appeal a determination on the following grounds:
- the director erred in law;
  - the director failed to observe the principles of natural justice in making the determination;

- evidence has become available that was not available at the time the determination was being made.
18. The Tribunal has consistently said that the burden is on an appellant to persuade the Tribunal that there is an error in the Determination on one of the statutory grounds. An appeal is not an opportunity to re-argue a case that has been fully presented and considered by the delegate.
19. Although Mr. Zarei appeared at the hearing with an interpreter, he says that due to the fact that English is not his first language and his unfamiliarity with quasi-judicial proceedings, he was unable to focus on the questions and provide appropriate responses. He also submits that, for the same reasons, he was unable to ask any questions in English. Had he done so, he asserts, he would have been able to clarify “many unclear and significant aspects.”
20. Mr. Zarei’s unfamiliarity with the hearing process and his English language limitations are not, in and of themselves, a basis for allowing an appeal. Mr. Zarei attended the hearing with an interpreter, and there is nothing in the record that suggests that Mr. Zarei had any difficulties expressing himself. I find therefore, that Mr. Zarei had a fair hearing, with an ability to present his case and respond to the evidence.
21. The Tribunal as adopted the following definition of “error of law” set out by the British Columbia Court of Appeal in *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)*, [1998] BCJ No. 2275 (BCCA):
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.
22. I am not persuaded that the delegate erred in law in interpreting the partnership agreement. The original agreement was drafted in Farsi by Mr. Zarei. A certified English translation of that agreement was submitted into evidence. The document was identified as a preliminary agreement to “expedite the preparation activities and the start of the store located at...” The subject of the contract is indicated to be “partnership in the preparation and equipping and completion of the above mentioned location...” Other references include “making the store operational,” the partners “will be continuously active in the store,” “supplying all the store’s needs.” An addendum to the agreement, dated February 12, 2017, refers to the purchase of kitchen supplies by Mr. Zarei.
23. I find that the delegate had sufficient evidence before him to arrive at the conclusion that the partnership agreement was in respect of the entire business operations rather than the three shelves of products he now asserts.

24. Many of Mr. Zarei's assertions on appeal are, in essence, that the delegate erred in his factual conclusions and submits that Mr. Naderi provided incorrect or false information to the delegate. I find that Mr. Zarei's arguments are largely those he made before the delegate and that he simply disagrees with the delegate's findings. The Tribunal has no authority to consider appeals based on alleged errors of findings of fact unless those findings amount to an error of law (*Britco Structures Ltd.* BC EST # D260/03). I find that the delegate's conclusions on these matters were all findings of fact, and are not subject to review on appeal unless they also amount to legal errors.
25. I find that in his 25 page Determination, the delegate fairly considered the evidence of both parties, made findings of fact and provided reasons for his conclusions. I find that his conclusions were made on the evidence before him and they were rationally supported by that evidence.
26. The delegate gave little weight to Mr. Zarei's witnesses because they both had claims for either outstanding wages or significant amounts of money against Mr. Naderi, demonstrating a possible bias against him. I find the delegate was entitled to discount the evidence of Mr. Zarei's witnesses, a decision which was supported with reasons. I find no error in his conclusion.
27. The appeal is dismissed.

## **ORDER**

28. Pursuant to section 114 of the *ESA*, I dismiss the appeal. Pursuant to section 115 of the *ESA*, the Determination, dated December 8, 2017, is confirmed in the amount of \$4,224.16, together with whatever interest may have accrued since the date of issuance.

---

**Carol L. Roberts**  
**Member**  
**Employment Standards Tribunal**