



Citation: Shirley Jones (Re)
2018 BCEST 65

An appeal

- by -

Shirley Jones

- 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: Carol L. Roberts

FILE NO.: 2018A/27

DATE OF DECISION: June 18, 2018

DECISION

SUBMISSIONS

Shirley Jones

on her own behalf

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (“ESA”), Shirley Jones (“Ms. Jones”) has filed an appeal of a Determination issued by Rachael Larson, a delegate (the “delegate”) of the Director of Employment Standards (the “Director”), on January 26, 2018.
2. Ms. Jones filed a complaint with the Director alleging that Dollarama L.P. (“Dollarama”) contravened the *ESA* in failing to pay her regular and overtime wages, annual vacation pay, statutory holiday pay, and compensation for length of service. Ms. Jones also alleged that Dollarama had made unauthorized deductions from her wages.
3. Following an investigation, the delegate concluded that Dollarama had not contravened the *ESA* and that no wages were owed.
4. Ms. Jones contends that the Director failed to observe the principles of natural justice in making the Determination and asked that the matter be referred back to the Director.
5. After receiving the appeal, the Tribunal’s Registrar sought the section 112(5) “record”, that is, all the material before the delegate pertaining to the complaint, including, but not limited to, Canada Post tracking information, corporate searches, payroll demands and investigation notes, from the Director. The delegate produced the record on March 23, 2018.
6. After receiving the record, Ms. Jones sought “phone calls to/from Dollarama Head Office’s Human Resources Department, between January to September 2017.” It appears that Ms. Jones is seeking these documents for the first time to support her contention that her hours of work were not calculated properly. The delegate submits that the record is complete.
7. Having reviewed the record, I am satisfied it is complete. There is no evidence that the delegate sought or received phone calls to or from Dollarama’s Human Resources department during the investigation.
8. These reasons are based on Ms. Jones’ written submissions, the section 112(5) record and the Reasons for the Determination.

ISSUE

9. Whether or not Ms. Jones has established any basis to interfere with the Director’s determination.

FACTS

10. Ms. Jones was employed from November 3, 2015, to May 26, 2017, as a cashier/sales associate at the Dollarama store on King George Boulevard, Surrey, British Columbia. Dollarama terminated Ms. Jones' employment on May 26, 2017, and paid her two weeks wages as compensation for length of service.
11. On September 27, 2017, Ms. Jones attended a "fact-finding" meeting at the Employment Standards Branch and provided the delegate with wage statements for the entire period of her employment. She also submitted her own handwritten record of hours, which she asserted reflected the hours she was scheduled to work each day and her own calculation of what she contended she had earned and what Dollarama had paid her.
12. Ms. Jones reviewed Dollarama's payroll records and argued that because Dollarama had been overcharging customers due to an issue with its barcode scanning system, it was likely her record of earnings was also incorrect. Ms. Jones also contended, but provided no evidence, that there was a problem with the punch clock used by employees.
13. In response to the delegate's preliminary assessment that Ms. Jones was not entitled to any additional wages, Ms. Jones further alleged that Dollarama's time clock system had been malfunctioning. Ms. Jones requested that the delegate re-calculate her hours and pay for dates which she asserted the time-clock records were incorrect.
14. The delegate reviewed Ms. Jones' pay period calculations and corresponding wage statements for a number of periods between November 2016 and May 2017. The wage statements provided by Ms. Jones indicated that she had received overtime wages, statutory holiday pay, annual vacation pay, and compensation for length of service.
15. Dollarama provided the delegate with Ms. Jones' timecard report from November 21, 2016, until May 26, 2017. The records indicated that Ms. Jones was paid for her hours of work in accordance with the time recorded in her punch card. Dollarama explained that if an employee punched in or outside of a schedule, a manager validated the time card. The manager had the ability to acknowledge a schedule variance. Dollarama's manager did, on occasion, override Ms. Jones' timecard (for example, when Ms. Jones punched out twice on one day or fail to punch out after work). While Dollarama acknowledged it had occasional issues with barcode scanning system and employee time clock malfunctions, it denied any issues with the punch-in and punch-out time clock system.
16. The delegate determined that Ms. Jones had provided no evidence in support of her claim that she was owed outstanding wages or that the time clock system had malfunctioned. The delegate also determined that the evidence, including Ms. Jones' own records, showed that she worked and was paid for more hours than she was scheduled.
17. The delegate found no evidence that Ms. Jones had not been paid for all work performed.
18. The delegate determined that Ms. Jones had received all the wages she as entitled to under the *ESA*, including vacation pay, statutory holiday pay, and compensation for length of service.

19. The delegate also determined that the only deductions made from Ms. Jones' wages were statutory deductions.
20. The delegate dismissed Ms. Jones' complaint.

ARGUMENT

21. Ms. Jones says that she would like "Employment Standards" to include calculation errors in the time clock in the Determination. She contends that the time differences between her records and the time clock result in Dollarama owing wages to her, despite the delegate's findings.

ANALYSIS

22. 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:
- (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, 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.
23. 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.
24. The burden is on an appellant to demonstrate a basis for the Tribunal to interfere with the decision. I am not persuaded that Ms. Jones has met that burden.
25. Natural justice is a procedural right which includes the right to know the case being made, the right to respond, and the right to be heard by an unbiased decision maker. It does not mean that the Director's delegate must arrive at a conclusion Ms. Jones considers just and fair.
26. There is nothing in Ms. Jones' appeal submission that establishes that the delegate failed to provide her with an opportunity to present her case or respond to Dollarama's documents. Although Ms. Jones

does not agree with the Determination, that is not a basis to conclude that she was denied natural justice.

27. In her appeal submission, Ms. Jones contends that her hours of work were cut and given to people younger than her, and argued that her wages and benefits increased once she worked more than 35 hours per week. Some of her arguments are identical to those made before the delegate and have no bearing on her claim for unpaid wages.
28. Ms. Jones' objection to the record consisted of a request for additional documents. While I have concluded that these documents were not before the delegate during the investigation, even if they were part of the record, it is not clear how they would support Ms. Jones' appeal. Records of telephone calls are not evidence of unpaid wages, computer errors, or anything else that bears on Ms. Jones' complaint.
29. In essence, Ms. Jones' argument is that the delegate erred in concluding that she was paid all wages she was statutorily entitled to. I find that the delegate fairly reviewed all of the evidence before her and came to a reasoned conclusion on that evidence. While Ms. Jones alleged various computer errors, some of which Dollarama acknowledged, the delegate determined that there was insufficient evidence to support a conclusion that those errors materially affected what Ms. Jones was paid.
30. I find no basis to interfere with the Determination.
31. The appeal is dismissed.

ORDER

32. Pursuant to section 115 of the *ESA*, I Order that the delegate's January 26, 2018, Determination to dismiss the complaint be confirmed.

Carol L. Roberts
Member
Employment Standards Tribunal