Employment Standards TRIBUNAL

Citation: Babak Pakdaman (Re)
2019 BCEST 101

An appeal

- by -

Babak Pakdaman

- 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: Robert E. Groves

FILE NO.: 2019/83

DATE OF DECISION: September 23, 2019

DECISION

SUBMISSIONS

Babak Pakdaman — on his own behalf

OVERVIEW

1. This is an appeal brought by Babak Pakdaman (the "Appellant") pursuant to section 112 pf the *Employment Standards Act* (the "*ESA*").

2. The Appellant challenges a determination (the "Determination") issued by a delegate (the "Delegate") of the Director of Employment Standards (the "Director") on May 28, 2019.

3. The Appellant had filed a complaint alleging that his former employer, Eagle Ridge Chevrolet Buick GMC Ltd. (the "Employer") had failed to pay him compensation for length of service as required under section 63 of the *ESA*.

4. The Delegate conducted a hearing regarding the complaint on February 19, 2019, at which the Appellant, representatives of the Employer, and another witness gave evidence.

5. The Delegate then issued the Determination, which stated that the *ESA* had not been contravened. Accordingly, no wages were found to be owed to the Appellant.

6. I have before me the Appellant's Appeal Form, his submission in support of it, and the record the Director was required to deliver to the Tribunal pursuant to subsection 112(5) of the *ESA*.

7. Subsection 114(1) of the *ESA* stipulates that the Tribunal may dismiss all or part of an appeal, at any time after an appeal is filed and without a hearing, if any of a listed number of criteria is satisfied. In this instance, I am persuaded that it is appropriate to consider the criterion established in subsection 114(1)(f). That subsection permits the Tribunal to dismiss an appeal if it determines there is no reasonable prospect that the appeal will succeed.

ISSUE

8. Should the appeal be permitted to proceed, or should the Tribunal exercise its discretion pursuant to subsection 114(1)(f) and dismiss the appeal because there is no reasonable prospect that it will succeed?

FACTS

9. The record delivered by the Director, and the Delegate's Reasons for the Determination (the "Reasons"), reveal the following salient facts.

10. The Appellant was employed by the Employer commencing in August 2013. His last day of work was July 22, 2018. Initially, the Appellant worked as a sales representative, but in 2015 he was promoted to the position of sales manager.

11. On June 13, 2018, the Appellant sent an email to Rob Walker ("Walker"), his supervisor and the operations manager for the Employer. The email requested vacation time from July 23 until August 10, 2018.

12. Walker testified at the hearing that he told the Appellant he could not approve a vacation of that length, and that the approval had to come from the Employer's general manager, Dale Isfeld ("Isfeld"). The practice at the Employer was that Walker was responsible for approving vacations less than two weeks in duration. Isfeld approved vacations that were longer than two weeks.

13. Walker also testified that he told the Appellant he should complete the Employer's time-off request form. He stated, further, that the Appellant had not accrued an entitlement to the amount of vacation time he was requesting, an assertion that the Appellant conceded at the hearing.

14. The Appellant told the Delegate that he had planned to use his vacation to enjoy a trip to Europe. Shortly before the vacation was to commence, however, his condominium flooded, and the Appellant was obliged to deal with this setback, rather than take the trip.

15. The Appellant's recollection of his discussion with Walker after the June 13, 2018 email was that Walker told him he would get back to him. A few weeks passed, and when Walker had not yet responded, the Appellant approached him again. He stated that Walker told him to take his request to Isfeld, because it was Isfeld who had the authority to grant vacations of the length the Appellant was contemplating. The Appellant also said that he did not complete a time-off request form in respect of his proposed vacation. He asserted that he had taken vacations in the past without completing such a form, and so he believed it to be unnecessary.

16. Isfeld testified that he first became aware of the Appellant's vacation request when the Appellant met with him to discuss it shortly before the vacation was set to begin. He stated the Appellant told him his apartment had flooded, that he would be dealing with that problem while he was away from work, but that he would return to work on August 1, 2018. Isfeld told him to "do what he had to do."

17. The Appellant's evidence was that he told Isfeld he would be reducing his request from three weeks to two weeks, and that he would be attending to his problem with his condominium. He stated that Isfeld gave him the "green light" to take the vacation time.

18. Subsequently, Walker told Isfeld that the Appellant believed he was on vacation until August 8, 2018.

19. On July 31, 2018, Isfeld texted the Appellant to say that he wanted to meet with the Appellant on the following day to discuss his sales team and the Appellant's strategy for improving its performance, as the previous month's production had been "substandard". The Appellant replied that he could not do so because he was on vacation, as discussed with Isfeld the previous week. Isfeld responded that the Appellant was to be away for the weekend only and that he had been expected to return to work on Monday, July 30, 2018.

20. In a text message that followed, Isfeld told the Appellant that he needed to attend at work on the following day or the Appellant would be "abandoning" his "post". The Appellant replied that he would return on August 8, 2018. Isfeld then said that the Appellant's vacation had not been approved. The Appellant

responded that his request had not been denied either, and that he would return to work on August 8, 2018.

21. In subsequent texts, the Appellant alleged that Isfeld was trying to induce him to quit his employment. Isfeld denied that this was so, and that they could meet the next day to discuss the matter. The Appellant responded that he would see Isfeld "on the 8th".

22. Isfeld then texted that if the Appellant did not did not attend at work until August 8, 2018, the Employer would have to make "adjustments" to ensure that the sales staff were supported. The Appellant replied that Isfeld should make whatever adjustments he had to, but notice of the Appellant's vacation had been given and both Isfeld and Walker were aware of it. The Appellant also queried why Isfeld would think he could treat the Appellant in this manner.

23. The Appellant did not report to work at any time thereafter.

24. In the days after the texting exchange, the Employer assigned the Appellant's sales personnel to another sales manager.

25. On August 4, 2018, the Appellant sent Isfeld an email alleging that the texting exchange had contained threats, and that the reassignment of his sales staff meant that he was entitled to severance, which he would be seeking. The email also stated that the Employer had failed to comply with the *ESA* regarding the payment of vacation pay to the Appellant. The email asserted that that the Employer should pay the Appellant "all total loss wages as I will no longer be working for Eagleridge GM."

26. Before the Delegate, the Appellant argued that he had been dismissed, and so he was entitled to receive compensation for length of service. The Employer asserted that the Appellant had quit, and so no compensation was payable.

27. In her Reasons, the Delegate noted that there were inconsistencies in the Appellant's evidence that undermined his credibility. For example, at one point the Appellant asserted that Isfeld had granted his vacation request, but he later stated that his vacation request had not been denied, and that no one had told him he could not go on vacation. At another point, the Appellant said that Isfeld had given him verbal permission to take a vacation until August 8, 2018, but then he said he assumed he had obtained approval because he never received a non-approval. Moreover, a sales representative witness named Arian King ("King"), whom the Appellant called to testify at the hearing, stated that the Appellant had told his "team" he would be on vacation for one week, and not the two weeks the Appellant was claiming he had received approval to take.

28. The inconsistencies in the Appellant's evidence, reflecting on his credibility, led the Delegate to prefer the evidence of the Employer, and to decide that the Employer had not approved the Appellant's vacation request. Rather, the Delegate concluded that the Employer had not excused the Appellant from attending at work on August 1, 2018. To the contrary, the Delegate found that Isfeld explicitly instructed the Appellant to come to work on August 1, 2018, or the Employer would consider him to have abandoned his employment, and that the Appellant responded with the message that he would return on August 8, 2018.

29. The Delegate observed, correctly in my view, that in order for an employee to be found to have abandoned his employment the facts, viewed objectively by a reasonable person, must demonstrate that the employee no longer has the intention to be bound by the employment contract. The Delegate also indicated, again correctly, that it is an implied term of every contract of employment that an employee will attend at work and perform his duties, and that an employee abandons his employment if he fails to report to work absent lawful excuse.

30. The Delegate's conclusion on the question whether the Appellant had been dismissed, or had terminated his contract of employment himself, is captured in the following excerpt from the Delegate's Reasons:

> In the context of having been explicitly instructed to come to work on August 1, 2018, and having heard that his job would be in jeopardy if he did not do so, I find that Mr. Pakdaman's failure to attend work on August 1, 2018 constituted abandonment of his employment.

31. The Appellant also submitted that he had been dismissed because the Employer reassigned his sales team to another manager when the Appellant failed to report to work as required. The Appellant relied on section 66 of the *ESA*, which permits the Director to determine that an employee has been terminated if an employer substantially alters a condition of his employment.

32. The Delegate rejected the Appellant's submission because the reassignment occurred after the Appellant had already abandoned his employment when he chose not to report to work as required. The Delegate also found that there was no evidence the purported substantial alteration would have occurred had the Appellant attended at work as directed.

33. For all these reasons, the Delegate determined that the Employer had not contravened the *ESA*, and no wages were outstanding.

ANALYSIS

34. The appellate jurisdiction of the Tribunal is set out in subsection 112(1) of the *ESA*, which reads:

> 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.

35. Subsection 115(1) of the *ESA* should also be noted. It says this:

> 115 (1) After considering whether the grounds for appeal have been met, the tribunal may, by order,
>
> (a) confirm, vary or cancel the determination under appeal, or
>
> (b) refer the matter back to the director.

36. The Appellant's Appeal Form engages, as grounds for his appeal, subsections 112(1)(a) and (c) of the *ESA*. He submits that the Delegate erred in law, and that evidence has become available that was not available at the time the determination was being made. He asks that the Tribunal vary the Determination.

Error of law

37. The Tribunal has adopted the following criteria for identifying an error of law for the purposes of subsection 112(1)(a) of the *ESA* (see Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam) [1998] B.C.J. No. 2275):

- a misinterpretation or misapplication of a section of the applicable legislation;
- a misapplication of an applicable principle of general law;
- acting without any evidence;
- acting on a view of the facts which could not reasonably be entertained; and
- adopting a method of assessment which is wrong in principle.

38. On matters of credibility, the Tribunal is highly deferential when it comes to the conclusions drawn by a delegate. In cases where the reliability of evidence, or the weight to be given to it, becomes an issue, the Tribunal will be reluctant to decide that a delegate's findings of fact constitute errors of law. This is so even where the Tribunal might have been disposed to reach a different conclusion on the evidence than the one a delegate has arrived at (see *Re Tony Lau Insurance Agencies Ltd.*, BC EST # D036/06, affirmed on reconsideration by BC EST # RD75/06; *Re LeRuyet*, BC EST # D065/13).

39. The Appellant submits that the Delegate acted on a view of the facts which could not reasonably be entertained when she determined that the Appellant's failure to attend at work on August 1, 2018, constituted abandonment of his employment because it demonstrated an intention no longer to be bound by his employment contract. The Appellant refers to his text exchange with Isfeld on July 31, 2018, where the Appellant indicated he was prepared to return to work after August 1, 2018, and more precisely on August 3, 2018 or August 8, 2018. That being so, the Appellant submits that it cannot be said he had an intention to no longer to be bound by his contract of employment.

40. This submission is flawed. While the evidence seems unclear whether Isfeld agreed to the Appellant's absenting himself until July 30 or August 1, 2018, the Delegate found as a fact that the Appellant had not received approval for his vacation request beyond July 31, 2018. For that reason, there was no justification for the Appellant to be absent from work without the consent of the Employer after that date. The Appellant decided not to attend at work on August 1, 2018, despite the express direction from Isfeld that he must be present.

41. In my view, the Delegate was correct to find that a reasonable person, viewing the facts objectively, would come to the conclusion that the Appellant had no intention to be bound by the requirements of his employment contract when he failed to report to work on that day. It matters not, in my view, that the Appellant had no subjective intention to quit his employment, or that he intended to return to work on some later date.

42. The Appellant argues that Isfeld knew his condominium had been flooded and so, he states, it was impossible for him to attend at work on such short notice. One may sympathize with the Appellant's predicament, and his unilateral decision to deal with his problem at home was clearly his to make. However, in choosing to confront that problem, rather than attend at work as directed, he also chose, in law, to abandon his employment.

43. The Appellant contends that the Delegate acted on a view of the facts which could not reasonably be entertained when, in her Reasons, she alluded to the fact that there was no evidence the Appellant had not received a vacation within twelve months after becoming entitled to it. The Appellant asserts that this was so because the Employer had no proper policy or procedure in place for employees to take vacations. This meant that the time-off form referred to in the Employer's evidence was used but rarely, and so there was no evidence of the vacations the Appellant actually took during his employment. The Appellant alleges that this lack of organization on the Employer's part caused "miscommunication throughout the company" and justified the Appellant in concluding that the "verbal agreement" he had obtained was "an acceptable approval".

44. The difficulty I have with this submission is that the Delegate found as a fact that the Employer did not grant the Appellant's vacation request as presented, either verbally or otherwise, and Isfeld told the Appellant on July 31, 2018, that the Appellant had to report for work on August 1, 2018, or he would be deemed to have abandoned his employment. The Appellant's own witness, King, confirmed that the Appellant had said he would be away for one week, and not the two weeks for which the Appellant claimed he had received approval. The Delegate determined that evidentiary statements given by the Appellant on this point were inconsistent with each other. The documentary record relating to the communications between the parties supports the position of the Employer.

45. For the reasons I have given, I do not discern that the Delegate made an error of fact amounting to an error of law when she determined that the Employer had not approved the Appellant's vacation, at least beyond July 31, 2018.

46. In addition, the Appellant argues that since only one completed time-off request form relating to vacation for the Appellant was produced by the Employer at the hearing, the Delegate erred in accepting Isfeld's evidence that employees were required to complete such a form when seeking vacation.

47. In my opinion, this submission misses the point. A fair reading of the material in the record, and the Delegate's Reasons, reveals that the critical issue for the Delegate was not whether the Employer had a practice of insisting that employees completed a time-off request form in order to take vacation. Instead, the Delegate sought to determine if the Appellant had received approval for his vacation, whether the Appellant completed a form or not. As I have stated, the Delegate determined that no approval was ever given for the Appellant to be on vacation after July 31, 2018.

48. For these reasons, I have decided that the Appellant has failed to establish that his appeal might succeed as a result of the application of subsection 112(1)(a) of the *ESA*.

Evidence has become available that was unavailable at the time the Determination was being made.

49. The Tribunal's power to allow an appeal based on "new evidence" under subsection 112(1)(c) incorporates an obligation to exercise a discretion. The discretion must be exercised with caution. A rationale for this approach appears in subsection 2(d) of the *ESA*, which stipulates that it is a purpose of the legislation to provide fair and efficient procedures for resolving disputes over its application and interpretation. It would hinder the achievement of that purpose if an appellant were to be permitted, as a matter of routine, to seek out new evidence to bolster a case which failed to persuade at first instance. Conversely, proceedings under the *ESA* are likely to be more fair and efficient if parties are encouraged to take care to seek out all relevant information during the investigation phase and present it to a delegate before a determination is issued.

50. One of the criteria that the Tribunal will apply in determining whether an appeal should be allowed on this basis is to ask whether the evidence could not, with the exercise of due diligence, have been presented to the delegate during the investigation or adjudication of a complaint and prior to a determination being made. In other words, was the evidence really unavailable to the party seeking to present it? At the same time, even if the evidence might have been discovered with greater diligence, the Tribunal may nevertheless consider it if an appellant can demonstrate that it is important in the sense that if the delegate were to have accepted it as reliable, it may have led the delegate to a different conclusion on a material issue (see *Re Merilus Technologies Inc.*, BC EST # D171/03; *Re Specialty Motor Cars (1970) Ltd.*, BC EST # D570/98).

51. The Appellant offers for consideration several items of "new evidence" in his argument delivered in support of his appeal.

52. In his submission, the Appellant alleges that the Delegate declined to accept evidence tendered by the Appellant at the hearing in the form of a blank time-off request form which states that vacations could only be approved by Walker or Isfeld. The Appellant argues that the existence of this evidence refutes the Employer's claim that only Isfeld could approve vacations for longer than one week, and so the Delegate should have questioned the credibility of the Employer's witnesses, rather than his own. The Appellant asserts further that the existence of this document, and another completed time-off request form showing approval of vacation for the Appellant for a period longer than one week, yet signed by Walker, proves that there was no procedure that was consistently applied when the Employer approved vacations for the Appellant, and so the "verbal approval" the Appellant insists he received from Walker should have been affirmed by the Delegate.

53. I cannot accept the Appellant's submission on this point. There is nothing in the Delegate's Reasons which indicates that she declined to consider any of the evidence the Appellant sought to tender. Moreover, the time-off request forms to which the Appellant refers are both contained in the record the Director has delivered to the Tribunal for the purposes of the appeal, containing the materials that were before the Delegate, and presumably considered, when the Determination was made. It follows that the evidence is not "new" in the sense contemplated by subsection 112(1)(c) of the *ESA*.

54. Even if I am wrong in this assessment, it is my view that this evidence also does not, of necessity, support the inference for which the Appellant seeks to rely on it, and so it is not sufficiently probative to warrant examination as evidence that is "new". The blank time-off request form does state that time off must

only be approved by Walker or Isfeld, but the document does not clarify whether this means all requests for time off, or whether, as asserted by the Employer throughout, that Walker could approve requests for no more than one week, and Isfeld had to approve requests for longer periods of time. As for the time-off request document that was completed, and alleged to have been signed by Walker, it says that only Isfeld could approve the time-off request. An inference which might reasonably be drawn from this document, therefore, and one that is contrary to the Appellant's interpretation, is that Walker signed the document evidencing, on behalf of the Employer, that Isfeld had approved the vacation.

55. The Appellant next seeks to rely on excerpts from the Employer's Policy and Procedures Booklet, which was not before the Delegate at the time the Determination was being made. The Appellant states that it was not possible for him to make use of the Booklet before the Delegate because he did not have a copy in his possession, and his lawyer advised him to refrain from requesting one from other employees still working for the Employer, who might be placed in a compromising position were he to do so.

56. The reason the Appellant wishes to rely on the Booklet is, he says, that the "Vacations" section within it makes no reference to the necessity for employees to complete time-off request forms before they may take vacations. The Appellant asserts that if this evidence had been before the Delegate it would have demonstrated why he did not feel the need to fill out such a form in respect of the vacation request that led to the termination of his employment in 2018.

57. I am skeptical that the evidence in the Booklet is evidence that was unavailable to the Appellant at the time the Determination was being made. Clearly, the Appellant was aware of it, because he considered how he might obtain a copy of it prior to the hearing of his complaint. At worst, the Appellant could have requested that the Delegate order production of the Booklet from the Employer if he felt it would advance his case.

58. In any event, I am of the view that here, too, the Appellant's argument relating to the significance of the portion of the Booklet to which he refers is misplaced and misses the rationale for the Delegate's conclusion that the Appellant abandoned his employment. As I stated earlier, the Delegate did not find that the Appellant lost his employment because he failed to complete a time-off request form and obtain a signed approval for his vacation. Instead, the reason why the Appellant was found to have terminated his own employment was that he disobeyed an express direction of his superior that he attend work on August 1, 2018.

59. There is nothing in the record, or in the other materials before me, which indicates that it was a term of the Appellant's contract of employment that he might determine, himself, when he could take a vacation. Indeed, the Appellant's own evidence reveals that he knew he had to obtain the Employer's approval regarding the dates on which he could take the vacation that might be owed to him.

60. Section 57 of the *ESA* requires an employer to permit an employee to take the vacation that the statute mandates, but there is no provision in the legislation which requires an employer to accede to an employee's request that the vacation be taken on the days the employee stipulates.

61. The "Vacations" section in the Booklet to which the Appellant refers makes it clear that the Appellant's right to take vacation was not unfettered. The Booklet states that the Employer often has "problems maintaining an adequate work force in each department, especially during the summer months." It

advises that employees will be approved for vacation "as long as your department has appropriate coverage as determined by your department manager to arrange and distribute the work load during your absence." Finally, the Booklet points out that "[a]lthough every effort will be made to accommodate the wishes of each employee, the company reserves the right to approve all vacation schedules."

62. The Appellant also relies on the Booklet in support of a further argument that the Determination is flawed. He alleges that the Booklet nowhere discusses terms and conditions regarding job abandonment. He observes that the Booklet contains a section marked "Absences and Tardiness", which includes a statement that a failure to report an "absence for two consecutive work days without a reasonable explanation may be considered a voluntary termination from the company." The Appellant argues that a flood in his condominium was a reasonable explanation, and Isfeld's direction that the Appellant attend at work on August 1, 2018 must be considered as a threat made in clear violation of the Employer's policy. He submits that if the Delegate had been made aware of this provision in the Booklet, she would not have concluded that the Appellant had abandoned his employment.

63. I cannot accede to this argument. In my opinion, the "Absences and Tardiness" section of the Booklet is inapplicable, because Isfeld was aware that the Appellant wished time off due to a flood in his residence, and so no further explanation was necessary in respect of the Appellant's absences from work. The evidence accepted by the Delegate demonstrates that the issue confronting her was not whether the Appellant could take some time away from work. Instead, the issue was how long that time-off period should be.

64. The inference to be drawn from the evidence is that the Appellant was absent from work for a period of days during the week of July 23, 2018, and on July 30 and 31. Isfeld told the Appellant he had to attend to work on August 1, 2018, or he would be deemed to have abandoned his employment. That statement was not a threat. It was an objective statement of fact. Furthermore, the evidence indicates that Isfeld did not wish for the Appellant to lose his employment. As I have noted earlier, the Appellant chose to ignore his Employer's direction, no doubt because he viewed the remediation of his problem at home to be a higher priority. The legal result of his decision, however, was that he sacrificed his employment with the Employer.

65. The Appellant seeks to rely, in addition, on the evidence obtained from two former employees of the Employer, Chris Ting ("Ting") and Blake Forbes ("Forbes"), whose unsworn written statements are attached to the Appellant's Appeal Form.

66. In his submission in support of his appeal the Appellant claims that Ting's evidence was unavailable to him because Ting remained an employee of the Employer until at least the date of the hearing before the Delegate, and he had therefore chosen to remain silent. I note from Ting's statement, however, that Ting indicates his employment with the Employer ended in October 2018. The hearing before the Delegate did not occur until February 2019. While it is entirely plausible that Ting may have been reluctant to come forward while he continued to work for the Employer, the failure of the Appellant to engage him after October 2018 remains unexplained.

67. Forbes' statement reveals that his last day of employment with the Employer was July 26, 2018. The reason the Appellant gives to explain why Forbes' evidence was not available to him at the time the Determination was being made ten months later is that he had only recently discovered that Forbes had

resigned. The Appellant provides no details regarding the efforts he may have taken to determine which of the employees of the Employer were no longer employed there, and whether any of them might be prepared to provide evidence that would assist him in the proceedings before the Delegate.

68. Given these facts, I have decided that the Appellant has failed to establish that the evidence of Ting and Forbes could not, with reasonable diligence, have been obtained well before the Delegate conducted the hearing of the complaint, let alone when the Determination was being made thereafter.

69. In addition, I am of the view that the probative value of the Ting and Forbes evidence is low. The fact that their statements are unsworn is troubling on its own, but there are other, more substantive, reasons why I have reached this conclusion.

70. Ting states that he never completed, nor was he ever asked to complete, a time-off request form in order to take a vacation, and that any such arrangements for time off were always discussed verbally. As I have stated, the question whether the Appellant was required to utilize a time-off request form in order to obtain approval for his vacation in this instance is of little, if any, consequence. Again, the reason is that the Delegate did not decide that the Appellant had abandoned his employment because he failed to utilize the form. Rather, the Appellant lost his job because he refused to comply with Isfeld's direction that he attend at work on August 1, 2018.

71. Both Ting and Forbes say that they knew the Appellant would be away on vacation in the days before he lost his employment. Ting states that "the entire staff had been made aware of his time off from July 25th to August 8th". Forbes says that "[w]e had all been informed he would be taking vacation beginning July 25th until August 8th, 2018, and that management would cover for him while away."

72. The use by Ting and Forbes of the passive voice erodes, significantly, the evidentiary benefit which might otherwise have been derived from these statements. Not only are their statements based on hearsay, the authors of the information on which they rely are not identified. For these reasons, their statements cannot be taken as conclusive evidence that Isfeld, Walker, or any other representative of the Employer with the requisite authority had authorized the Appellant to be absent from work beyond July 31, 2018.

73. For the reasons I have given, I have also decided that the Appellant has failed to establish that his appeal might succeed as a result of the application of subsection 112(1)(c) of the *ESA*.

ORDER

74. I find that there is no reasonable prospect the appeal will succeed.

75. Pursuant to section 115 of the *ESA*, I order that the Determination in this matter, dated May 28, 2019, be confirmed.

Robert E. Groves
Member
Employment Standards Tribunal