

Citation: Sasowski Wax Hair Removal Bar Ltd. and Luba Sasowski (Re)
2019 BCEST 110

An appeal

- by -

Sasowski Wax Hair Removal Bar Ltd. carrying on business as
Wax Hair Removal Bar and Luba Sasowski

- 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.: 2019/56

DATE OF DECISION: October 22, 2019

DECISION

SUBMISSIONS

Luba Sasowski on her own behalf and on behalf of Sasowski Wax Hair Removal Bar Ltd. carrying on business as Wax Hair Removal Bar

OVERVIEW

1. On August 12, 2019, pursuant to section 112(2) of the *Employment Standards Act* (the “*ESA*”), Sasowski Wax Hair Removal Bar Ltd. carrying on business as Wax Hair Removal Bar, a company duly incorporated in British Columbia, and Luba Sasowski (collectively, the “Employer”) filed an appeal of a Determination issued by Shane O’Grady, a delegate (the “Delegate”) of the Director of Employment Standards (the “Director”). In that Determination, the Director found that the Employer had contravened sections 18, 40, and 58 of the *ESA* by failing, respectively, to pay its employee, Alana Berube (Ms. Berube), wages, overtime, and annual vacation pay.
2. In its decision, the Director ordered that the Employer pay the employee a total of \$1,542.02. This is comprised of \$1,198.75 in unpaid wages pursuant to section 18 of the *ESA*; overtime in the amount of \$242.81 pursuant to section 40; and annual vacation pay pursuant to section 58 in the amount of \$57.66. The Director further ordered accrued interest be paid pursuant to section 88 in the amount of \$42.80.
3. Further, section 98(1) of the *ESA* requires that a mandatory administrative penalty be imposed for each contravention of a requirement of the *ESA* or the *Employment Standards Regulation* (the “*Regulation*”). Penalty amounts are set in section 29(1) of the *Regulation* at \$500.00 per contravention. The delegate found the employer to have contravened sections 18 (failure to pay all outstanding wages to Ms. Berube) and 28 (failure to maintain a record of hours of work) of the *ESA* and ordered a total administrative penalty amount of \$1,000.00 with a total amount owing in the Determination of \$2,542.02
4. This decision is based on the Employer’s submissions, the section 112(5) record (the “Record”) that was before the Delegate at the time the decision was made, and the Reasons for the Determination

ISSUE

5. The Employer completed an Appeal Form (Form 1) but selected no ground of appeal as articulated in the appeal form pursuant to section 112(1). Instead, the Employer hand-wrote on the form under grounds for appeal “other” and sought to have the Determination referred back to the Director of Employment Standards. Correspondence from the Employer indicates that she wishes the Tribunal to repeal the penalties levied against the Employer.

ARGUMENT

6. The Employer argues that the penalties levied pursuant to section 98(1) of the *ESA* and section 29(1) of the *Regulation* are harsh and the Employer seeks to appeal the penalties.

THE FACTS AND ANALYSIS

7. 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
8. Further, the *ESA* outlines the grounds of appeal that are open to an appellant. Those grounds are listed in section 112(1) of the *ESA* as follows:

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.
9. There are no other available grounds of appeal.
10. However, I find that the intention of the Employer was to seek a variance of the Determination reducing or eliminating the mandatory penalties based on the exemplary record of her business.
11. Section 98(1) of the *ESA* sets out a regime of mandatory administrative penalties that must be levied in instances when provisions of the *ESA* have been contravened. The Delegate, in his Determination, found that the Employer had, in fact, contravened the *ESA* in its dealings with Ms. Berube and imposed mandatory administrative penalties.
12. The Employer does not appeal the finding that Ms. Berube was an employee and is owed wages, overtime, and vacation pay.

13. The Tribunal may only cancel a penalty provided for in the *ESA* and the *Regulation* in circumstances amounting to bad faith or abuse of process or if it decides that the contravention which underlies the penalty cannot be supported and must be set aside pursuant to one of the grounds of appeal referred to in section 112 of the *ESA*. [See *537370 B.C. Ltd.*, BC EST # D011/06]
14. The Employer has provided no support for its argument that there was an error in the imposition of the administrative penalties and the appeal must fail.
15. Therefore, it must follow that, in addition to being responsible for outstanding wages, overtime and vacation pay, the Employer is also liable for the administrative penalties.

ORDER

16. Pursuant to section 115 of the *ESA*, I confirm the Determination together with any interest that has accrued under section 88 of the *ESA*.

Michelle F. Good
Member
Employment Standards Tribunal