



An appeal

- by -

0697655 B.C. Ltd. carrying on business as The Rocking Horse Pub  
("The Rocking Horse")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

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

**PANEL:** Maia Tsurumi

**FILE NO.:** 2018A/115

**DATE OF DECISION:** January 23, 2019

## DECISION

### SUBMISSIONS

David Willoughby

on behalf of 0697655 B.C. Ltd. carrying on business as  
The Rocking Horse Pub

### OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*ESA*”), 0697655 B.C. Ltd. carrying on business as The Rocking Horse Pub (“The Rocking Horse”) has filed an appeal of a determination (“*Determination*”) issued by Carrie Manarin, a delegate (“*Delegate*”) of the Director of Employment Standards (the “*Director*”), on September 28, 2018. In the *Determination*, the *Delegate* found that The Rocking Horse contravened sections 17, 27, 40, and 63 of the *ESA*.
2. The Rocking Horse appeals the *Determination* on the grounds that the *Delegate* failed to observe the principles of natural justice in making the *Determination* and that evidence has become available that was not available at the time the *Determination* was made. The Rocking Horse seeks to have the *Determination* cancelled.
3. I have decided this appeal pursuant to section 114 of the *ESA* and pursuant to that provision, I dismiss the appeal. Pursuant to section 115 of the *ESA*, I confirm the *Delegate*’s *Determination*.
4. This decision is based on the submissions made by The Rocking Horse in its Appeal Form, supplemental submissions from the *Delegate* that I requested during the appeal process, the subsection 112(5) record (the “*Record*”), a supplemental record submitted by the *Delegate*, the *Determination*, and the Reasons for the *Determination*.

### ISSUE

5. The issue before the Employment Standards Tribunal is whether the appeal should be allowed or dismissed under section 114 of the *ESA*.

### ARGUMENT

6. The Rocking Horse submits that the *Delegate* was biased because: (1) she refused to allow The Rocking Horse’s representative to record the hearing; and (2) she was allegedly upset with The Rocking Horse’s representative at the hearing because of the pre-hearing interaction between the Employment Standards Branch (“*Branch*”) and The Rocking Horse.
7. The Rocking Horse also submits that there were further breaches of natural justice because: (1) the *Branch* did not facilitate a mediation; and (2) the *Delegate* refused to enter a written statement made by a Ron Mackie and an entry from The Rocking Horse’s incident log into evidence. According to The Rocking Horse, it did not know, and was not given notice by the *Branch*, that a written statement would not be received into evidence without in-person testimony.

8. The Rocking Horse also said that it questions the Branch's ability to fairly review its evidence as it appears to have been received only two days prior to the hearing.
9. In terms of the merits of the Determination, The Rocking Horse states that the respondent Cathy Matthews (the "Complainant") was terminated with cause because she refused to prepare regular menu items for The Rocking Horse's customers during Easter dinner on April 1, 2018, was rude and abusive towards her co-workers, within the hearing of customers, and left her shift 1.5 hours earlier than scheduled. At this point, she had three shifts remaining in her working notice (after resigning on March 23, 2018). The Rocking Horse also says that the Complainant is not entitled to overtime and other unpaid wages because she never raised this issue with her employer before complaining to the Branch.
10. Finally, The Rocking Horse's appeals on the basis that there is new evidence that was not available at the time of hearing. In this regard, it submits a letter from its current bookkeeper responding to the Delegate's findings in the Decision.

## **THE FACTS AND ANALYSIS**

### Background

11. 0697655 B.C. Ltd. is an incorporated British Columbia company. David Willoughby was its sole director at the time of the hearing and was also its President and Secretary. The Rocking Horse Pub is an unregistered proprietorship which is owned and operated by 0697655 B.C. Ltd. The Rocking Horse operates a pub.
12. The Complainant was employed by The Rocking Horse as a cook from October 2, 2017, to April 2, 2018. She was paid \$20.00 per hour. She filed a complaint with the Branch on April 24, 2018.

### Issues Before the Delegate

13. The issues before the Delegate were whether the Complainant was owed: (1) overtime wages; (2) any other wages; and/or (3) compensation for length of service.

### Evidence and Submissions at the Hearing

14. The Complainant testified that on March 23, 2018, she gave The Rocking Horse written notice of her resignation effective her last scheduled shift on April 6, 2018. She worked her scheduled shifts up to April 1, 2018. On April 2, 2018, she received a text message from Mr. Willoughby saying that she need not return to work for the rest of that week.
15. Regarding the events of April 1, 2018, the Complainant said that she cooked a special dinner for Easter at the pub. She denied being instructed by The Rocking Horse to serve regular menu items and claimed that it was not the usual practice to serve regular menu items because making a special holiday meal took up all of the kitchen space. She also claimed that The Rocking Horse's bartender told her that customers enjoyed the meal and that only one bar customer requested a regular menu item. According to the Complainant, this request could not be accommodated because there were no hamburgers on site. Finally, the Complainant said that The Rocking Horse never raised any issue with her about her performance or behaviour on April 1, 2018.

16. Karen Willoughby, a witness for The Rocking Horse, testified that overtime wages were only owed if an employee worked over 80 hours bi-weekly and that this has been The Rocking Horse's practice for the past 14 years, confirmed by The Rocking Horse's accountant. As a result, she did not believe that the Complainant was owed any overtime wages during her period of employment because she never worked more than 80 hours in a bi-weekly pay period.
17. The Rocking Horse received the Complainant's notice of resignation on March 23, 2018. Mr. and Mrs. Willoughby both said at the hearing that they were relieved to receive the notice because the Complainant was a "nightmare" to work with: she was rude, would lose her temper and swear, upsetting staff and customers, other employees were afraid of her, and some of the cooks refused to work with her. The Rocking Horse never disciplined or terminated the Complainant for her behaviour because it was hard to find cooks. When the Complainant gave notice of her resignation, The Rocking Horse found a cook who was able to start April 2, 2018.
18. Regarding April 1, 2018, Mrs. Willoughby testified that she instructed the kitchen staff to prepare a special meal for Easter dinner, but also to serve the full regular menu. On April 2, 2018, staff advised Mrs. Willoughby that the Complainant refused to prepare anything other than the special meal and that as a result, The Rocking Horse lost customers. The incident was recorded in The Rocking Horse's "incident book", which is kept for British Columbia Liquor Distribution Branch inspection purposes. Mrs. Willoughby said that the Complainant's behaviour was motivated by spite and that she wanted to ruin The Rocking Horse's business.
19. After learning of the events on April 1, 2018, The Rocking Horse terminated the Complainant on April 2, 2018. By that date they no longer needed the Complainant. Mr. Willoughby said that he did not speak to the Complainant about her behaviour on April 1, 2018, because he did not want to upset her.

#### Delegate's Findings and Analysis

##### *Overtime wages*

20. The Delegate first considered whether the Complainant was owed overtime wages. She noted that section 40 of the *ESA* states that unless an employer has an averaging agreement, which complies with section 37 of the *ESA*, an employer must pay an employee who works over 8 hours a per day, 1 and ½ times the employee's hourly regular wage for the time over 8 hours and double time for any time over 12 hours. An employer must also pay an employee who works over 40 hours a week, 1 and ½ times the employee's regular wage for the time over 40 hours.
21. The Delegate found that The Rocking Horse's payroll records showed that it was paying regular wages for all hours worked and was not paying the Complainant overtime wages as required by the *ESA*. She found the Complainant was entitled to overtime wages of \$157.50.
22. The Delegate found that the Complainant was entitled to vacation pay of 4% on the overtime wages owed to her.

23. In addition to contravening section 40 of the *ESA*, the Delegate found that The Rocking Horse also violated section 17 of the *ESA*, because employers are required to pay wages at least semi-monthly and within eight days after the end of the pay period during which they were earned.

*Other wages*

24. The Delegate then considered whether the Complainant was owed any other wages. She found that The Rocking Horse's records show that it was generally paying statutory holiday pay, but the amount it paid for two statutory holidays was not sufficient as follows:
- a. Remembrance Day: The Complainant was entitled to average daily pay of \$108.44 but was paid \$92.80. She was also entitled to premium pay of \$240.00 for working that day but was paid \$80.10. I also note that the Complainant was not paid statutory holiday pay at the end of the pay period in which it was earned but rather at the end of the following pay period ending December 8, 2017.
  - b. Family Day: The Complainant was entitled to average daily pay of \$149.32 but was paid \$138.20.

25. Rather than finding contraventions under sections 45 and 46 of the *ESA* based on the above circumstances, the Delegate held that section 17 applied to these facts. Section 17 of the *ESA* requires an employer to pay wages at least semi-monthly and within eight days after the end of the pay period during which they were earned. The Rocking Horse did not pay all wages earned in the November 11 – 24, 2017, and February 3 – 16, 2018, pay periods within the *ESA*'s requirements as noted above.

26. The Delegate found that the Complainant was entitled to vacation pay of 4% on the regular wages owed to her.

*Compensation for length of service*

27. The Delegate found that the Complainant was entitled to compensation for length of service.
28. Under section 63 of the *ESA*, an employer must give an employee written working notice of termination or compensation in lieu of notice (or a combination of the two) unless the employee retires, quits, or is dismissed for just cause. If an employer shows that it had just cause to terminate an employee, then it does not have an obligation under the *ESA* to pay compensation for length of service. An employer has the onus of showing that it had just cause.
29. The Delegate considered whether The Rocking Horse had just cause to dismiss the Complainant. If it did, she would not be entitled to compensation for length of service. If it did not, and the Complainant was dismissed without cause, including because her services were no longer required, then The Rocking Horse was required to pay compensation for length of service.
30. The Delegate noted that sometimes a single act of misconduct may constitute just cause if it is serious and deliberate and the employee behaved in a manner that was not consistent with the continuation of employment. But the Delegate did not find that the evidence established that the events of April 1, 2018, by itself provided The Rocking Horse just cause to dismiss the Complainant. Her reasons were as follows:
- a. the entry in the "incident book" was given little weight because it was hearsay;

- b. the written statement from the person who said the Complainant acted against the “owner’s wishes” was given little weight because the witness did not attend the hearing to be questioned on her statement;
- c. there was conflicting evidence as to whether the Complainant was instructed to prepare regular menu items on Easter;
- d. the fact that The Rocking Horse did not mention the Complainant’s behaviour on April 1, 2018, to her after the fact was incongruous with a finding that her actions had serious consequences for The Rocking Horse’s business as claimed; and
- e. there was scant evidence that The Rocking Horse lost business as a result of the Complainant’s behaviour.

31. The Delegate also said that less serious instances of misconduct may warrant progressive discipline but not warrant immediate dismissal. In these circumstances, to establish just cause, the employer must prove the following:

- a. a reasonable standard of performance was communicated to the employee;
- b. the employee was given a reasonable opportunity to meet the standard;
- c. the employer warned the employee that failure to meet the standard was serious and would result in termination; and
- d. the employee did not meet the standard.

32. Although the evidence was that the Complainant was disagreeable and difficult to work with, there was no evidence that The Rocking Horse engaged in any form of progressive discipline regarding the Complainant’s behaviour prior to April 1, 2018. Mr. Willoughby testified that neither he nor Mrs. Willoughby warned the Complainant that her job was in jeopardy because they needed a cook and cooks were difficult to find. Both The Rocking Horse and the Complainant agreed that The Rocking Horse never told her that it had a problem with her behaviour on April 1, 2018.

33. In the result, the Delegate found that the Complainant was terminated without cause and was entitled to compensation for length of service. As she was employed for less than one year, she was entitled to one week’s wages under section 63 of the *ESA*. The Complainant worked one day in the last five-day work week of her notice period and therefore was entitled to pro-rated compensation of \$436.68, plus vacation pay of 4% of \$17.47.

#### *Written wage statements*

34. In reviewing the records of the employer, the Delegate found that The Rocking Horse Pub did not give the Complainant written wage statements setting out each pay day with the wage rate and hours worked. Thus, the Delegate found The Rocking Horse contravened section 27 of the *ESA*.

#### *Administrative penalties*

35. The Delegate imposed mandatory administrative penalties of \$500 for violations of each of *ESA* sections 17, 27, 40, and 63. She did not impose penalties for violations of sections 45 and 46 of the *ESA*. In

supplemental submissions, dated January 4, 2019, regarding the administrative penalties imposed, the Delegate explained as follows:

At page R4 of the Determination the Delegate found that the Employer had been paying statutory holiday pay however, in certain pay periods it had not calculated the amount correctly or had not paid the full amount owed in the pay period in which it was earned. The delegate also found that as a result of its incorrect calculations, the Employer also had not paid vacation pay correctly. Accordingly, at page R7 of the Determination the Delegate issued an administrative penalty for a contravention of section 17 of the Act for failing to pay all wages earned in a pay period, rather than issuing more specific penalties for sections 45 and 46.

### Analysis

36. Subsection 112(1) of the *ESA* provides that a person may appeal a determination on 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.
37. As noted above, in this appeal, The Rocking Horse asks the Tribunal to cancel the Determination because:
- a. the Delegate was biased because:
    - i. she refused to allow The Rocking Horse's representative to record the hearing; and
    - ii. she was allegedly upset with The Rocking Horse's representative at the hearing because of the pre-hearing interaction between the Branch and The Rocking Horse;
  - b. the Branch did not facilitate a mediation;
  - c. the Delegate refused to enter a written statement made by a Ron Mackie and an entry from The Rocking Horse's incident log into evidence. According to The Rocking Horse, it did not know, and was not given notice by the Branch that a written statement would not be received into evidence without in-person testimony;
  - d. the Branch was unable to fairly review its evidence prior to the hearing;
  - e. there is new evidence that was not available at the time of hearing;
  - f. contrary to the Delegate's finding, the Complainant was terminated with cause; and
  - g. the Complainant never raised the claim for overtime wages with her employer before complaining to the Branch.
38. An appeal is not another opportunity to argue the merits of the claim to another decision-maker. The Legislature has expressly limited the grounds of appeal to those set out in subsection 112(1). The burden is on the appellant to persuade the Tribunal that there was an error in the Determination under one of the statutory grounds.

39. I have considered whether there is any basis pursuant to subsection 112(1)(a) through (c) for the Tribunal to interfere with the Determination. For the reasons that follow, I conclude that there is no basis and thus this appeal has no reasonable prospect of success and I dismiss it under subsection 114(1)(f) of the *ESA*.

*Natural justice*

40. The Rocking Horse submits that the Delegate failed to observe the principles of natural justice in making the Determination. As explained below, there is nothing in the Determination, the Reasons for Determination or the Record that indicates the Delegate failed to observe principles of natural justice.

41. I find that there is no merit to the Rocking Horse's suggestion that the Branch was unable to fairly review The Rocking Horse's evidence prior to the hearing. This is mere speculation. Moreover, the Decision and the Record refute this speculation.

42. In relation to The Rocking Horse's other complaints about natural justice, The Rocking Horse submits that the Delegate was biased, the Delegate refused to allow a recording of the hearing, there was no mediation prior to the hearing, the Delegate refused to enter a written statement made by Mr. Mackie and an entry from The Rocking Horse's incident log into evidence at the hearing and that it did not know, and was not given notice by the Branch, that a written statement would not be received into evidence without in-person testimony.

43. I asked for supplemental submissions ("Supplemental Submissions - Procedural Fairness") from the Delegate regarding the above procedural fairness issues:

- a. why was no recording of the hearing allowed;
- b. why was there no mediation;
- c. why was Mr. Mackie's witness statement not entered into evidence at the hearing; and
- d. what explanation was provided to the appellant prior to the hearing about the use of written statements during the hearing.

44. The Supplemental Submissions - Procedural Fairness explain as follows:

- a. The Director does not make electronic recordings of adjudications and his practice is not to allow parties to make electronic recordings unless they have the prior written consent of the Director and take appropriate steps to ensure that the recording is reliable. The parties were advised of this at the outset of the hearing and told that the Delegate would be taking notes and that they were also encouraged to do so.
- b. According to the notes to file of a Branch administrative employee, the Branch contacted Mrs. Willoughby on July 20, 2018, to schedule a mediation. Mrs. Willoughby advised that The Rocking Horse would not be attending a mediation and hung-up on the Branch employee.
- c. Mr. Mackie's statement was admitted into evidence at the hearing. The Delegate advised The Rocking Horse that the statement would be given little weight because the witness was unavailable for questioning at the hearing and because the matters set out in the statement did not appear relevant as he did not have first-hand knowledge of the Complainant's actions



that were alleged to be the reason for her termination. At the hearing, the Delegate gave The Rocking Horse's representative an opportunity to contact the witness by phone. Mr. Willoughby was unable to reach the witness.

- d. When The Rocking Horse was served with the Notice of Complaint Hearing it was also sent several Branch Fact Sheets, one of which explains that if parties bring written statements to the hearing instead of producing witnesses in person, the contents of those statements may not be admitted as evidence or will be given less weight than if the person who wrote the statement was available to give evidence and to be questioned.

45. In the above submissions, the Delegate also included notes to file made by the Branch and the Employment Standards Fact Sheet providing information about the hearing process.
46. There is no evidence of bias or a reasonable apprehension of bias. The parties were told at the outset of the hearing about the Director's policy regarding the recording of hearings. If The Rocking Horse wanted to record the hearing, it should have sought the prior written consent of the Director and taken the steps required to ensure that the recording was reliable.
47. The Rocking Horse provided no reason to suggest that the allegation that the Delegate was biased against The Rocking Horse at the hearing because of the pre-hearing interactions between the Branch and The Rocking Horse was anything more than speculation.
48. Based on the Record, The Rocking Horse was given an opportunity to participate in a mediation and refused to do so. There was no breach of natural justice on this ground.
49. The Determination indicates that the incident log was accepted as evidence at the hearing, but for the reasons given by the Delegate, it was given little weight. The Supplemental Submissions – Procedural Fairness explain that Mr. Mackie's witness statement was also admitted into evidence, although given little weight for the reasons set out above. The Branch informed The Rocking Horse, prior to the hearing, about the potential ramifications of relying on written statements without oral testimony by a witness.
50. In summary, based on the Decision, the Record, and the Supplemental Submissions – Procedural Fairness, there is no basis to allow the appeal on natural justice grounds.

#### *New evidence*

51. On appeal, The Rocking Horse also relies on evidence that was not before the Delegate. This evidence consists of a statement from its bookkeeper ("Additional Evidence"). The Additional Evidence says that Mrs. Willoughby told her that The Rocking Horse's policy was to only pay overtime if an employee worked more than 80 hours biweekly and that the Complainant never complained about this practice. It also says that the bookkeeper miscalculated the amount owing to the Complainant for average daily pay for Remembrance Day 2017 and that the total premium pay owed was partially paid in the November 11 – 24, 2017, pay period, but the balance was paid in the November 24 – December 8, 2017, pay period.
52. For the reasons that follow, I find that the Additional Evidence is inadmissible and does not provide a ground of appeal.

53. An appeal is decided on the record before the Delegate unless there is evidence that has become available that was not available at the time the Determination was being made: *ESA*, subsection 112(1)(c). The Tribunal in *Bruce Davies et al.* provided guidance on how the Tribunal applies subsection 112(1)(c):

This ground is not intended to allow a person dissatisfied with the result of a Determination to simply seek out more evidence to supplement what was already provided to, or acquired by, the Director during the complaint process if, in the circumstances, that evidence could have been provided to the Director before the Determination was made. The key aspect of paragraph 112(1)(c) in this regard is that the fresh evidence being provided on appeal was not available at the time the Determination was made. In all cases, the Tribunal retains a discretion whether to accept fresh evidence...[The evidence] must meet four conditions:

- (a) the evidence could not, with the exercise of due diligence, have been discovered and presented to the Director during the investigation or adjudication of the complaint and prior to the Determination being made;
- (b) the evidence must be relevant to a material issue arising from the complaint;
- (c) the evidence must be credible in the sense that it is reasonably culpable of belief; and
- (d) the evidence must have high potential probative value, in the sense that, if believed, it could, on its own or when considered with other evidence, have led the Director to a different conclusion on the material issue

(*Bruce Davies et al.*, BC EST # D171/03 at p. 3)

54. The Additional Evidence could have, with due diligence, been discovered by The Rocking Horse and presented to the Delegate for the hearing and prior to the Determination. Having someone review records that existed at the time of the hearing and then provide an interpretation of those records is not “new evidence” pursuant to the *ESA*.

55. In any event, in relation to the overtime issue, the Additional Evidence only reiterates what Mrs. Willoughby said at the hearing, which was that it was The Rocking Horse’s practice not to pay overtime unless more than 80 hours was worked in a pay period. As the Delegate explained, this practice was contrary to section 40 of the *ESA*. The Additional Evidence also confirms the Delegate’s finding of a section 17 violation: statutory holiday pay was not paid within the required pay period. It is not entirely clear, but it also appears to confirm that The Rocking Horse miscalculated the amount of average daily pay owed to the Complainant for Remembrance Day 2017.

#### *Error of law*

56. Regarding a possible error of law, in *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)*, 1998 CanLII 6466 (BC CA), the British Columbia Court of Appeal defined a question of law in the context of an appeal of a tribunal’s determination. In this context, an error of law occurs in the following situations:
- a. a misinterpretation or misapplication by the decision-maker of a section of its governing legislation;
  - b. a misapplication by the decision-maker of an applicable principle of general law;

- c. where a decision-maker acts without any evidence;
  - d. where a decision-maker acts on a view of the facts that could not reasonably be entertained; and/or
  - e. where the decision-maker is wrong in principle.
57. The Tribunal has adopted this definition: see e.g., *Re: C. Keay Investments Ltd. (Re)*, 2018 BCEST 5, at para. 36.
58. Thus, the Tribunal has no authority to consider appeals that seek to have the Tribunal reach a different factual conclusion than was made by the Director (or Delegate) unless these findings raise an error of law as defined in *Gemex Developments Corp.*: see *Britco Structures Ltd.*, BC EST # D260/03.
59. There was no error of law in relation to the Delegate's overtime wage finding in relation to section 40 of the *ESA*. The fact that the Complainant never made a claim for overtime wages before complaining to the Branch is not relevant to whether The Rocking Horse complied with section 40. The Rocking Horse admitted that it did not follow the requirements of the *ESA* when it testified that it did not pay overtime because it only paid overtime when an employee worked more than 80 hours in a bi-weekly pay period.
60. There was no error of law regarding the Delegate's statutory holiday wage finding resulting in her finding a contravention of section 17 of the *ESA*. The *ESA* required statutory holiday pay in the amounts found by the Delegate for both the Remembrance Day and Family Day holidays in the pay period in which those days fell. While the Additional Evidence now provides an explanation that is consistent with some amount of the statutory holiday pay having been paid in a subsequent pay period, this evidence is inadmissible on this appeal, and, in any event, only supports the reasonableness of Delegate's finding that The Rocking Horse failed to pay all wages earned in a pay period as required by section 17.
61. The Delegate decided that while the facts she found could have led to penalties under sections 45 and 46 of *ESA*, these potential contraventions were encompassed in the administrative penalty imposed under section 17 of the *ESA*.
62. In relation to my request for submissions on her decision not to impose penalties for breaches of sections 45 and 46, the Delegate submitted that in *Kimberley Dawson Kopchuk (Re)*, BC EST # D049/05, the Tribunal held that its power on appeal is limited to matters dealt with in the Determination or matters under appeal. In my view, the issue of violations of sections 45 and 46 were dealt with in the Delegate's Determination as the facts giving rise to a finding of contravention of sections 45 and 46 were found. Thus, unlike in *Kopchuk*, the issue of whether there were other contraventions of the *ESA* was before me as I specifically requested submissions on this point.
63. Despite the foregoing, I will not vary the Determination in relation to administrative penalties. According to *Kopchuk*, while delegates do not have any discretion regarding whether, and in what amount, to impose administrative penalties once they have found contraventions, in practice, delegates appear to have the discretion concerning how to characterize a set of facts as giving rise to one or more contraventions: *Kopchuk* at p. 16.

64. However, as noted by the Tribunal in *Kopchuk*, it is preferable if delegates of the Director are clear when they are exercising their discretion regarding characterizing contraventions: *Kopchuk* at p. 21. If a delegate is exercising his or her discretion not to find every contravention that might be said to have occurred on the facts, he or she should say why they are doing so, and similarly, if they are declining to impose penalties because they are subsumed in others, they should state so expressly. In this case, the Delegate found a contravention of section 17 instead of sections 17, 45, and 46. Her reasoning was only provided in supplemental submissions requested by the Tribunal. It would have been helpful to have that reasoning explained in her Decision.
65. There was also no error of law in relation to the Delegate's finding that statutory pay was not paid in the appropriate pay period. The Delegate reasonably applied the requirements of section 17 to the evidence before her. The same is true for the Delegate's finding about section 27 of the *ESA*.
66. Finally, regarding compensation for length of service, under section 63 of the *ESA*, if the Complainant was terminated without cause, she was entitled to one week's worth of wages as compensation for length of service. Thus, the question for the Delegate was whether the evidence proved that the Complainant was terminated for cause or not.
67. The Delegate appropriately summarized the law regarding termination for cause (see for example, *Silverline Security Locksmith Ltd.*, BCEST # D207/96; *Re: Jace Holdings Ltd.* BCEST # D132/01) and then reasonably applied that law to the facts before her. In the result, the Delegate concluded that The Rocking Horse could end the Complainant's employment, but the decision was not made on the basis of "just cause" within the meaning of the *ESA*. My review of the Appeal Form, Determination, Decision, Record, and Supplemental Submissions does not lead me to a different conclusion.

## **ORDER**

68. Pursuant to section 115 of the *ESA*, I order the Determination, dated September 28, 2018, confirmed in the amount of \$2,821.35, together with any interest that has accrued under section 88 of the *ESA*.

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**Maia Tsurumi**  
**Tribunal Member**  
**Employment Standards Tribunal**