

Citation: Matthew Aaron Riley (Re)
2019 BCEST 123

An appeal

- by -

Matthew Aaron Riley carrying on business as Matheos & Sons Photography
Studio and Santa's Photoshop
("Santa's Photoshop")

- 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: Marnee Pearce

FILE NO.: 2019/151

DATE OF DECISION: November 19, 2019

DECISION

SUBMISSIONS

Matthew Riley on his own behalf, carrying on business as Matheos & Sons Photography Studio and Santa's Photoshop

OVERVIEW

1. Matthew Riley ("Mr. Riley") operates a photography business in Abbotsford, BC. A former employee, Amber-Marie Best ("Ms. Best"), filed an unpaid wage complaint under section 74 of the *Employment Standards Act* (the "ESA"). This complaint was subsequently investigated by Vivian Tan, a delegate of the Director of Employment Standards (the "delegate").
2. On July 5, 2019 the delegate completed her investigation and issued a Determination ordering Santa's Photoshop to pay Ms. Best wages, including overtime, vacation pay and interest, in the amount of \$1,471.63. The delegate also levied three separate \$500 penalties against the employer for contravening sections 17 (ongoing payment of wages), section 18 (payment of wages at the end of employment) of the *ESA*, and section 46 (production of records) of the *Employment Standards Regulation* (the "ESR"). The total amount payable was \$2,971.63.
3. The deadline for filing an appeal of the Determination with the Tribunal was August 12, 2019, as set out in section 112(3) of the *ESA*.
4. A form of appeal was filed with the Tribunal on August 13, 2019. Mr. Riley asked that the Determination be cancelled and referred back to the Director of Employment Standards because the delegate erred in law and failed to observe the principles of natural justice when making the Determination. Mr. Riley also indicated that evidence has become available that was not available at the time the Determination was being made. Mr. Riley requested an extension for filing his application until October 15, 2019, arguing that he had been busy with a custody issue and was seeking legal advice.
5. On August 26, 2019, the Tribunal wrote to Mr. Riley seeking additional documents by October 15, 2019. The Tribunal requested the resubmission of the incomplete scanned copy of the Determination and the written reasons of the Determination, and Mr. Riley's written reasons and argument for appeal in keeping with his extension request.
6. Mr. Riley did not provide any further documentation to the Tribunal.
7. On September 4, 2019 the Tribunal wrote to the parties providing an opportunity to object to the completeness of the section 112(5) record (the "Record") as submitted by the delegate. No objections were received and accordingly, the Tribunal accepts it as being a complete Record of the material that was before the delegate when the Determination was made.
8. I have decided this appeal is appropriate for consideration under section 114 of the *ESA*. At this stage, I am assessing the appeal based solely on the Determination, the Reasons for the Determination, the appeal, the written submissions filed with the appeal, my review of the material that was before the

Director when the Determination was being made, and any other material allowed by the Tribunal to be added to the record. Under section 114(1) of the *ESA*, the Tribunal has the discretion to dismiss all or part of the appeal, without a hearing, for any of the reasons listed in the subsection, which reads:

- 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 any 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 the requirements of section 112(2) have not been met.

ISSUE

9. The issue is whether this appeal should be allowed to proceed or be dismissed under section 114(1) of the *ESA*.

FINDINGS AND ANALYSIS

10. Mr. Riley asked for an extension for filing his appeal and supporting documents until October 15, 2019, in order to allow him to seek legal advice. October 15, 2019 has come and gone, and although invited to provide his additional documents by this date, he has provided the Tribunal with no further information or arguments.
11. Mr. Riley was told by letter from the Tribunal that he needed to resubmit a copy of the Determination including its written reasons, as the one he initially provided with his request for an appeal extension was incomplete. The October 15, 2019 deadline for this resubmission has passed without the submission of a complete copy of the Determination and reasons.
12. By ignoring deadlines and material requests from the Tribunal, Mr. Riley has failed to diligently pursue his appeal, a consideration listed in section 114(1)(e) of the *ESA*.
13. Even if this appeal were properly before me, I find it has no reasonable prospect of succeeding under 114(1)(f) of the *ESA*. Mr. Riley's argument to the delegate was that Ms. Best was a former girlfriend who volunteered her time and was not an employee of Santa's Photoshop; however, he provided no documentation or evidence in support of this assertion although given ample opportunity to do so. Ms. Best on the other hand, provided a record of her hours of work, as well as text message evidence

supporting the employment relationship and confirmed by Mr. Riley. The best evidence available establishes that Ms. Best expected to be paid for the work she performed, and that Mr. Riley acknowledged that Ms. Best was entitled to wages.

14. The delegate sent a detailed “preliminary findings” letter dated June 12, 2019, to Mr. Riley. The letter outlined the legislative basis for establishing an employee/employer relationship under the *ESA* and explained why the text message evidence provided by Ms. Best and her documentation of hours worked supported the finding that Ms. Best was an employee of Santa’s Photoshop. The preliminary findings established that Ms. Best was entitled to wages, overtime and vacation pay. Mr. Riley was provided with a further opportunity to provide evidence and respond to the complaint prior to the issuance of a formal Determination.
15. On June 12, 2019, Mr. Riley responded to the preliminary findings letter. By way of email to the delegate he disparaged the investigative process and his former employee and wanted to speak with “the boss”. He did not respond to the evidence outlined, the tentative conclusion reached based on this evidence, or his described lack of participation in the evidence gathering process.
16. In my view this appeal is without merit. Mr. Riley has not provided any argument or evidence that would allow me to conclude that the delegate erred in law or failed to observe the principles of natural justice during the investigative process or in her dealings with Mr. Riley. The delegate provided Mr. Riley with the opportunity to participate fully in the investigative process, including the provision of the preliminary findings letter. The delegate’s findings are supported by the documentary record and appear to be wholly in accord with the provisions of the *ESA*.
17. This appeal is dismissed because the appeal remains incomplete and out of time, Mr. Riley has not provided the completed appeal by his requested extension deadline of October 15, 2019, and in any event, the appeal has no reasonable prospect of succeeding.

ORDER

18. Pursuant to section 114(1)(e) and (f) of the *ESA* this appeal is dismissed. Pursuant to section 115(1)(a) of the *ESA* the Determination is confirmed as issued in the amount of \$2,971.63 together with whatever additional interest that has accrued under section 88 of the *ESA* since the date of issuance.

Marnee Pearce
Member
Employment Standards Tribunal