



Citation: Pirate Hockey Ltd. (Re)  
2019 BCEST 137

An appeal

- by -

Pirate Hockey Ltd. carrying on business as Clippers Hockey Limited Partnership

- 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:** Richard Grounds

**FILE NO.:** 2019/62

**DATE OF DECISION:** December 24, 2019

## DECISION

### SUBMISSIONS

Karol Suprynowicz	counsel for Pirate Hockey Ltd. carrying on business as Clippers Hockey Limited Partnership
Andrea Trepanier	on her own behalf
Dan Armstrong	delegate of the Director of Employment Standards

### OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “ESA”), Pirate Hockey Ltd. carrying on business as Clippers Hockey Limited Partnership (the “Appellant”) has filed an appeal of a Determination issued on May 9, 2019 by Micah Carmody, a delegate of the Director of Employment Standards (the “Delegate”).
2. The Appellant operates the Nanaimo Clippers Junior “A” hockey team. Andrea Trepanier (the “Complainant”) worked for the Nanaimo Clippers from November 2010 to March 2018. The Complainant filed a complaint under section 74 of the *ESA* that the Appellant failed to pay the Complainant wages, commission and compensation for length of service.
3. The complaint proceeded to a hearing in front of the Delegate on January 30, 2019. The parties also provided written submissions to the Delegate. The Delegate concluded that the Complainant was an employee of the Appellant and that the Appellant owed the Complainant unpaid wages, commission, statutory holiday pay, compensation for length of service and accrued interest. The Delegate imposed administrative penalties for contraventions of the *ESA*.
4. The Appellant appealed the Determination on the basis that the Delegate erred in law and / or failed to observe the principles of natural justice in making the Determination. For the reasons that follow, the appeal is dismissed and the Determination is confirmed.

### ISSUE

5. The issues are whether or not the Delegate erred in law or failed to observe the principles of natural justice in making the Determination.

### ARGUMENT

6. The Appellant submitted on appeal that the Delegate erred in law in concluding that the Complainant was an employee of the Appellant. The Appellant submitted that the Complainant was only employed for a short period of time by the Appellant and at all other times the Complainant’s limited company was the one employed.

7. The Appellant submitted that at the time of the Complainant's voluntary resignation, there were no allegations of unlawful conduct on the part of the Complainant and a lawsuit against the Complainant was brought against her after her resignation. The Appellant submitted that the Complainant did not want to do marketing and resigned to go work at a curling club.
8. The Appellant submitted that the Delegate's comment about the Complainant being able to sign her own cheques is not conclusive as to whether or not she was an independent contractor and the Delegate had no authority to state that an independent contractor cannot have this authority. The Appellant submitted that the Delegate's comment about the hiring of another employee was not relevant.
9. The Appellant submitted that the Delegate's conclusion about the lawsuit against the Complainant is a breach of procedural fairness and supports that the Delegate was biased and acted on a view of facts which could not reasonably be entertained. The Appellant submitted that the lawsuit is irrelevant to the Determination.
10. The Appellant submitted that the Delegate's decision was "primarily based on a lot of hearsay evidence" and that the Delegate did not conduct a thorough investigation because he did not contact particular witnesses.
11. Submissions on the merits of the appeal were not requested from the parties or the Delegate but the Delegate was asked by the Tribunal to provide the additional correspondence (written submissions) with the parties that was referred to in the Determination.
12. The Complainant responded to the Delegate's submission and submitted that she had not seen emails between the Delegate and the Appellant after the written submissions were "closed". Given the outcome of this appeal, it is not necessary to address this submission from the Complainant.

## **THE FACTS**

### *Background*

13. The Appellant operates the Nanaimo Clippers Junior "A" hockey team in Nanaimo, British Columbia. The Complainant has been involved with the Nanaimo Clippers since November 2010 and in October 2017 signed a general services agreement with the former owner of the hockey team, Nanoose Bay Sports Limited Partnership operating as the Nanaimo Clippers Junior A Hockey Club. The Complainant received an annual salary of \$60,000.00 plus commissions under this agreement.
14. The Clippers hockey team was then purchased by the Appellant in November 2017. Wesley D. Mussio is the sole director of the Appellant. In December 2017 the Complainant and Mr. Mussio agreed that effective January 1, 2018, the Complainant would receive \$30 per hour instead of a salary. The Complainant terminated the contract on March 21, 2018, and on May 24, 2018, filed a complaint under section 74 of the *ESA* for failing to pay wages, commissions and compensation for length of service.
15. The complaint proceeded to a hearing in front of the Delegate on January 30, 2019. The Complainant testified on her own behalf and proposed other witnesses who ultimately did not testify. The Delegate attempted to contact one of the Complainant's witnesses but the witness could not be reached. Two

witnesses testified on behalf of the Appellant before the hearing was adjourned. The parties subsequently agreed that it was not necessary to call any further witnesses and agreed to make closing arguments by written submission.

### *The Determination*

16. On May 9, 2019, the Delegate completed the Determination and identified the issues as follows:
  1. Was the Complainant an employee under the Act? If so.
  2. Is the Complainant owed commissions?
  3. Is the Complainant owed compensation for length of service?
  4. Was the Complainant a manager?
  5. Is the Complainant owed regular wages, vacation pay, overtime or statutory holiday pay?
17. The Delegate summarized in his Determination the evidence from the Complainant and witnesses at the hearing. The Delegate's summary of the evidence is included here in an abbreviated fashion for convenience.
18. The Complainant testified about her duties at various times which included: working as a bookkeeper; supervision of game day sales and cash outs for beer gardens, 50/50 tickets and other booths; volunteer coordination and billet organization; and marketing. In addition, the Complainant was the treasurer for a committee that brought the 2013 Western Canada Cup to Nanaimo in 2013, the Complainant organized a wrap-up event thanking clients and advertisers after the 2016/2017 season and the Complainant helped with the transition after the Clippers hockey team was sold to the Appellant.
19. The Appellant brought in a new head coach and General Manager, Darren Naylor, and a new marketing person, Paul German. The Complainant was responsible for marketing to the end of the 2017/2018 season. In late December the Complainant discussed her options with Mr. Mussio and Mr. Naylor to keep working for the team. There was an agreement that the Complainant would take over bookkeeping duties from a bookkeeper and remain with the team as a business manager. The Complainant was to receive an hourly rate of \$30 per hour as well as commissions for the 2017/2018 season.
20. The Complainant billed for most of her time working for the Clippers hockey team as a contractor, but she also worked as an employee in 2017 when she was paid a salary. The Complainant continued to invoice the then owners of the hockey team as a contractor for commissions. The owners who were selling the team wanted the Complainant to become a full contractor again in 2017 which led to the general services agreement in October 2017. During the hockey season the Complainant worked approximately six days per week and did various duties including occasionally riding the fan bus to hockey games. The Complainant had business cards that identified her as Controller and Corporate Relations for the Nanaimo Clippers and she used a computer in the office for most of her work.
21. The Complainant said that she was entitled to the commissions claimed because she was responsible for ensuring the Clippers met its deliverables in each contract, regardless of whether it was a new agreement or one sold by previous marketing staff that carried over into the 2017/2018 season. The person responsible for marketing was paid the commission for the amount invoiced in the season, regardless of

who signed the original contract. The Complainant sought commissions from six sources that she had worked on. The Complainant confirmed that she was paid all of her wages correctly up to the end of 2017.

22. The Complainant agreed that she was not told what hours to keep but explained that she generally had to be in the office for business hours. She was not directed to respond to emails after hours. The Complainant referred to emails from Mr. Mussio where he gave her specific instructions and referred to her as a key employee. The Complainant denied signing her own cheques and stated that two signatures were required. The Complainant agreed there was no documentary evidence that Mr. German was her boss or supervisor but she stated that he was the Director of Business Operations.
23. On March 20, 2018, the Complainant met with Mr. German who advised her that she could only work a maximum of 10 hours per week and that they would be doing the bookkeeping offsite. The Complainant stated that she was unsure what her role would be because Mr. German was taking over marketing and bookkeeping was her main responsibility. She did not attempt to confirm how many hours she would be working. Mr. Mussio sent the Complainant an email later that same day and advised her that she was only entitled to commissions on contracts she had closed and not those signed by other marketers. According to the Complainant, this was a departure from established practice and she believed that Mr. Mussio would take back previously paid commissions.
24. The Complainant resigned the following day and stated: “Under the circumstances, I do not wish to continue my services with the Clippers and I want to have all of the floats counted and contra gifts cards received and a signed receipt provided.” According to the Complainant, Mr. Mussio was making accusations to her regarding cash and float discrepancies. The Complainant did not speak to Mr. Mussio to clarify his intention.
25. The Complainant applied for the position of general manager with the Nanaimo Curling Club because she knew the general manager was retiring and she could see the “writing on the wall” that her role with the Clippers would be greatly reduced or eliminated. The Complainant interviewed for the job on March 21, 2018, and started working for the Curling Club in July 2018.
26. Mr. Naylor testified on behalf of the Appellant, but Mr. German had resigned from his position and was unable to participate in the hearing. Mr. Naylor started working as the head coach and general manager of the Clippers in December 2017. Mr. Naylor was told by the previous general manager that the Complainant was hired as an independent marketer selling sponsorships, and she also did bookkeeping and accounting. Mr. Naylor described the Complainant as being very independent and free to do what she wanted. Mr. Naylor stated that he did not know exactly what the Complainant did with her time and she did not do much other than game day work and bookkeeping. The Complainant was not in the office much, she kept her own hours and most of her work was done from home on her own computer.
27. Mr. Naylor and Mr. Mussio met with the Complainant in December 2017 because she did not want to take on the role of marketing, so Mr. German was brought on to do marketing and advertising. The Complainant accepted a new hourly rate plus commissions and had to track her hours. The Complainant would submit invoices which had to be approved by either Mr. Naylor or Mr. Mussio. The Complainant and Mr. German were equals and he was not her boss, Mr. Mussio was the boss. Mr. German raised concerns that the Complainant was paying herself commissions on sponsorships she did not sell and that

there was a discrepancy on liquor sales which was being investigated. Mr. Naylor believed that the Complainant quit because she was upset about the investigation.

28. Mr. Mussio also testified on behalf of the Appellant. Mr. Mussio is the sole shareholder and owner of Pirate Hockey Ltd., the general partner of Clippers Hockey Limited Partnership. When he purchased the Clippers, the Complainant was described as the “go to person” and she was introduced as overseeing the entire Clippers operation, marketing and day-to-day operations. Mr. Mussio was told by Ken Wagner, the former owner, that the Complainant’s October 2017 contract clearly stated she was only entitled to commissions on sales she actually closes, when payments are received from the customer. The Complainant’s role was bookkeeping and game day operations. Mr. Wagner also had the Complainant take on marketing because previous marketing managers had not survived.
29. The Complainant worked her own hours and worked from where she wanted, including from home. Mr. Mussio stated that the Complainant was clearly an independent contractor because he “let her be” other than when he would ask her to do a specific task. Everyone else except for the Complainant were treated as employees and put on payroll. The person who has replaced the Complainant is an employee.
30. In December 2017 the Complainant told Mr. Mussio that she had no more sales leads and did not plan on selling anymore for the rest of the season, so he brought in Mr. German for the marketing role. The Complainant was put back into game day operations, bookkeeping and accounting. On December 27, 2017, Mr. Mussio emailed the Complainant with a proposal which included a severance package. The Complainant did not accept the proposal and, after meeting in person on December 28, 2017, he accepted her proposal which included hiring her daughter and paying the Complainant \$30 per hour at an expected annual cost of \$28,000.00 to \$36,000.00 based on an average of 18-23 hours per week.
31. Mr. Mussio reviewed the Complainant’s time sheets in March 2018 and found she was charging over 50 hours per week, mostly coded as marketing. On two occasions she billed for time spent on the fan bus and on one occasion she billed for time drinking in the beer garden. On March 4, 2018, Mr. Mussio advised the Complainant that she was restricted to 30 hours per week. Mr. German subsequently informed him that the Complainant was claiming commissions on contracts she did not sell. Mr. Mussio emailed the Complainant on March 20, 2018, and she resigned the following day. Mr. German audited the beer sales and found that sales had decreased but that costs had increased.
32. In written submissions to the Delegate, the Appellant alleged that the Complainant received appliances that were not used for a game-day giveaway and that the commissions claimed by the Complainant were not payable.
33. The Delegate considered the definitions of “employer”, “employee” and “work” in the *ESA* and noted that the common law factors were also instructive in examining the actual functional relationship between the parties. The Delegate acknowledged the intentions of the parties but clarified that they are not determinative of the issue. The Delegate preferred the evidence of the Complainant over that of Mr. Naylor in regard to how often she was at the office because Mr. Naylor only visited the Complainant’s office approximately once per week. The Delegate stated that the number of hours a person spends in the office is not determinative. The Delegate found that the Complainant’s flexibility and autonomy arose from her extensive experience rather than from any true independence. The Delegate found that the Complainant was integral to the Appellant’s organization which was evidenced by her business cards

identifying her as Controller and Corporate Relations, her signing authority, her responsibility for payroll and accounts payable and her possession of password information.

34. The Delegate did not agree with the Appellant's submission that the fact the Complainant had signing authority to pay her own invoices, which the Complainant denied, supported that she was an independent contractor. The Delegate noted that the Complainant did not provide her services to others and, while she used an email from a charitable campaign, the charitable campaign was inactive. The Delegate considered that the Complainant completed a variety of duties and was expected to perform general, ongoing work rather than to accomplish a specific task. The Delegate noted that Mr. Mussio assigned roles to the Complainant when she did not plan to sell any more advertising or sponsorships for the rest of the 2017/2018 season, Mr. Mussio assigned tasks to the Complainant and the Complainant was required to track her time and submit a detailed log of her hours and tasks semi-monthly. The Delegate found that these factors were typical of an employment relationship.
35. The Delegate did not agree that the Complainant choosing her own vacation time indicated that she was an independent contractor. The Delegate noted that the Complainant checked with Mr. Mussio and Mr. Naylor about taking the vacation time and did not think it would be unusual for an employee to request vacation in this way. The Delegate highlighted that Mr. German was hired as an employee to do the Complainant's marketing work, the person hired to do the Complainant's bookkeeping and game day duties was hired as an employee and for several months in 2017 (before the Appellant purchased the Clippers) the Complainant was treated as an employee.
36. The Delegate concluded that "[t]he majority of evidence indicates that the parties' relationship was functionally one of employment" and, therefore, found that the Complainant was an employee under the *ESA*.
37. The Delegate addressed the issue of whether or not the Complainant was entitled to commissions and noted the disagreement between the parties as to the interpretation of the October 2017 contract and whether or not the Complainant was only entitled to commissions on sales that she closed. The Delegate noted that the wording of the contract, that the Complainant was entitled to receive "commission on all sales closed", was ambiguous. The Delegate accepted the Complainant's evidence that previous marketers received commissions only for the amounts invoiced in each season. The Delegate found that the previous owner of the Clippers paid the Complainant for all sales closed on cash contracts, regardless of whether she or her predecessor executed the original contract. The Delegate found that the purpose of the October 2017 contract was to document existing terms rather than to change them. The Delegate accepted the Complainant's evidence about the work she did to earn the commissions she claimed.
38. The Delegate addressed the Complainant's claim for compensation for length of service based on four changes to her employment: an immediate reduction in hours of work; a reduction in the scope of her duties and therefore her future hours; the non-payment of commissions; and the allegations of theft or impropriety. The Delegate was not satisfied that the change in work hours, due to seasonal fluctuations, was a substantial change. The Delegate did find the change in the Complainant's bookkeeping duties to be a substantial change to her duties and earning capacity. The Delegate also found that the unilateral change to the interpretation of the contract regarding commissions and the reasonable apprehension that the Complainant would be forced to pay back commissions amounted to a substantial change to a

fundamental term. The Delegate found it unnecessary to consider whether the allegations of theft and impropriety constituted a fundamental change.

39. The Delegate noted that there were no details about the investigation into the cash and float discrepancies, there were other plausible explanations for the “shrinkage” and that there were concerns about the reliability of the spreadsheet information. The Delegate noted that there was no evidence called about the Complainant receiving appliances intended for a game-day giveaway. The Delegate found that there was insufficient evidence to demonstrate any misconduct on the part of the Complainant, so the Appellant did not have cause to terminate the Complainant’s employment. The Delegate concluded that the Complainant was entitled to seven weeks of wages for length of service based on how long she had been working with the Clippers hockey team.
40. The Delegate concluded that the Complainant was not a manager and, while she performed many important tasks that were vital to the organization’s function, there was little evidence that she was overseeing others in their work, as opposed to doing the work herself. The Delegate concluded that there was no evidence the Complainant exercised executive authority, Mr. Mussio made the decision to hire the Complainant’s daughter, not the Complainant, and the Complainant’s principal employment duties were bookkeeping, attending to game days, meeting with sponsors, marketing and administrative tasks such that supervising or directing other employees was incidental to her employment.
41. The Delegate rejected the argument that the Complainant was not entitled to the hours she spent on marketing after January 1, 2018, and accepted the Complainant’s evidence that she was still required to ensure the Appellant met its deliverables under its contracts with sponsors for the remainder of the 2017/2018 season. The Delegate accepted that the evidence was sufficient to establish that the Complainant worked as a host and representative when she travelled on the fan bus. The Delegate accepted that the Complainant’s time sheets for January 1, 2018, to March 20, 2018, were the best available evidence of the hours the Complainant worked which the Delegate used to calculate the wages, overtime and statutory holiday pay owed to the Complainant.
42. The Delegate imposed mandatory administrative penalties totaling \$3,000 for contraventions of the *ESA* relating to failing to pay the Complainant final wages for length of services and wages for March 2018, failing to give the Complainant wage statements, failing to pay the Complainant overtime, failing to pay the Complainant statutory holiday pay and failing to provide payroll records.
43. The Appellant appealed the Determination on the basis that the Delegate erred in law and failed to observe the principles of natural justice in making the Determination.

## **ANALYSIS**

### *Error of Law*

44. The Appellant submitted on appeal that the Delegate erred in law in concluding that the Complainant was an employee of the Appellant. The Appellant submitted that the Complainant was only employed for a short period of time by the Appellant and at all other times the Complainant’s limited company was the one employed. The Appellant submitted that the Delegate considered some irrelevant factors including the Appellant’s lawsuit against the Complainant and the Appellant’s hiring of Mr. German as an employee.



The Appellant submitted that the Delegate should not have relied upon the Complainant's evidence about being able to sign her own cheques as evidence that she was not an independent contractor.

45. In regard to the Complainant's resignation, the Appellant submitted that there were no allegations of unlawful conduct on the part of the Complainant at that time and that the Complainant did not want to do marketing and resigned to go work at a curling club. The Appellant does not agree with the Delegate's conclusion that the Complainant was an employee and, having found that she was an employee, that she was constructively dismissed.
46. The Appellant made detailed written submissions to the Delegate before the Determination was made on all aspects of the case including whether or not the Complainant was an employee, whether the Complainant was owed commissions and wages, on the allegations of impropriety against the Complainant and whether the Complainant was entitled to compensation for length of service. It is important to note that on appeal the Tribunal's role is not to decide each issue *de novo* but to decide whether the Delegate erred in law or breached the principles of natural justice in reaching conclusions on each issue.
47. The Tribunal has adopted the following definition of an error in law set out in *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 - Coquitlam)*, [1998] B.C.J. No 2275 (C.A.):
1. a misinterpretation or misapplication of a section of the Act [in *Gemex*, the legislation was the *Assessment Act*];
  2. a misapplication of an applicable principle of general law;
  3. acting without any evidence;
  4. acting on a view of the facts which could not reasonably be entertained; and
  5. adopting a method of assessment which is wrong in principle.
48. The Delegate considered the relevant definitions in the *ESA* as well as common law factors in concluding that the Complainant was an employee. The Delegate acknowledged the intentions of the parties but noted that this was not determinative. The Delegate based his decision on the evidence before him from the parties. That the Appellant disagrees with the Delegate's assessment of the facts does not by itself support that the Delegate acted on a view of the facts which could not reasonably be entertained.
49. The Appellant submitted that it was not relevant for the Delegate to consider evidence related to the hiring of Mr. German as an employee and how assigning different roles to persons was an indicator of control by an employer. This submission is without merit. Such factors including that the Complainant had worked as an employee for the Clippers hockey team and that the person hired to do the Complainant's job after she left was hired as an employee are directly relevant factors that were considered by the Delegate.
50. While the Appellant takes issue with any reference to the lawsuit against the Complainant, the Delegate did not base any conclusions on this evidence. The Delegate specifically did not address the allegations of theft and impropriety against the Complainant as a factor when considering whether or not the Complainant was constructively dismissed. In regards to the allegations of misconduct against the

Complainant, it was well within the Delegate's discretion to conclude that the Appellant had not met the burden to prove that it had cause to dismiss the Complainant.

51. The Appellant submitted that the Delegate's decision was "primarily based on a lot of hearsay evidence". The Delegate specifically addressed issues of hearsay evidence from Mr. Naylor and Mr. Mussio and preferred the direct evidence of the Complainant in key areas including relating to the payment of commissions and the work that she performed from January to March 2018. This was within the Delegate's discretion in his capacity as the original decision maker. The interpretation of the commissions clause in the contract was also within the Delegate's discretion. The Delegate reached reasonable conclusions on these points.
52. The Appellant submitted that the Delegate did not conduct a thorough investigation because he did not contact particular witnesses, including Mr. Wagner and the other former owner of the Clippers (Dave Leneveu), Mr. German and someone from the ice arena where the Complainant subsequently went to work. The Appellant submitted on appeal that the Delegate should have heard from Mr. Wagner "at a minimum".
53. The Delegate initially wanted to hear from Mr. Wagner, but they ran out of time and discussed continuing the hearing. The Delegate subsequently proposed to the parties that they proceed based on written submissions without hearing from Mr. Wagner "*if both parties agree*". Both parties agreed to this procedure.<sup>1</sup> The Appellant did not raise this issue in its written submissions to the Delegate and has essentially raised them for the first time on appeal. Given the Appellant agreed to the procedure proposed by the Delegate to proceed by written submissions without hearing from further witnesses, this submission on appeal is not compelling.
54. There is no reasonable basis to conclude that the Delegate exercised his discretion in a fashion that was wrong in principle.
55. The Delegate did not misinterpret or misapply the *ESA*, nor did he misapply a general principle of law. The Delegate acted based on the evidence before him and his conclusions are reasonably supported by the evidence. The Delegate did not exercise his discretion in a fashion that was wrong in principle. Given these factors, I am satisfied on a balance of probabilities that the Delegate did not commit an error of law in making the Determination.

#### *Failure to Observe the Principles of Natural Justice*

56. The principles of natural justice relate to the fairness of the process and ensure that the parties know the case against them, are given the opportunity to respond to the case against them and have the right to have their case heard by an impartial decision maker. The principles of natural justice include protection from proceedings or decision makers that are biased or where there is a reasonable apprehension of bias.

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<sup>1</sup> The Delegate contacted the parties by email on February 8, 2019 to propose proceeding by written submissions without hearing from Mr. Wagner. By February 8 and 11, 2019 emails respectively, legal counsel for the Appellant and the Complainant agreed to this procedure. See pages 1-9 of the Delegate's September 24, 2019 submission.

57. The Appellant was informed of the case to meet and was provided with an opportunity to respond to the allegations by providing evidence to the Delegate. The Appellant was provided with the opportunity to make detailed submissions to the Delegate which addressed all of the issues that were before the Delegate. While the Appellant submitted that the Delegate's conclusion about the lawsuit against the Complainant is a breach of procedural fairness, this evidence did not form any meaningful part of the Delegate's reasoning in the Determination. As noted above, it was well within the Delegate's discretion to conclude that the Appellant had not met the burden to prove that it had cause to dismiss the Complainant.
58. The Appellant has not identified any reasonable basis that the Delegate was biased in favour of the Complainant. That a decision maker has preferred the evidence of one party over another is not by itself evidence of bias. An apprehension of bias must be a reasonable one held by reasonable right-minded persons. (See *Committee for Justice and Liberty et al. v. National Energy Board et al.*, [1978] 1 S.C.R. 369 at page 394.) The test is what would an informed person, viewing the matter realistically and practically, and having thought the matter through, think in regards to whether it is more likely than not, whether consciously or unconsciously, that the decision maker would not decide fairly.
59. The Delegate heard evidence from both parties, provided the parties with an opportunity to make submissions on the issues and decided the case based on the evidence before him. When applying the applicable legal test for bias above, there is no reasonable basis to think that the Delegate would not (or did not) decide fairly. I am not satisfied on a balance of probabilities that the Delegate failed to observe the principles of natural justice in making the Determination.

## **ORDER**

60. The Appellant's appeal is dismissed. Pursuant to section 115 of the *ESA*, I order the Determination dated May 9, 2019, be confirmed.

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**Richard Grounds**  
**Member**  
**Employment Standards Tribunal**