



Citation: Meher Trucking Ltd. (Re)  
2019 BCEST 138

An appeal

- by -

Meher Trucking Ltd.  
("Meher Trucking")

- 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.:** 2019/171

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

## DECISION

### SUBMISSIONS

Harpreet Singh Madaan

on behalf of Meher Trucking Ltd.

### OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “ESA”), Meher Trucking Ltd. (“Meher Trucking”) has filed an appeal of a Determination issued by Sarah Vander Veen, a delegate (the “delegate”) of the Director of Employment Standards (the “Director”), dated August 29, 2019.
2. On February 12, 2019, Sahib Singh (“Mr. Singh”) filed a complaint with the Director alleging that Meher Trucking contravened the *ESA* by failing to pay him wages, vacation pay, and statutory holiday pay.
3. Following an investigation into the complaint, the delegate concluded that Meher Trucking had contravened sections 17, 18, 27, 40, 45, and 58 of the *ESA* in failing to pay him wages, overtime pay, statutory holiday pay, and vacation pay. The delegate ordered Meher Trucking to pay \$4,029.99 in respect of those wages and interest. The delegate also imposed 6 administrative penalties in the total amount of \$3,000.00, for a combined amount of \$7,029.99.
4. Meher Trucking’s appeal, dated September 30, 2019, is on the grounds that the Director erred in law and that evidence has become available that was not available when the Determination was made.
5. This decision is based on Meher Trucking’s written submissions, the section 112(5) “record” that was before the delegate at the time the Determination was made, and the reasons for the Determination.

### ISSUE

6. Whether or not Meher Trucking has established any basis to interfere with the Director’s determination.

### FACTS

7. Meher Trucking is a company duly incorporated under the laws of British Columbia and operates a delivery business in the Lower Mainland which falls within the jurisdiction of the *ESA*. An April 9, 2019 on-line BC Registry Services search shows that Meher Trucking was incorporated on September 9, 2014, and that Harpreet Singh Madaan (“Mr. Madaan”) and Gurmeet Narula Madaan, aka Daisy Madaan (“Ms. Madaan”) are listed as directors and officers.
8. On April 9, 2019, Ms. Madaan called the delegate and said that her husband Mr. Madaan was responsible for the operation of the business and that she had nothing to do with it – she provided the contact email address and telephone number for Mr. Madaan.

9. On April 11, 2019, Mr. Madaan called the delegate confirming his email address and telephone number. He stated that Mr. Singh had worked for Meher Trucking, but he had paid Mr. Singh in full, including some cash payment.
10. On May 30, 2019, a notice of hearing and a demand for section 28 payroll records were sent by email and by registered mail on May 31, 2019; successful delivery was confirmed by Canada Post tracking records.
11. No response was received for the demand for payroll records.
12. Mr. Madaan did not participate in the scheduled July 12, 2019 hearing. The delegate reached Mr. Madaan by telephone when he did not check in for the hearing and told him that the hearing was changed to a fact-finding meeting. Mr. Singh's evidence was obtained.
13. Mr. Singh testified that he began work as a helper doing deliveries on July 18 or July 20, 2018 for Meher Trucking. He earned \$130.00 per day and worked regularly most Tuesdays through Saturdays.
14. Mr. Singh said that he received confirmation of the next day's work by phone app message the evening before, and he would report for work at the Richmond warehouse at 6:30 a.m. each workday. He and a driver would load Hudson's Bay products and deliver them to customers throughout the day.
15. Meher Trucking contracted with B&N Delivery to deliver the Hudson's Bay products to customers.
16. Mr. Singh did not keep a daily record of his hours and did not receive wage statements, a T4 slip, or a record of employment.
17. Mr. Singh provided a copy of a cheque received from Meher Trucking on August 1, 2018, for \$2,160; this was signed by Ms. Madaan and the memo line indicated it was for work performed between July 20 and July 31, 2018.
18. Mr. Singh provided a copy of a cheque received from Meher Trucking on September 28, 2018, for \$1,280.00, also signed by Ms. Madaan. The memo line did not provide details of payment. He received no further payments from Meher Trucking.
19. Mr. Singh provided Delivery sheets that he and the driver were given each morning by warehouse staff, setting out days worked in August, September, and October 2018. Most sheets showed his signature.
20. Mr. Singh was terminated without notice on October 2, 2018, having worked less than 3 months for Meher Trucking.
21. Gurbalwinder Singh Sandu ("Mr. Sandu") testified that he drove for Meher Trucking and Mr. Singh worked with him as a delivery helper. He worked most Tuesday through Saturdays at the rate of \$150.00 per day for 9-10 hours during the period in dispute, as did Mr. Singh, his assigned helper. Mr. Sandu quit working for Meher Trucking in November 2018 because he wasn't paid for his last two months of work.
22. Susan Powers ("Ms. Powers"), the site manager at the Richmond warehouse, confirmed that Mr. Singh was one of the helpers provided as part of the Meher Trucking contract with B&N Delivery. Ms. Powers

said that an average day for a driver or helper is 8 to 9 hours, as they begin their day with loading up trucks in the morning and end with unloading them at shift's end.

23. On July 31, 2019, the delegate sent Meher Trucking, its directors, and its registered and records office a written preliminary findings letter by way of registered mail and email. Canada Post tracking records show that the preliminary assessment was available for pick up as of August 2, 2019, although it was not picked up. The government of BC postmaster system shows that the preliminary assessment was successfully delivered to the email address provided by both Mr. and Ms. Madaan as the contact address for Meher Trucking.
24. The preliminary findings letter outlined the complaint and the delegate's findings, based on available evidence, that Mr. Singh was entitled to wages, overtime wages, and statutory pay. The letter informed Meher Trucking that it had until August 14, 2019, in which to respond. Meher Trucking did not do so.
25. The delegate determined that Meher Trucking chose not to participate in the complaint resolution process, although Meher Trucking was given ample opportunity to respond to the complaint and evidence presented.
26. Based on the evidence obtained during the investigation, including payment of partial wages by way of cheques, testimony of co-workers and Delivery sheets, the delegate determined that Mr. Singh was an employee of Meher Trucking from July 20, 2018, through October 2, 2018.
27. Mr. Singh's hourly wage rate was determined to be \$16.25 or \$130.00 daily over an 8-hour shift. Mr. Singh earned \$4,420.00 in regular wages and \$341.21 in overtime wages between August 1 and October 2, 2018.
28. Mr. Madaan told the delegate that Meher Trucking paid Mr. Singh partly in cash, but provided no evidence of such payments, such as payroll or bookkeeping records. Mr. Singh denied receiving cash payments from Meher Trucking. The delegate found that no cash payments were made.

## **ARGUMENT**

29. Mr. Madaan argues that Mr. Singh was not employed by Meher Trucking, but was a subcontractor providing services when needed and was paid either cash on a daily basis or by cheque.
30. Mr. Madaan argues that the decision was made by the delegate without an opportunity for Meher Trucking to present evidence or an explanation, which was unfair.
31. Mr. Madaan argues that Mr. Singh owed him money for tools and a truck rental.

## ANALYSIS

32. 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.

33. The grounds of appeal are statutorily limited to those found in subsection 112 (1) of the *ESA* which says:

- 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.

34. An appeal is not simply another opportunity to argue the merits of a claim to another decision maker. An appeal is an error correction process, with the burden in an appeal being on the appellant to persuade the Tribunal that there is an error in the Determination under one of the statutory grounds. I am not persuaded that Meher Trucking has met that burden.

### *Error of Law*

35. The Tribunal has adopted the following definition of “error of law” set out by the British Columbia Court of Appeal in *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 - Coquitlam)*, [1998] B.C.J. No. 2275 (B.C.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.

36. Mr. Madaan argues that Mr. Singh was not an employee, but a sub-contractor who would provide services when needed, and that Mr. Singh rented a truck from Meher Trucking.
37. On April 9, 2019, Mr. Madaan told the delegate during a telephone conversation that Mr. Singh was never on payroll, was just a helper, and only provided temporary services for 10 days or so.
38. On April 11, 2019, Mr. Madaan told the delegate that Mr. Singh had been paid in full for hours worked and that some of the payment was made in cash. Mr. Madaan said that Mr. Singh failed to return a truck to him and used it for his own purposes for a week.
39. Mr. Madaan did not argue that Mr. Singh worked as a subcontractor until the appeal documents were submitted and has provided no supporting documents.
40. During the July 12, 2019 fact-finding investigation, Mr. Singh said, through a translator, that he had bought a truck from Mr. Madaan, but this was unrelated to his work for Meher Trucking, which was as a delivery helper.
41. The grounds of appeal do not provide for an appeal based on errors of fact. Under section 112 of the *ESA*, the Tribunal has no authority to consider appeals which seek to have the Tribunal reach different factual conclusions than were made by the Director unless such findings raise an error of law: see *Britco Structures Ltd.*, BC EST # D260/03. The test for establishing findings of fact constitute an error of law is stringent. In order to establish the Director committed an error of law on the facts, Meher Trucking is required to show the findings of fact and the conclusions reached by the delegate on the facts were inadequately supported, or wholly unsupported, by the evidentiary record with the result there is no rational basis for the conclusions and so they are perverse or inexplicable: see *3 Sees Holdings Ltd. carrying on business as Jonathan's Restaurant*, BC EST # D041/13.
42. I find no error of law in the Determination. The delegate analyzed the evidence presented by the parties during the complaint process, including Mr. Madaan's statement that Mr. Singh worked as a helper, the cheques received for work performed, and the supporting evidence provided by Mr. Singh and his witnesses. Mr. Singh was properly found to be an employee under the *ESA*. Mr. Singh worked under the control and direction of Meher Trucking, and there is no evidence that Mr. Singh was in business for himself.
43. Although Mr. Madaan disagrees with the findings of facts and conclusion, he has not shown that any of the factual findings and conclusions were made without any evidence at all, were perverse or inexplicable, or that the delegate misapplied the law and legislation.

### *New Evidence*

44. Meher Trucking has selected as a ground of appeal that new evidence has become available that was not available at the time the determination was made.
45. In *Re Merilus Technologies*, BC EST # D171/03, the Tribunal established the following four-part test for admitting new evidence on appeal:
- 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 the material issue arising from the complaint;
  - c. the evidence must be credible in the sense that it is reasonably capable 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.
46. Although Mr. Madaan disagrees with the Determination's findings, he has submitted no new evidence on Meher Trucking's behalf.
47. Meher Trucking provides no information on appeal that meets the test for new evidence. In any event, any documentation relevant to the complaint ought to have been provided in response to the Demand for Employers records.
48. I find no basis for this ground of appeal.

### *Failure to comply with the principles of natural justice*

49. At their essence, the principles of natural justice are procedural rights that ensure that parties know the case being made against them, are given an opportunity to reply, and have the right to have their case heard by an impartial decision maker.
50. There is nothing in Meher Trucking's appeal submission that establishes the delegate failed to provide sufficient information about the complaint or failed to afford Meher Trucking the opportunity to respond to the allegations.
51. On April 9, 2019, Ms. Madaan provided the delegate with the correct contact information for her husband and Meher Trucking, and on April 11, 2019, Mr. Madaan called the delegate confirming the contact information and stating that Mr. Singh had been paid in full. On May 30, 2019, the notice of hearing and demand for payroll records were successfully delivered to Meher Trucking; no records were provided in response to the demand.
52. When Mr. Madaan did not attend the July 12, 2019 scheduled hearing, he was contacted by telephone and the hearing was changed to a fact-finding investigation, resulting in a preliminary findings letter and providing Mr. Madaan until August 14, 2019 to respond and provide evidence.

53. Although Meher Trucking declined to pick up the preliminary findings letter available as registered mail, the same document was successfully delivered to the email address provided by Mr. and Ms. Madaan. When no response was forthcoming by the date provided, the delegate went on to write the Determination.
54. I find that Meher Trucking was given every opportunity to provide records in support of its position and failed or refused to do so.
55. I find no basis to conclude that Meher Trucking was denied natural justice.

### **ORDER**

56. I dismiss this appeal and confirm the Determination under section 115(1)(a) of the *ESA*.

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**Marnee Pearce**  
**Member**  
**Employment Standards Tribunal**