

Citation: Sinorama Travel Vancouver Inc. (Re)
2019 BCEST 34

An appeal

- by -

Sinorama Travel Vancouver Inc.
("STV")

- 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: Carol L. Roberts

FILE NO.: 2019/11

DATE OF DECISION: April 17, 2019

DECISION

SUBMISSIONS

Hong Qian on behalf of Sinorama Travel Vancouver Inc.

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*ESA*”), Sinorama Travel Vancouver Inc. (“*STV*”) has filed an appeal of a Determination issued by May Lee, a delegate (“*Delegate Lee*”) of the Director of Employment Standards (the “*Director*”), on January 7, 2019 (the “*Determination*”). In that Determination, the Director found that *STV* had contravened sections 18, 45, 58, and 63 of the *ESA* in failing to pay wages to five former employees. The Director ordered *STV* to pay the amount of \$21,723.79, representing unpaid wages, statutory holiday pay, annual vacation pay, and compensation for length of service and accrued interest. The Director also imposed two administrative penalties in the total amount of \$1,000 for *STV*’s contraventions of the *ESA*, for a total amount owing of \$22,723.79.
2. *STV* appeals the Determination on the basis that evidence has become available that was not available at the time the Determination was being made.
3. This decision is based on *STV*’s written submissions, the section 112(5) “record” that was before the delegate at the time the decision was made, and the Reasons for the Determination.

FACTS AND ARGUMENT

4. Five former employees of *STV* filed a group complaint with the Employment Standards Branch alleging that *STV* had contravened the *ESA* in failing to pay them wages, annual vacation pay, statutory holiday pay, and compensation for length of service. The complaints indicated that the business had ceased operation and that wages were owed as a result.
5. On September 27, 2018, Emma Riminchan, a delegate (“*Delegate Riminchan*”) of the Director, sent a registered letter to *STV* as well as its officers and directors, including Mr. Hong Qian, notifying them of the complaints. The letter also contained a Demand for Employer Records, which were to be provided by October 10, 2018. The letter indicated that if the records were not submitted by that date, a Determination would be issued based on the evidence the delegate had at that time. The record contains a Canada Post tracking sheet confirming that Mr. Hong Qian signed for delivery of this letter on October 1, 2018.
6. On November 26, 2018, Delegate Lee sent a registered letter to *STV* and the listed directors outlining a notice of investigation and preliminary findings along with information on the relevant provisions of the *ESA*. The letter noted that Mr. Hong Qian had submitted some employer records and acknowledged “unpaid salary, vacation and severance pay”. Subsequent attempts by Delegate Lee to speak to Mr. Hong Qian were unsuccessful.

7. Canada Post tracking records confirm that Mr. Hong Qian received the November 26, 2018, letter on December 4, 2018.
8. After receiving no further information from STV or any of the directors, Delegate Lee issued the Determination against STV on January 7, 2019.

Argument

9. Mr. Hong Qian says that Consumer Protection BC “forcibly removed the license of Sinorama Travel Vancouver on Aug. 8, 2018, [and] ordered our employees to leave the office” on that day, and at the same time, froze the company’s bank accounts. He says that although he attempted to communicate with the consumer protection agency, he was unsuccessful in determining when the company’s bank account would be “unfrozen.”
10. Mr. Hong Qian acknowledged receiving Delegate Lee’s November 26, 2018, preliminary findings letter. He says that he made arrangements to liquidate the company’s assets in an effort to pay outstanding wages, but the liquidation company was unable to proceed with the process until they were able to ascertain the number of creditors and the amounts owing. He said that he attempted to get that information from Consumer Protection BC, which informed him that the liquidation company would have to contact them directly.
11. Mr. Hong Qian says that STV had sufficient assets in the frozen bank accounts to pay the outstanding wages, but that in mid-December, three transfers of substantial sums were made from STV’s accounts, and he has no knowledge of who made the transfers.
12. Mr. Hong Qian argues that Consumer Protection BC should pay the outstanding wages, as it has seized STV’s funds and has not provided STV with any explanation for doing so.
13. Mr. Hong Qian asks that the Determination be cancelled.

ANALYSIS

14. Section 114 (1) 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:
 - (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, 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 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.

15. Section 112 (1) of the *ESA* provides that a person may appeal a determination on the following grounds:
- the director erred in law;
 - the director failed to observe the principles of natural justice in making the determination;
 - evidence has become available that was not available at the time the determination was being made.

16. The burden is on an appellant to demonstrate a basis for the Tribunal to interfere with the decision. I conclude that STV has not met that burden and dismiss the appeal.

New Evidence

17. In *Re Merilus Technologies* (BC EST # D171/03) the Tribunal established the following four-part test for admitting new evidence on appeal:

1. 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;
2. the evidence must be relevant to a material issue arising from the complaint;
3. the evidence must be credible in the sense that it is reasonably capable of belief; and
4. the evidence must have high 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.

18. STV was notified of the investigation and the potential liabilities of the company and its directors under the *ESA*. I find that STV had every opportunity to present all of the arguments Mr. Hong Qian made on appeal to the Director during the investigation. For this reason, I conclude that the submissions do not constitute “new evidence.”

19. Nevertheless, I have reviewed that information and conclude that it would not have led Delegate Lee to a different conclusion on the material issue in any event.

20. In support of the appeal, Mr. Hong Qian submitted a number of documents that I will refer to in my analysis.

21. On August 9, 2018, the Vice-President of Regulatory Services, Consumer Protection BC, acting on his delegated powers from its Director (“CPBC Director”), suspended STV’s travel agent licence. In his letter to STV, the Vice-President noted that he had reliable information that STV “does not have sufficient working capital to reasonably be expected to operate a travel service business”, which was one of the conditions for a licence under the *Travel Industry Regulation*. STV was given an opportunity to respond to the decision.

22. On August 20, 2018, Consumer Protection BC noted that STV had not challenged the CPBC Director’s decision to suspend the licence and indicated that it no longer intended on conducting business in British

Columbia. The letter further indicated that STV had not produced any financial, commercial, and corporate transaction records that it was obliged to maintain under the *Travel Industry Regulation* in response to requests to do so. Consumer Protection BC cancelled STV's licence.

23. I find no error in Delegate Lee's conclusion that STV contravened the ESA in failing to pay its employee wages. Indeed, Mr. Hong Qian has never disputed that conclusion.
24. Mr. Hong Qian suggests, however, that STV's assets were sufficient to pay those wages and that STV was unable to make the payments as a result of the actions of Consumer Protection BC.
25. Having reviewed that "new evidence", I am not persuaded that had this information and STV's arguments been considered by Delegate Lee, she would have arrived at a different conclusion.
26. Acting on reliable information, Consumer Protection BC suspended STV's travel agency licence because it had insufficient capital. Even though STV had the opportunity to dispute this conclusion, it did not, closing the business instead. It has not complied with Consumer Protection BC's demand for financial records. This information contradicts Mr. Hong Qian's submission that STV has sufficient assets to cover the employees' outstanding wages.
27. There is no basis to cancel the Determination against STV. I deny the appeal.

ORDER

28. Pursuant to section 114 of the *ESA*, I deny the appeal. I order that the Determination, dated January 7, 2019, be confirmed in the amount of \$22,723.79 together with whatever further interest that has accrued under section 88 of the *ESA* since the date of issuance.

Carol L. Roberts
Member
Employment Standards Tribunal