

Citation: Spruce Hill Resort and Spa Ltd. (Re)
2019 BCEST 5

An appeal

- by -

Spruce Hill Resort and Spa Ltd.
(the “Spruce Hill”)

- 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: Kenneth Wm. Thornicroft

FILE NO.: 2018A/111

DATE OF DECISION: January 7, 2019

DECISION

SUBMISSIONS

Kin Wa Chan

on behalf of Spruce Hill Resort and Spa Ltd.

OVERVIEW

1. This is an appeal filed under subsection 112(1)(a) of the *Employment Standards Act* (the “ESA”) by Spruce Hill Resort and Spa Ltd. (“Spruce Hill”). Spruce Hill appeals a Determination issued on October 4, 2018, by Jeff Bailey, a delegate of the Director of Employment Standards (the “delegate”), pursuant to which Spruce Hill was ordered to pay \$20,740.73 on account of unpaid wages and section 88 interest owed to nine former employees (the “complainants”). The complainants’ unpaid wage claims include regular wages, overtime pay, statutory holiday pay, vacation pay, and compensation for length of service.
2. In addition, and also be way of the Determination, the delegate levied six separate \$500 monetary penalties (see section 98) against Spruce Hill based on its contraventions of sections 18 (payment of wages on termination), 40 (overtime pay), 45 (statutory holiday pay), 58 (vacation pay) and 63 (compensation for length of service) of the *ESA* and section 46 of the *Employment Standards Regulation* (failure to comply with demand for production of employment records). Thus, the total amount payable by Spruce Hill under the Determination is \$23,740.73.
3. Spruce Hill says that the delegate erred in law in issuing the Determination and, accordingly, seeks an order that the Determination be cancelled. However, Spruce Hill’s submissions do not demonstrate, even on a *prima facie* basis, that the delegate erred in law. Accordingly, I am dismissing this appeal under subsection 114(1)(f) of the *ESA* because it has no reasonable prospect of succeeding. My reasons for reaching that conclusion now follow.

THE DETERMINATION

4. Spruce Hill operates a destination resort and spa at the 108 Mile Ranch (about 210 kilometers northwest of Kamloops). The complainants include the resort’s former general manager, the former human resources manager, the former spa manager, the former maintenance supervisor, a former accounts clerk, and four former restaurant servers. The complainants’ employment ended when they either quit or were terminated.
5. The delegate conducted an investigation into the complainants’ unpaid wage complaints and, in addition to the Determination, also issued comprehensive “Reasons for the Determination” (the “delegate’s reasons”).
6. On September 20, 2016, the delegate issued a “Demand for Employer Records” under section 85 of the *ESA* – relating to the complainants – but Spruce Hill did not comply with the Demand. Spruce Hill failed to provide complete employment records relating to the individual complainants. The complainants provided various payroll and other information but conceded that “they were unable to obtain employment records following the end of their employment” and thus “made estimates in their

calculations in some cases” (delegate’s reasons, page D8). Accordingly, the delegate’s unpaid wage calculations were based on the complainants’ incomplete records and other estimates since this evidence constituted the “best available” (see *Hofer*, BC EST # D538/97; confirmed on reconsideration: BC EST # D120/98).

7. Although Spruce Hill maintained that no wages were owed to any of the complainants, Spruce Hill “participated minimally in the investigation and did not respond to a preliminary findings letter of March 26, 2018, which outlined the results of the investigation to that point” (delegate’s reasons, page D8). In essence, the present appeal constitutes a simple statement of disagreement with the delegate’s findings (and without providing any justification for its asserted disagreement) in circumstances where Spruce Hill passed on the opportunity to challenge the delegate’s preliminary findings during the investigation.
8. Based on the evidentiary record before him, the delegate determined that the complainants were owed unpaid wages that varied in both type (for example, overtime pay versus statutory holiday pay) and amount from one complainant to another. For example, the complainants’ unpaid wage awards ranged from \$176.05 (regular wages plus concomitant vacation pay) to \$8,692.00 (regular wages, compensation for length, of service and vacation pay). All of the other unpaid wage orders, save one at \$2,345.27, were for less than \$2,000.
9. The delegate accepted the complainants’ various assertions regarding non-payment of overtime, statutory holiday pay, vacation pay, and compensation for length of service. In each case, the delegate noted that Spruce Hill had failed to provide any evidence to show that it had met its statutory obligation to pay regular wages, overtime pay, statutory holiday pay, vacation pay, and compensation for length of service.
10. The delegate’s reasons include separate appendices (“summary sheets”) for each complainant where the delegate detailed each person’s individual wage compensation information and entitlements, together with his detailed calculations as to the amount awarded.

REASONS FOR APPEAL

11. Spruce Hill’s appeal documents consist of the Appeal Form to which is attached Records of Employment for the complainants (and other former employees) and some payroll records. Several of the appended documents concern persons other than the complainants and, as such, do not appear to have any relevance to this appeal. Spruce Hill’s entire “reasons and argument” consists of the following assertions:

Grounds of appeal.

1. Melonie was the General Manager.
2. All the employee schedules were approved through Melonie.
3. Kathy did the accounting. Clare processed payroll and Melonie signed off on it. Melonie was in charge of watching for overtime and paying out overtime.
4. All the employees quit at the same time and walked off the job. They were not fired and Ken did not sign off on any paperwork to fire them.
5. The employee records and payroll records for this time period are not in the possession of Spruce Hill Resort and Spa because they have been taken by the employees in question.

12. The above assertions fall well short of demonstrating that the delegate erred in law in issuing the Determination. I will, however, briefly address each of the above assertions in turn.
13. First, “Melonie” was awarded only two day’s wages for August 3 and 4, 2016, plus concomitant vacation pay. Her status as a “manager” might have been relevant had she been awarded overtime pay or statutory holiday pay (see *Employment Standards Regulation*, subsection 34(f) and section 36), but no such awards were issued. As for her duties associated with scheduling – Nos. 2 and 3, above – even if Spruce Hill’s general manager scheduled employees to work overtime or on statutory holidays, that does not relieve Spruce Hill from its obligation to pay such wages to the employees in question if it was not otherwise paid. Spruce Hill failed to provide cogent evidence to the delegate that all overtime and statutory holiday pay was paid in accordance with the provisions of the *ESA*.
14. Spruce Hill’s fourth assertion concerns the compensation for length of service (section 63) awards. An employee who voluntarily quits (and is not otherwise deemed to have been dismissed under section 66) is not entitled to compensation for length of service (see subsection 63(3)(c) of the *ESA*). Of the nine complainants, seven were awarded compensation for length of service. Of these seven, six were awarded section 63 compensation on the basis that there were terminated without proper written notice or payment of compensation for length of service. The delegate determined that the seventh employee was terminated based on a section 66 deemed dismissal (weekly working hours reduced from 40 to 8 to 16 per week). Spruce Hill’s assertion that several of the complainants simply “quit” is an assertion without any evidentiary foundation and stands in stark contrast to the delegate’s findings.
15. I might add that the delegate, in his March 26, 2018 “preliminary findings” letter, set out the details relating to the express dismissal of the six complainants and the deemed dismissal of the seventh complainant. Spruce Hill never challenged the delegate or otherwise took issue with the delegate’s preliminary findings relating to section 63. Further, there are several documents in the section 112(5) record that corroborate the delegate’s finding that several of the complainants were dismissed without just cause, or proper written notice, or with the payment of proper compensation for length of service. Finally, even if the complainants’ dismissals were not formally authorized by a Spruce Hill officer or director (presumably, this is the “Ken” referred to No. 4, above) – an assertion that is wholly uncorroborated – that does not directly speak to the factual question of whether the six complainants in question were actually dismissed.
16. Spruce Hill’s fifth assertion is wholly uncorroborated and, at least to a degree, is belied by the fact that it appended several payroll records to its Appeal Form.

ORDER

17. Pursuant to subsection 114(1)(f) of the *ESA*, this appeal is dismissed. Pursuant to subsection 115(1)(a) of the *ESA*, the Determination is confirmed as issued in the amount of \$23,740.73 together with whatever additional interest that has accrued under section 88 since the date of issuance.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal