

An appeal

- by -

Inderjeet Tiwana
("Mr. Tiwana")

- 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.: 2019/41

DATE OF DECISION: July 22, 2019

DECISION

SUBMISSIONS

Inderjeet Tiwana

on behalf of Empire Consulting Group of Companies Inc.
carrying on business as Westcoast Direct Solutions

OVERVIEW

1. This is an appeal filed by Inderjeet Tiwana (“Mr. Tiwana”) identified as the appellant on the appeal form filed with the Employment Standards Tribunal (“the Tribunal”) on April 26, 2019.
2. The appeal identifies two grounds of appeal, namely that the Director of Employment Standards (the “Director”) erred in law and the Director failed to observe the principles of natural justice. The Tribunal was asked to vary the March 19, 2019, Determination (the “Determination”) issued by a delegate of the Director (the “Delegate”).
3. The Determination dated March 19, 2019, addressed the claim for wages and vacation pay initiated by the employee, Amandeep Kaur Thabrkey (“Ms. Thabrkey”), finding that Ms. Thabrkey was entitled to \$1,729.69 in gross wages and \$296.64 in vacation pay, as well as \$31.27 interest. Penalties were levied against Empire Consulting Group of Companies Inc. carrying on business as Westcoast Direct Solutions (“Empire”) in the total amount of \$1,000.00, for a total amount payable of \$3,057.60.
4. A BC Corporate Registry search established that Westcoast Direct Solutions is a sole proprietorship, and the sole proprietor is Empire Consulting Group of Companies Inc. with Mr. Tiwana listed as the sole director and officer.
5. Empire operates a sales and marketing business, and Ms. Thabrkey was employed as an office administrator from February 28, 2018, to October 24, 2018, when she quit her job.
6. Procedural issues have been identified with this appeal. On April 29, 2019, the Tribunal contacted Mr. Tiwana by telephone and asked him to provide page D3 of the Determination, a revised and signed Appeal form with the correct appellant name as shown in the Determination (Empire), and an extension request of the statutory appeal deadline.
7. On May 8, 2019, the Tribunal wrote to Mr. Tiwana and reiterated that the appeal was deficient and that an amended appeal form needed to be filed by May 23, 2019, providing page D3 of the Determination, a completed and signed appeal form with the correct appellant name (Empire), and a written request for an extension to the statutory appeal deadline.
8. On May 28, 2019, the Tribunal issued a letter to the parties confirming that the preliminary appeal documents requested from Mr. Tiwana were not received. This letter also provided the opportunity to object to the completeness of the record provided by the Director. No objections were made, and I am satisfied that the record is complete.

ANALYSIS AND FINDINGS

9. This appeal has not been brought in the name of the proper party and despite requests by telephone and by written correspondence, this deficiency has not been rectified. The appeal, as presently filed, is not valid as the respondent to the Determination – Empire – is not named as the appellant.
10. The named appellant in the submitted appeal documents would only be a proper party if the appeal related to a section 96 director/officer determination rather than the circumstances at hand, which is an appeal concerning a determination issued against a business corporation. The correct appellant is the corporation Empire.
11. Section 112(2) of the *Employment Standards Act* (the “ESA”) provides that an appeal is not perfected unless, within the statutory appeal period, the appellant files a completed appeal form and a copy of the reasons for the determination. Neither Mr. Tiwana nor Empire provided a complete copy of the reasons for the Determination even though the appellant was asked on several occasions to provide the absent page D3.
12. Because correcting the deficiencies in the appeal to the Tribunal would result in the appellant’s completed appeal form being received past the legislated deadline, it was also necessary for the appellant to request, in writing, an extension to the appeal deadline. This was not done, although Mr. Tiwana and Empire were advised of this requirement in writing by the Tribunal, and the initial and deficient appeal documents were already received outside of the legislated deadline for filing.
13. Section 112(3) of the *ESA* provides that the deadline for filing completed appeals is 30 days after the date of service of the determination, if the person was served by registered mail – Empire was served with the Determination by registered mail on March 19, 2019, and the appeal was received by the Tribunal on April 26, 2019.
14. 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.*

15. Even if this appeal were properly before me, it has no reasonable prospect of succeeding. The issue before the Delegate was outstanding wages and vacation pay owed to Ms. Thabr kay. As Empire did not submit any record of the specific hours worked by Ms. Thabr kay, the records Ms. Thabr kay submitted were accepted as the best evidence available and entitlement and the subsequent award were calculated accordingly. Mr. Tiwana's evidence was found to be vague and imprecise, and indeed, on one matter untruthful; where there were discrepancies between his evidence and that of Ms. Thabr kay's, Ms. Thabr kay's evidence was preferred. My reading of the Determination finds that the conclusions reached by the Delegate were reasonable and firmly grounded in the evidence.
16. This appeal must be dismissed as Mr. Tiwana has made no effort to correct the identified deficiencies in spite of multiple requests from the Tribunal, and in any event, the appeal has no reasonable prospect of succeeding.

ORDER

17. Pursuant to subsections 114(1)(b), (e), (f), and (h) of the *ESA*, this appeal is dismissed.

Marnee Pearce
Member
Employment Standards Tribunal