

Citation: All Right Trucking-99 Ltd. (Re)
2019 BCEST 75

An appeal

- by -

All Right Trucking-99 Ltd.
(the “Appellant”)

- 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: James F. Maxwell

FILE No.: 2019/45

DATE OF DECISION: August 7, 2019

DECISION

SUBMISSIONS

Harnav Nahal

on behalf of All Right Trucking-99 Ltd.

OVERVIEW

1. On November 6, 2018, Gurmeet Dhillon (“Dhillon”) filed a complaint with the Employment Standards Branch against All Right Trucking-99 Ltd. (“the “Appellant”). Dhillon alleged that the Appellant, with whom he had previously been employed, had failed to pay him amounts for regular wages, overtime, annual vacation pay, and statutory holiday pay.
2. On April 5, 2019, a delegate of the Director of Employment Standards (the “Director”) issued a determination (the “Determination”) pursuant to the *Employment Standards Act* (the “ESA”), in which the Director held that the Appellant had breached several sections of the *ESA* by failing to pay to Dhillon amounts owing as regular wages, overtime, annual vacation pay, and statutory holiday pay.
3. On May 10, 2019, the Appellant filed an appeal of the Determination.
4. In its appeal, the Appellant requests that the Tribunal vary the Determination pursuant to section 112 of the *ESA* on the ground that the Director failed to observe the principles of natural justice in making the Determination.
5. Having reviewed the Determination, the Appellant’s appeal submissions, and the record of proceedings provided by the Director, I conclude that this appeal must be dismissed pursuant to section 114(1)(f) of the *ESA*. My reasons follow.

ISSUES

6. The issue to be determined in this matter is whether there a reasonable prospect that the within appeal would succeed.

FACTS

7. Dhillon commenced work for the Appellant in June 2017 as a short haul truck driver. His employment with the Appellant ended August 31, 2018, when he resigned.
8. Dhillon filed a complaint against the Appellant on November 6, 2018, within the time period contemplated by the *ESA* for doing so. In his complaint, Dhillon contended that the Appellant failed to fully compensate him for regular wages, overtime, annual vacation pay, and statutory holiday pay.
9. On March 14, 2019, the Director conducted a formal hearing into Dhillon’s complaint. Testimony was provided under affirmation by Dhillon; Harnav Nahal, representative of the Appellant; four current and former employees of the Appellant; and the Appellant’s accountant. The Director accepted additional

evidence at the hearing, provided by Dhillon, and afforded the Appellant the opportunity to review this evidence, and to respond to it, both in the hearing and afterwards.

10. Following the hearing, the Director afforded both Dhillon and the Appellant the opportunity to provide post-hearing submissions and to provide additional evidence or other materials. The Appellant did tender post-hearing submissions and other documents, which were provided to Dhillon. Dhillon did not submit any post-hearing submission.
11. On April 5, 2019, the Director issued a Determination. In the Determination, the Director held that the Appellant had breached several sections of the *ESA* by failing to pay to Dhillon correct amounts for regular wages, overtime, annual vacation pay, and statutory holiday pay. The Director ordered the Appellant to pay the sum of \$7,923.86 for outstanding wages and accrued interest. In addition, the Director imposed upon the Appellant administrative penalties in the sum of \$3,000.00.
12. The Director assessed and weighed the evidence provided by all of the witnesses and examined all relevant documents tendered by the parties. The Director acknowledged that there were inconsistencies in the evidence presented by Dhillon with respect to the hours that he had worked in the Appellant's employ. The Director also noted, however, that the Appellant did not keep records of the hours worked by its employees. The Director accepted that the best evidence as to the hours worked by Dhillon was provided by a careful analysis of Dhillon's records and the evidence of the Appellant's own employees who testified at the hearing.
13. On May 10, 2019, the Appellant filed the within appeal with the Tribunal.

ANALYSIS

14. Section 112(1) of the *ESA* provides that a person may appeal a Determination 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.
15. The burden is on an appellant to persuade this Tribunal that there is justification to interfere with a determination on any one of these statutory grounds.
16. In the present case, the Appellant contends that the Director failed to observe the principles of natural justice in making the Determination and argues that, for this reason, the Determination should be varied.
17. Section 114 of the *ESA* provides that an appeal may be dismissed summarily in certain circumstances as follows:
 - 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 the appeal if the tribunal determines that any of the following apply:

...

(f) there is no reasonable prospect that the appeal will succeed; ...

18. For the purposes of this Appeal, I will examine whether there is a reasonable prospect that this Appeal would succeed on the basis of the arguments and allegations advanced by the Appellant.

Did the Director fail to observe the principles of natural justice in making the Determination?

19. In its appeal, the Appellant alleged that the Director failed to observe the principles of natural justice in making the Determination.

20. The Appellant tendered submissions with its appeal, including arguments as to how the Director failed to observe the principles of natural justice in making the Determination. The Appellant alleged that:

- the Determination was very unfair in its treatment of the evidence tendered by the Appellant; and
- Dhillon presented false evidence and was untruthful during the hearing.

21. The onus is on the Appellant to show that the Director breached the principles of natural justice in making the Determination. In this appeal the Appellant seeks, in essence, to have the evidence that was considered by the Director re-examined by this Tribunal, in the hope that the Tribunal will come to a different conclusion. It is not the function of the Tribunal to re-examine the evidence heard by the Director, but rather to assess whether the Director failed to apply the principles of natural justice in reaching the Determination.

22. In *Imperial Limousine Service Ltd.*, BC EST # D014/05, the Tribunal addressed the principles of natural justice that must be addressed by administrative bodies, as follows:

Principles of natural justice are, in essence, procedural rights ensuring that parties have an opportunity to know the case against them; the right to present their evidence; and the right to be heard by an independent decision maker. It has been previously held by the Tribunal that the Director and her delegates are acting in a quasi-judicial capacity when they conduct investigations into complaints filed under the *Act*, and their functions must therefore be performed in an unbiased and neutral fashion. Procedural fairness must be accorded to the parties, and they must be given the opportunity to respond to the evidence and arguments presented by an adverse party. (see *BWI Business World Incorporated* BC EST #D050/96).

23. I do not find anything in the Appellant's submissions or in the Director's record that supports the argument that the Director failed to apply the principles of natural justice in reaching the Determination. I find that the Director afforded sufficient opportunities to the Appellant to know the case against it and the right to present its evidence. The Director provided the Appellant with the particulars of Dhillon's complaint prior to the hearing. Materials presented by both Dhillon and the Appellant were provided to the other party, both in advance and at the hearing. The Director conducted a hearing in which both Dhillon and a representative of the Appellant gave oral evidence and were afforded rights of cross-examination. Additional testimony was provided by witnesses called by both Dhillon and the Appellant. The parties were afforded the opportunity to present further materials and submissions post-hearing, and those were

exchanged between the parties. While the Director did note some inconsistencies in Dhillon's evidence, the Director carefully weighed all the evidence, including that provided by other employees, and reached a reasonable conclusion as to what evidence was most compelling.

24. The Appellant has presented no convincing evidence in support of its allegations that the Director failed to apply the principles of natural justice. On the contrary, I am satisfied that the Director observed the principles of natural justice in conducting the hearing and in evaluating the testimony provided therein. For this reason, I conclude that there is no reasonable prospect that the within appeal would succeed.

ORDER

25. Pursuant to section 114(1)(f) of the *ESA*, I dismiss this appeal. Pursuant to section 115 of the *ESA*, I confirm the Determination.

James F. Maxwell
Member
Employment Standards Tribunal