

Citation: Western Pacific Trust Company (Re)
2019 BCEST 98

An appeal

- by -

Western Pacific Trust Company
("WPTC")

- 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: David B. Stevenson

FILE NO.: 2019/74

DATE OF DECISION: September 16, 2019

DECISION

SUBMISSIONS

Alison Alfer on behalf of Western Pacific Trust Company

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “ESA”), Western Pacific Trust Company (“WPTC”) has filed an appeal of a Determination issued by Chantelle MacInnis, a delegate of the Director of Employment Standards (the “Director”), on May 14, 2019.
2. The Determination found WPTC had contravened section 46 of the *Employment Standards Regulation* (the “Regulation”) and ordered WPTC to pay an administrative penalty in the amount of \$500.00, which is the total amount of the Determination.
3. In this appeal WPTC says the Director erred in law and failed to comply with principles of natural justice in making the Determination. WPTC seeks to have the Determination cancelled.
4. In correspondence dated June 26, 2019, the Tribunal acknowledged having received an appeal. Among other things, the correspondence requested the section 112(5) record (the “record”) from the Director, notified the parties that no submissions were being sought from any other party pending a review of the appeal by the Tribunal and notified the parties that, following such review, all or part of the appeal might be dismissed.
5. The record has been provided to the Tribunal by the Director. A copy has been delivered to WPTC, which has been given an opportunity to object to its completeness. WPTC submitted a document had been omitted from the record; the Director acknowledged the omission and it was corrected. I am satisfied the record is complete.
6. I have decided this appeal is appropriate for consideration under section 114 of the *ESA*. At this stage, I am assessing the appeal based solely on the Determination, the reasons for Determination, the appeal, the written submission filed with the appeal and my review of the material that was before the Director when the Determination was being made and any material accepted for inclusion in the appeal. Under section 114(1), the Tribunal has discretion to dismiss all or part of an 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 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 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 of the requirements of section 112(2) have not been met.*

7. If satisfied the appeal or a part of it should not be dismissed under section 114(1), the Director will be invited to file submissions. On the other hand, if it is found the appeal satisfies any of the criteria set out in section 114(1), it is liable to be dismissed. In this case, I am looking at whether there is any reasonable prospect the appeal will succeed.

ISSUE

8. The issue here is whether this appeal should be allowed to proceed or be dismissed under section 114(1) of the *ESA*.

THE FACTS

9. The Director received an anonymous complaint alleging WPTC had contravened the *ESA* which resulted in the Employment Standards Branch (the “Branch”) conducting an audit of current and former employees over a six-month period.
10. On February 28, 2019, the Director sent a letter to WPTC by registered mail advising an audit was being conducted and it was required to provide payroll records to the Branch by 4:00 pm on March 15, 2019. The relevant portion of the letter – for the purposes of this appeal – stated:

I require you to provide payroll records for all employees who worked in the last six months for the period of June 2018 to January 2019. The records must include the rate of pay, number of hours worked each day **including overtime hours**, calculation of gross wages, deductions and net pay for each employee for each pay period.

11. WPTC delivered their response to the demand on March 14, 2019. The response did not include a daily record of hours worked by each employee.
12. On March 19, 2019, the Director sent an e-mail to Alison Alfer (“Ms. Alfer”), the president and CEO of WPTC, advising the records of hours remained outstanding. On March 20, 2019, the Director spoke directly with Ms. Alfer reiterating the payroll records were incomplete. On March 21, 2019, WPTC submitted a daily record of hours worked for all employees.

THE APPEAL

13. The principle point made by WPTC in the appeal is that the demand for payroll records was satisfied by the material delivered to the Director on March 14, 2019.

14. Other submissions made by WPTC, that the Director changed the requirements for the time period under review, engaged in a path of enquiry that was not reasonable and did not make any decision in the Determination on the anonymous complaint that initiated the demand for payroll records, are not helpful to deciding the question raised in the appeal, which is whether WPTC contravened section 46 of the *Regulation*.

ANALYSIS

15. 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 made.*
16. An appeal is an error correction process, with the burden in an appeal being on the appellant to persuade the Tribunal there is an error in the Determination under one of the statutory grounds.
17. WPTC has grounded this appeal in error of law and failure to comply with principles of natural justice in making the Determination.
18. As indicated above, the only issue required to be decided is whether the Director committed a reviewable error in finding WPTC contravened section 46 of the *Regulation* and imposing an administrative penalty for that contravention. All of the other submissions made in the appeal argument which do not address that issue – whether the Director changed the requirements for the time period under review, engaged in a line of enquiry that was not reasonable and made no decision on the complaint in the Determination – are superfluous and irrelevant.
19. Whether the Director, as alleged, did not conduct a “complete” review of all the material provided by WPTC in response to the demand, it is obvious the Director conducted a review which was sufficient to determine WPTC had not met the requirements of the demand. Whether the Director changed the time period to which the demand applied does not alter or affect the finding that WPTC had not met the requirements of the demand.
20. I find no merit whatsoever in the appeal. The facts are incontrovertible and fully support the finding reached by the Director in the Determination. WPTC did not meet the requirements of the demand for payroll records and in failing to do so contravened section 46 of the *Regulation*. The Director was entirely justified in imposing the administrative penalty.
21. WPTC has demonstrated neither an error of law nor a failure to comply with principles of natural justice.

22. I find the appeal has no reasonable prospect of succeeding. The purposes and objects of the *ESA* are not served by requiring the other parties to respond to it. The appeal is dismissed under section 114(1) of the *ESA*.

ORDER

23. Pursuant to section 115 of the *ESA*, I order the Determination dated May 14, 2019, be confirmed in the amount of \$500.00.

David B. Stevenson
Member
Employment Standards Tribunal