Citation: Serdar International Inc. (Re)
2020 BCEST 132

EMPLOYMENT STANDARDS TRIBUNAL

An appeal

- by -

Serdar International Inc.
(the "appellant")

- 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.: 2020/129

DATE OF DECISION: November 18, 2020

DECISION

SUBMISSIONS

Nick Kasim on behalf of Serdar International Inc.

INTRODUCTION

1. Serdar International Inc. (the "appellant") appeals a Determination issued against it by Jo-Ann Spencer, a delegate of the Director of Employment Standards (the "delegate"), on July 24, 2020. I note that the appellant has misspelled its proper corporate name in its appeal form (using "Seradr" rather than "Serdar" – the latter being the name registered with BC Registry Services). This appeal is filed under section 112(1)(b) of the *Employment Standards Act* (the "*ESA*").

2. By way of the Determination, the delegate ordered the appellant to pay a former employee (the "complainant") $143.98 on account of unpaid wages and interest. Further, and also by way of the Determination, the delegate levied a $500 monetary penalty against the appellant based on its contravention of section 18 of the *ESA* – failure to pay wages within 48 hours after the employer terminates employment. It appears that this appeal solely, or at least principally, concerns this latter monetary penalty.

3. In my view, this appeal has no reasonable prospect of succeeding and, that being the case, must be dismissed under section 114(1)(f) of the *ESA*. My reasons for reaching that conclusion now follow.

FACTS AND FINDINGS

4. The relevant facts are largely uncontested. The appellant hired the complainant to work at its "Blenz" coffee shop in Surrey, and she attended a 5 ½-hour "training session" (6 hours less a ½-hour break) on January 30, 2020, at the appellant's business. The appellant maintained that it was expressly understood that this "training" shift would be an unpaid shift, but also conceded that the complainant "did complete work-related duties" on that day (delegate's "Reasons for the Determination" – the "delegate's reasons" – page R3). The complainant, for her part, maintained that she was quite busy that day, performing cashier duties, heating and serving food and cold drinks.

5. The complainant worked another 4.75-hour shift on February 1, 2020, following which the appellant decided she would not be a "good fit" for the business, and thus the complainant's employment ended. The agreed wage rate was $13.85 per hour, and the complainant claimed 10.25 hours at $13.85 per hour.

6. "On June 15, 2020, [the appellant] agreed to voluntarily pay the amount of $141.96 [unpaid wages plus section 88 interest] to the Complainant by e-transfer" (delegate's reasons, page R3). I understand this transfer has now been affected.

7. The appellant says that it "agreed to pay for both days just to get over, even [*sic*] though I still believe she should only be paid for 1 day." Given that the appellant has paid the complainant, in full, the amount due under the Determination, any appeal with respect to the wage award is moot.

8. This appeal is predicated on the assertion that the delegate failed to observe the principles of natural justice in making the Determination. The appellant says: "Now I would like to request for the $500 penalty wrongly imposed to be removed." There is nothing in the material before me that would suggest, even on a *prima facie* basis, that the delegate failed to observe the principles of natural justice in making the Determination. The delegate correctly summarized and weighed both parties' evidence, and then applied the relevant provisions of the *ESA* in issuing the Determination. The delegate's reasons are intelligible and cogent. In my view, the thrust of the appellant's challenge is more akin to an alleged error of law than an alleged natural justice breach – namely, that the delegate erred in law in issuing the $500 monetary penalty.

9. Even if one accepted the appellant communicated to the complainant that the January 30th "training" shift would be without pay, and even if the complainant accepted that arrangement (a matter of some debate, on the evidence), I agree with the delegate that this "training" session was compensable work. Any agreement to waive a wage entitlement for this shift is proscribed by section 4 of the *ESA*.

10. In light of the fact that the appellant failed to pay the complainant in a timely manner for her work on January 30th (i.e., within 48 hours following termination), a $500 monetary penalty was appropriately levied under section 98(1) of the *ESA*. The Tribunal has no legal authority to cancel a penalty that was lawfully assessed.

ORDER

11. Pursuant to section 114(1)(f) of the *ESA*, this appeal is dismissed. Pursuant to section 115(1)(a) of the *ESA*, the Determination is confirmed as issued in the total amount of $643.98.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal