Citation: Canbridge Business Group Ltd. (Re)
2020 BCEST 138

EMPLOYMENT STANDARDS TRIBUNAL

An appeal

- by -

Canbridge Business Group Ltd.
("Canbridge")

- 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.: 2020/131

DATE OF DECISION: November 24, 2020

DECISION

SUBMISSIONS

Victoria Merritt — legal counsel for Canbridge Business Group Ltd.

INTRODUCTION

1. On May 8, 2020, Mitch Dermer, a delegate of the Director of Employment Standards (the "delegate"), issued a Determination under section 79 of *Employment Standards Act* (the "*ESA*") ordering Canbridge Business Group Ltd. ("Canbridge") to pay its former employee, Qin Yu (the "complainant"), the total sum of $1,056.62 (including interest). Further, and also by way of the Determination, the delegate levied a single $500 monetary penalty against Canbridge based on its contravention of section 18 of the *ESA*. Accordingly, Canbridge's total liability under the Determination is $1,556.62.

2. The statutory deadline for appealing the Determination, as set out in a text box found on the third page of the Determination, was June 15, 2020. On September 10, 2020, nearly three months after this appeal deadline expired, Canbridge submitted its appeal to the Tribunal. Canbridge's appeal is based on the assertion that the delegate failed to observe the principles of natural justice in making the Determination (see section 112(1)(b) of the *ESA*). In a later submission, Canbridge asserted that the delegate also erred in law (see section 112(1)(a) of the *ESA*) "by acting on a view of the facts that could not reasonably be entertained".

3. Given that this is a late appeal, Canbridge seeks an extension of the appeal period pursuant to section 109(1)(b) of the *ESA*: "In addition to its powers under section 108 and Part 13, the tribunal may do one or more of the following…(b) extend the time period for requesting an appeal or applying for reconsideration even though the period has expired".

THE DETERMINATION

4. The Determination was issued following a complaint hearing conducted on April 7, 2020. The delegate issued the Determination, together with his "Reasons for the Determination" (the "delegate's reasons"), on May 8, 2020.

5. As detailed in the delegate's reasons, Canbridge operates an immigration consulting business and the complainant, who is fluent in French, was employed to process and submit Canbridge clients' applications in the French language on the assumption that such applications would be processed more quickly than those filed in English.

6. The complainant's employment ended in May 2019. "On May 30, 2019 [Canbridge] issued a cheque to the Complainant in the amount of $929.02. Before the Complainant could cash the cheque, [Canbridge] cancelled the cheque" (delegate's reasons, page R2). Both parties advanced serious allegations as against each other (each alleged the other was engaging in fraudulent behaviour). The delegate found that the evidence presented by both parties was, in varying degrees, problematic. Nevertheless, the delegate ultimately determined that the complainant had not been paid for work undertaken in early May 2020:

"There appears to be no dispute that the Complainant worked a total of 28 hours on May 1, 2, 3 and 7. His rate of pay was $20.00 per hour." (delegate's reasons, page R5).

7. The delegate further determined that the complainant worked on May 8, 9, and 10, 2019 (delegate's reasons, page R6). Thus, the delegate awarded the complainant $980, being 49 hours of work at $20 per hour, plus 4% vacation pay ($39.20). The delegate dismissed the complainant's claim for compensation for length of service. The delegate also levied a $500 monetary penalty, since these earned wages were not paid to the complainant within 48 hours following his termination.

THE APPLICATION TO EXTEND THE APPEAL PERIOD

8. Canbridge says that it failed to file a timely appeal due to circumstances flowing from the COVID-19 pandemic. While not denying that a copy of the Determination was delivered to both of its offices shortly after it was issued, it maintains that it failed to properly review it "until July".

9. Canbridge says that when the Determination was issued, its employees were working remotely, and that "physical mail" was "only checked irregularly, around 2-3 weeks at both office locations". The section 112(5) record indicates that the Determination was sent by registered mail to Canbridge's registered and records office on May 8, 2020. The Determination was also sent by registered mail to its sole director (and president/CEO) – who also represented Canbridge at the complaint hearing – to his mailing/delivery address as set out in the BC Registry Service's records. Canada Post records show that Canbridge received the Determination at its registered and records office on May 11, 2020. The Determination was also sent by registered mail to Canbridge's business office in Richmond, and this envelope was sent on May 8 and delivered on May 12, 2020. The record does not include any Canada Post record indicating when the Determination sent to Canbridge's director/CEO was delivered.

10. However, if one accepts Canbridge's assertion that it was checking its mail every 2 to 3 weeks, it should have had the Determination in hand by no later than the first week of June. Canbridge concedes that "a staff member" picked up the envelope containing the Determination "at the end of June", an assertion that belies its statement that it was checking its mail every 2-3 weeks. Canbridge has not explained why it did not pick-up this envelope at the beginning of June, rather than at the end of June.

11. Canbridge, as noted above, says that its principal did not review the Determination "until July", but only says that in the interim period after the Determination was picked up by a staff member, the envelope containing the Determination "remained unopened". I fail to understand why an earlier communication could not have been given to Canbridge's principal regarding an envelope received from the Employment Standards Branch. In any event, even if the Determination was not reviewed by Canbridge's principal "until July", this appeal was not filed until September 10, 2020, some two or more months' later.

12. In my view, Canbridge has not adequately explained why its appeal was not filed in a timely manner. Canbridge says that it commenced its efforts to appeal the Determination on July 9, 2020, but it also says that it did not consult legal counsel until August 7, 2020, about one month later.

13. The text box in the Determination that states when the appeal must be filed, also contains information about how an appeal can be filed along with other relevant information. In my view, Canbridge's conduct since it first received the Determination, by its own admission, in late June 2020, can only be characterized

as being extremely dilatory. While I recognize that we are all now living in a changed world due to the pandemic, I fail to appreciate why this appeal could not have been filed well before September 10, 2020.

14. Further, and apart from the excessive, unexplained delay involved in this case, I see no merit whatsoever to the appeal. Canbridge says that the delegate failed to observe the principles of natural justice in making the Determination. In particular, Canbridge challenges the delegate's following finding (at page R5):

> When assessing whether the Complainant or [Canbridge] has provided the most credible evidence in the circumstances, I am hesitant to make any findings as to the truthfulness of either of the parties, and do not believe I need to do so in the circumstances.

15. Canbridge maintains that the delegate's reasons clearly show that he did not find the complainant to be a credible witness. That assertion is, in my view, an accurate characterization of the delegate's reasons. However, the delegate also found that Canbridge's evidence (given by its sole director) about the disputed workdays did not "provide…any degree of certainty whether, during this period, the Complainant did in fact attend at the office" (page R6). The delegate stated that he "found it bizarre that [Canbridge] could not provide evidence, either *viva voce* evidence from coworkers or documentary evidence, showing that the complainant did not in fact perform work on these days" (page R6). Further, Canbridge's principal testified that he originally issued a cheque to the complainant for the disputed days "as a good faith gesture" (this payment was later cancelled), and that he was "unsure" if the complainant attended at the workplace on any of the disputed days (see delegate's reasons, page R4).

16. As noted above, there was "no dispute" that the complainant worked 28 hours on May 1, 2, 3 and 7, 2019. The disputed workdays were May 8, 9, and 10, 2019. The delegate's finding regarding these latter days is as follows (page R6): "With only limited evidence on [Canbridge's] behalf in this respect, I am forced to prefer the Complainant's largely uncontroverted claim to have worked these days, if for no other reason than that a reasonable employer should be able to demonstrate whether or not someone did in fact attend work on a particular day." Thus, the delegate was forced to make a finding of fact in the face of little or no persuasive evidence from the employer to challenge the complainant's assertion that he actually worked on the disputed days.

17. In my view, the delegate did not fail to observe the principles of natural justice when he made a finding of fact based on uncontroverted evidence. The delegate, as he was obliged to do, heard and considered both parties' conflicting positions regarding whether the complainant worked on May 8 to 10, 2019, and made a good faith effort to resolve the matter based on the evidence before him. At the very least, I am unable to say that the delegate's finding of fact regarding whether the complainant worked on the disputed days was tainted by an overriding and palpable error. That being the case, it follows that the delegate's finding that the complainant actually worked on the disputed days does not amount to an error of law as has been alternatively asserted by Canbridge.

SUMMARY

18. Canbridge's application to extend the appeal period is refused, principally because it has not adequately explained why it failed to file a timely appeal.

19. Further, and in any event, this appeal is not, in my view, meritorious and thus should be dismissed as having no reasonable prospect of succeeding (see section 114(1)(f) of the *ESA*).

ORDERS

20. Canbridge's application to extend the appeal period, made pursuant to section 109(1)(b) of the *ESA*, is refused.

21. Pursuant to sections 114(1)(b) and 114(1)(f) of the *ESA*, this appeal is dismissed.

22. Pursuant to section 115(1)(a) of the *ESA*, the Determination is confirmed as issued in the total amount of $1,556.62 together with whatever additional interest that has accrued under section 88 since the date of issuance.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal