

An appeal

- by -

Armaan Bassi  
("Mr. Bassi")

- 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:** Shafik Bhalloo

**FILE No.:** 2020/004

**DATE OF DECISION:** April 6, 2020

## DECISION

### SUBMISSIONS

Armaan Bassi on his own behalf

### OVERVIEW

1. Pursuant to section 112 of the Employment Standards Act (the “ESA”), Armaan Bassi (“Mr. Bassi”) has filed an appeal of a Determination (the “Determination”) issued by a delegate of the Director of Employment Standards (the “Director”), on November 29, 2019, as varied on December 19, 2019.
2. The Determination found Mr. Bassi had failed to file his complaint within the time limit set out in section 74 of the *ESA* and, exercising the discretion allowed the Director in section 76 of the *ESA*, the Director decided not to proceed with Mr. Bassi’s complaint.
3. Mr. Bassi has appealed the Determination on the sole ground that the Director failed to observe principles of natural justice in making the Determination. Mr. Bassi seeks to have the Determination varied or cancelled.
4. In correspondence dated January 14, 2020, the Tribunal, among other things, acknowledged having received the appeal, requested the section 112(5) record (the “record”) from the Director and notified the other parties that submissions on the merits of the appeal were not being sought from any other party at that time.
5. The record has been provided to the Tribunal by the Director and a copy has been delivered to Mr. Bassi and Pop Lab Production Inc. (“PLP” or the “respondent”). Both, Mr. Bassi and PLP were provided with the opportunity to object to its completeness. Neither objected to the completeness of the record. Accordingly, the Tribunal accepts the record as being complete.
6. I have decided that the appeal is appropriate for consideration under section 114 of the *ESA*. I will consider 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. Under section 114, the Tribunal has discretion to dismiss all or part of an appeal, without a hearing, for any of the reasons listed in subsection (1). If I am satisfied, the appeal or a part of it has some presumptive merit and should not be dismissed, the Director and PLP 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.

### ISSUE

7. The issue in this case is whether or not there is any reasonable prospect the appeal can succeed. In other words, whether or not Mr. Bassi has established any basis to interfere with the Director’s decision.

## THE FACTS

8. PLP operated a frozen dessert shop in the City of Burnaby.
9. Mr. Bassi was employed as a sales associate and cashier with PLP from May 29, 2018, to July 13, 2018, at the rate of pay of \$12.65 per hour.
10. PLP shut down its business some time in September 2018.
11. A BC Online Corporate Registry search conducted on November 15, 2019, with a currency date of August 22, 2019, shows that PLP was incorporated on June 12, 2016, and dissolved on November 26, 2018, for failing to file. The search also shows that Darryl Navin Chandra (“Mr. Chandra”) as one of three directors of PLP.
12. On July 3, 2019, Mr. Bassi filed a complaint under section 74 of the *ESA* alleging that PLP contravened the *ESA* by failing to pay him regular wages for the periods June 4 to June 11, 2018, and July 10 to July 20, 2018. Based on an initial review of the complaint information provided by Mr. Bassi, the Director found the complaint was filed outside of the time limit set out in section 74(3) of the *ESA*, which provides:
  - 74 (3) A complaint relating to an employee whose employment has terminated must be delivered under subsection (2) within six months after the last day of employment.
13. On November 14, 2019, the Director sent an email to Mr. Bassi and requested him to provide further information for his failure to apparently meet the statutory time limit for filing his complaint. Mr. Bassi responded by email on November 17, 2019, explaining that the reason why he did not file his complaint earlier, within 6 months after the last day of his employment on July 31, 2019, was because he “was going back and forth with [his] employer” and “honestly thought” that he would receive payment “any day now but he [Mr. Chandra] never got around to it”. He provided screenshots of texts and email exchanges showing numerous prolonged exchanges he had with Mr. Chandra. Over time, he said that he found Mr. Chandra was slow and less responsive. He further submits that he “should have acted on this earlier” but he had “never had to file a complaint like this before” and “it’s not something [that he] ever looked into”. He simply did not know that the Employment Standards Branch was an option for him.
14. After reviewing Mr. Bassi’s response, the Director’s delegate delineated the two preliminary questions he considered in the reasons for the Determination: 1. Was the complaint filed within the time limit set out in section 74(3) of the *ESA*? 2. If the complaint was filed outside of the time limit, should he exercise discretion to refuse to investigate the complaint under section 76(3) of the *ESA*?
15. With respect to the first question, the delegate unequivocally concluded that Mr. Bassi filed his complaint outside of the 6-month time limit in section 74(3) as his last day of work was July 31, 2018, and the complaint was filed on July 3, 2019.

16. With respect to the second question, whether he should exercise discretion to refuse to investigate the complaint, the delegate referred to section 76(3) of the *ESA* which provides:

**Investigations**

76 (3) The director may refuse to accept, review, mediate, investigate or adjudicate a complaint or may stop or postpone reviewing, mediating, investigating or adjudicating a complaint if

- (a) the complaint is not made within the time limit specified in section 74 (3) or (4),

17. The delegate made note of the use of the word “may” in subsection (3) which he concluded makes the Director’s decision discretionary under section 76(3) of the *ESA*. He also noted one of the purposes of the *ESA* in section 2(d), namely, “to provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act”. This purpose or objective, according to the delegate, could be achieved by requiring complaints to be submitted to the Branch within the 6-month after the last day of employment as required by section 74 of the *ESA*. He further noted that it is only “in exceptional circumstances where there are compelling reasons to do so” that he will exercise his discretion to proceed with a late filed complaint.

18. In this case, in exercising his discretion to stop investigating Mr. Bassi’s complaint, the Director reasoned as follows:

The requirements to file a complaint are very explicit and available publicly on the Branch’s website. In addition, if employees or employers have questions about the Branch’s process or the requirements of the *Act*, they may phone the Branch information line for clarification.

The Complainant’s explanation that he was delayed by Mr. Chandra’s actions is not an exceptional circumstance with a compelling reason. There is nothing out of the ordinary or exceptional about his exchange with Mr. Chandra. Their exchange is typical in that there is some back and forth and sometimes someone needing to reschedule or to get the requested information from another person. Nor is the Complainant’s lack of knowledge about the Branch, the *Act* and its application exceptional. Many people have been in similar wage disputes with their employers and lacked similar knowledge about the *Act* or its application; however, many have nonetheless complied with the six-month time limit.

The delay here is substantial. The Complainant was required to file the complaint on or before January 31, 2019. As he did not file the complaint until July 3, 2019, there has been a substantial delay of approximately five months.

Based on the foregoing, I find the Complainant has provided no compelling reason to continue the investigation.

**ARGUMENT**

19. Mr. Bassi has checked off the “natural justice” ground of appeal on his Appeal Form. In his written submissions, he contends that he was only “a few months late to complain” and the Director “chose to stop further investigating my complaint”. He then largely reiterates the substance of his explanations for his late filed complaint in his email of November 17, 2019, to the Director. He meticulously delineates the

prolonged exchanges he had with Mr. Chandra hoping that he would get paid outstanding wages. He also includes the same texts he previously provided to the Director before the Determination was made and adds further evidence of email exchanges with Mr. Chandra showing his concerted efforts to obtain payment of wages from PLP or Mr. Chandra. He states when he realized that Mr Chandra was “wasting [his] time” and “delaying the process” he took steps to file his complaint. However, he states that the delay in filing the complaint was also because he “had no idea what [his] options were to complain”. Only after someone informed him about the *ESA*, he came to the Branch’s office to “write a written complaint”.

## ANALYSIS

20. The grounds of appeal are statutorily limited to those found in subsection 112(1) of the *ESA*, which states:

### Appeal of director's determination

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 being made.

21. The Tribunal has consistently stated that an appeal is not simply another opportunity to argue the merits of a claim to another decision maker. In other words, an appeal is not an opportunity to take the proverbial “second kick at the can”. 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.

22. As indicated, Mr. Bassi contends that the Director failed to comply with principles of natural justice. The onus is on Mr. Bassi to provide some evidence in support of that allegation: see *Dusty Investments Ltd. d.b.a. Honda North*, BC EST # D043/99. However, nothing in his written appeal submissions supports a finding the Director failed to comply with principles of natural justice.

23. In this case, the only obligations placed upon the Director pursuant to the principles of natural justice were to inform Mr. Bassi that his complaint was not filed within the period required by section 74 of the *ESA*, to provide him with an opportunity to explain the delay, to fairly consider his reasons, and to make a decision: see: *Xiang Li*, 2019 BCEST 50. I find that the delegate of the Director abundantly satisfied those obligations; first by contacting Mr. Bassi on November 14, 2019, and informing him that his complaint appeared to be out of time and affording him a reasonable opportunity to provide an explanation. The delegate then considered Mr. Bassi’s explanations but found them not compelling and therefore, decided not to exercise discretion in favour of adjudicating the complaint on its merits.

24. While there is no issue or dispute in this appeal that the complaint was filed outside the time period allowed in section 74(3) of the *ESA*, Mr. Bassi’s submissions appear to challenge the exercise of discretion granted to the Director under section 76(3) of the *ESA*. It is only in exceptional and very limited circumstances that the Tribunal will interfere with the exercise of the Director’s discretion. In *Re: Jody L.*

*Goudreau and Barbara E. Desmarais, employees of Peace Arch Community Medical Clinic Ltd.* (BC EST # D066/98), the Tribunal stated:

The Tribunal will not interfere with that exercise of discretion unless it can be shown the exercise was an abuse of power, the Director made a mistake in construing the limits of her authority, there was a procedural irregularity or the decision was unreasonable. Unreasonable, in this context, has been described as being:

...a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'.

**Associated Provincial Picture Houses v. Wednesbury Corp.** [1948] 1 K.B. 223, at 229.

25. In *Maple Lodge Farms Limited v. Government of Canada*, [1982] 2 SCR, the Supreme Court commented:

It is, as well, a clearly-established rule that the courts should not interfere with the exercise of a discretion by a statutory authority merely because the court might have exercised the discretion in a different manner had it been charged with that responsibility. Where the statutory discretion has been exercised in good faith and, where required, in accordance with the principles of natural justice, and where reliance has not been placed upon considerations irrelevant or extraneous to the statutory purpose, the courts should not interfere.

26. In this case, the Director considered the purposes of the ESA (particularly in section 2(d)), the importance of the reasons for the statutory time limit for filing a complaint, and the reasons Mr. Bassi advanced for filing the late complaint (lack of knowledge of the requirements of the ESA or the ESA "option"). None of those considerations by the Director are irrelevant consideration to the discretionary decision which the Director is required to make. I find that Mr. Bassi has failed to show that the Director acted "unreasonably". To the contrary, I find the Director's exercise of his statutory discretion in section 76(3)(a) to refuse to investigate the complaint to be reasonable. The decision addresses both, the pertinent issues and evidence, and is in keeping with the legislative intent of promoting fair and efficient dispute resolution under the ESA. I am not persuaded that there is any evidence of a breach of natural justice or any other reviewable error. I dismiss the appeal.

**ORDER**

27. Pursuant to section 115 of the *ESA*, I order the Determination dated November 29, 2019, as varied on December 19, 2019, be confirmed.

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**Shafik Bhalloo**  
**Member**  
**Employment Standards Tribunal**