



Citation: Raed Eid (Re)
2020 BCEST 45

An appeal

- by -

Raed Eid
("Mr. Eid")

- 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.: 2020/015

DATE OF DECISION: May 15, 2020

DECISION

SUBMISSIONS

Raed Eid on his own behalf

OVERVIEW

1. Pursual to section 112 of the *Employment Standards Act* (the “ESA”), Raed Eid (“Mr. Eid”) has filed an appeal of a determination issued by Theresa Robertson, a delegate of the Director of Employment Standards (the “Director”), on December 11, 2019 (the “Determination”).
2. The Determination found a complaint made by Mr. Eid against Specialized Therapeutic Solutions Ltd. (“STS”) had been resolved and no further action would be taken.
3. This appeal alleges the Director made an error of law and failed observe principles of natural justice in making the Determination.
4. In correspondence dated February 13, 2020, the Tribunal acknowledged having received an appeal, 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 advised 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 Mr. Eid and to STS. An opportunity has been provided to both parties to object to its completeness. There has been no such objection and, accordingly, the Tribunal accepts the record as being 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 submissions filed on the appeal and my review of the material that was before the Director when the Determination was being made. 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 any 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 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 and STS 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

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. Mr. Eid worked for STS for five hours on, or about, March 20, 2019, as a pharmacist at a rate of \$45.00 an hour and was paid \$225.00 for his work.
10. Mr. Eid filed a complaint with the Employment Standards Branch in September 2019, alleging STS had contravened the *ESA* by: failing to pay his wages on time; failing to make statutory deductions; and failing to provide a wage statement. Mr. Eid also submitted STS had paid his wages by e-transfer, which is not one of the methods of paying wages found in section 20 the *ESA*. Mr. Eid sought 55% of the amount already paid to him from STS to settle his complaint. It is apparent from the Determination and the material in the record that the amount sought did not represent a claim for wages.
11. The Director investigated the complaint and, following an assessment of it, decided the matters to which the *ESA* applied – failing to pay wages within the time provided in the *ESA* and failing to provide a wage statement – had been resolved by Mr. Eid having been paid the amount of wages owed to him and by STS having provided a wage statement.
12. In respect of these matters, the Director noted the *ESA* was remedial, that administrative penalties were not intended to be punitive and were typically applied to cases where a determination orders payment of wages an employer has refused to pay. In the circumstances of the claim by Mr. Eid, the Director stated that STS had paid the amount agreed upon for the work and that Mr. Eid had received a wage statement from STS.
13. The Director found the suggestion by Mr. Eid that he be paid an additional 55% of his earnings as a remedy was not supported by any provision in the *ESA* and dismissed it.
14. The Director found there was no provision in the *ESA* requiring employers to make statutory withholdings for Canada Pension, employment insurance and income tax and the issuance of a pay statement had resolved the statutory requirement found in section 27(1)(g) of the *ESA*.
15. In respect of Mr. Eid's reference to payment of his wages being made by e-transfer, the Director stated that such method of payment was becoming increasingly common and that Mr. Eid had received and

accepted the money sent by e-transfer. The Director found this method of payment met the spirit of the *ESA* and there was no contravention of section 20.

16. The Director exercised the discretion provided in section 76(3)(b) and (i) to cease investigating the complaint.

ARGUMENT

17. The appeal and the supporting appeal submission contain nothing that is relevant to the grounds of appeal upon which it is based. It is unnecessary to outline all elements of the arguments made by Mr. Eid or to attempt to relate them to the chosen grounds of appeal. The appeal does nothing more than assert STS must be fined for perceived contraventions of the *ESA*, allege the Director erred by failing to impose administrative penalties on STS and generally criticize how several complaints filed by Mr. Eid against a number of employers were being handled by the delegate of the Director who was assigned them, asserting her Determination is a “joke” and her conduct “disgraceful”.

ANALYSIS

18. The Tribunal may dismiss an appeal without a hearing of any sort where the appeal is “*frivolous, vexatious or trivial or gives rise to an abuse of process*”.
19. In the context of the *ESA*, an appeal is frivolous if the appellant can present no rational argument based upon the evidence or law in support of the appeal. A frivolous appeal is defined as “...one in which no justiciable question has been presented and the appeal is readily recognizable as devoid of merit in that there is little prospect that it can ever succeed.”: see *Greg Brewer operating as Smallbone Millwork & Design*, BC EST # D476/98.
20. It is an “*abuse of process*” to misuse the appeal process of the *ESA*. Mr. Eid has had his rights under the *ESA* addressed by the Director. He has no rights under the *ESA* relative to the carrying out of the administrative penalty scheme in the legislation; that responsibility, subject to the provisions of the *ESA* and the *Employment Standards Regulation*, rests solely with the Director. Mr. Eid has no statutory right to demand to have STS fined for contraventions of the *ESA*.
21. I find the appeal by Mr. Eid to be frivolous and an abuse of process.
22. Reviewing the Determination, the appeal and the submissions, I find that this appeal is devoid of merit. Mr. Eid has not made any argument nor given any evidence to challenge or controvert the findings made in the Determination. He has simply stated the Determination is based on “lies”. Neither has he challenged the rationale set out in the Determination.
23. When examining the merits of this appeal, the appropriate starting point is the grounds of appeal in the *ESA* and a consideration of the principles developed and applied to appeals generally as they relate to the appeal under consideration. Subsection 112(1) of the *ESA* 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 being made.

24. Mr. Eid alleges the Director erred in law and failed to observe principles of natural justice.
25. An appeal is not simply another opportunity to argue the merits of a claim to another decision maker. 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.
26. Mr. Eid argues the Director made an error of law. The Tribunal has adopted the following definition of “error of law” set out by the British Columbia Court of Appeal in *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)*, [1998] B.C.J. No. 2275 (B.C.C.A.):
1. a misinterpretation or misapplication of a section of the Act [in *Gemex*, the legislation was the *Assessment Act*];
 2. a misapplication of an applicable principle of general law;
 3. acting without any evidence;
 4. acting on a view of the facts which could not reasonably be entertained; and
 5. adopting a method of assessment which is wrong in principle.
27. The sum and substance of the Determination is that those aspects of the complaint which were governed by provisions in the *ESA* were resolved through the complaint process, that no contravention of the *ESA* had been found and no requirement had been imposed, that the purposes of the *ESA* did not justify administrative penalties as a punitive measure on matters which had been resolved without a determination and the imposition of a requirement under section 79 of the *ESA*, that the Director had discretion in the circumstances to not find a contravention and had discretion to cease investigation of the complaint.
28. Mr. Eid has failed to meaningfully address any of the above matters and has failed to show there was an error of law by the Director on any of them.
29. At its core, this appeal does no more than disagree with the decision of the Director to reject Mr. Eid’s demand that STS be charged with three administrative penalties.
30. To reiterate, an appeal is an error correction process. The burden of demonstrating an error in this case lies with Mr. Eid and he has failed to meet that burden.
31. Mr. Eid has also grounded this appeal in an alleged failure by the Director to observe principles of natural justice in making the Determination. A party alleging a failure to comply with principles of natural justice must provide some evidence in support of that allegation: see *Dusty Investments Inc. dba Honda North*, BC EST # D043/99.

32. Mr. Eid has provided no objectively acceptable evidence showing he was denied the procedural protections reflected in section 77 of the *ESA* and in the natural justice concerns that typically operate in the context of the complaint process. It is clear from the file that he was afforded the procedural rights reflected in section 77 and captured by natural justice principles.
33. There is no basis for this ground of appeal.
34. In sum, and in addition to my finding this appeal is frivolous and an abuse of process, it 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

35. Pursuant to section 115 of the *ESA*, I order the Determination dated December 11, 2019, be confirmed.

David B. Stevenson
Member
Employment Standards Tribunal