



Citation: Raed Eid (Re)
2020 BCEST 59

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.: 2020/043

DATE OF DECISION: June 2, 2020

DECISION

SUBMISSIONS

Raed Eid on his own behalf

OVERVIEW

1. Raed Eid (“Mr. Eid”) has filed an appeal under section 112 of the *Employment Standards Act* (the “ESA”) of a determination issued by Theresa Robertson, a delegate of the Director of Employment Standards (the “Director”), on February 6, 2020 (the “Determination”).
2. The Determination found a complaint made by Mr. Eid against N. Darji Pharmacy Ltd. carrying on business as Shoppers Drug Mart 2225 (“N. Darji Pharmacy”) had been resolved and no further action would be taken.
3. This appeal alleges the Director made an error of law and failed to observe principles of natural justice in making the Determination.
4. The appeal form, appeal submission and some supporting material was delivered to the Tribunal on March 2, 2020.
5. In correspondence dated March 11, 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.
6. The record has been provided to the Tribunal by the Director. A copy has been delivered to Mr. Eid and to N. Darji Pharmacy. An opportunity has been provided to both to object to its completeness. Mr. Eid confirms the completeness of the record. There has been no objection from N. Darji Pharmacy and, accordingly, the Tribunal accepts the record as being complete.
7. 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.*

8. If satisfied the appeal or a part of it should not be dismissed under section 114(1), the Director and N. Darji Pharmacy 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

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

THE FACTS

10. Mr. Eid worked as a pharmacist for N. Darji Pharmacy for nine hours on December 13, 2018, at a rate of \$40.00 an hour and was paid \$360.00 for this work and for 13 hours over two days in January 2019 at a rate of \$40.00 an hour and was paid \$560.00 on January 22, 2019, for this work.
11. Mr. Eid filed a complaint with the Employment Standards Branch on June 27, 2019. He alleged N. Darji Pharmacy had contravened the *ESA* by failing to take statutory deductions from his pay and failing to issue wage statements in accordance with the *ESA*.
12. During the complaint process N. Darji Pharmacy submitted pay statements to the Director which were passed on to Mr. Eid. The Director found the issuance of the pay statements satisfied the statutory requirement found in section 27(1) (g) of the *ESA* and had resolved that aspect of his complaint.
13. N. Darji Pharmacy also paid an additional amount for overtime worked by Mr. Eid and for vacation pay, although Mr. Eid was not entitled to it under the *ESA*. The Director found the wage portion of Mr. Eid's claim was resolved and no further wages were owing.
14. The Director found the matter alleging a failure by N. Darji Pharmacy to make statutory deductions for Canada Pension, employment insurance and income tax were not requirements under the *ESA* and would not be addressed.
15. The Director exercised the discretion provided in section 76(3) (b) and (i) to cease investigating the complaint.

ARGUMENT

16. Mr. Eid argues the Director erred in law by failing to investigate his complaint or take appropriate action. He asserts the pay wage statements were not issued on time and the wage payments were not on time. He says he did not receive the overtime wages and vacation pay the Director says was sent to him on January 8, 2020.
17. His appeal introduces a claim for travel time and expenses that were not included in his complaint to the Branch nor advanced during the complaint process.
18. Mr. Eid argues the Director failed to observe principles of natural justice because he was not issued pay wage statements and his hours worked were not insured and there were “no CPP” on those hours.

ANALYSIS

19. 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.*”
20. 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.
21. 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 the contraventions” of the *ESA*.
22. I shall address more fully Mr. Eid’s claim for travel time and expenses, but it suffices to say at this point that for any purpose under the *ESA* this claim does not exist. It is a claim that is raised for the first time in this appeal; it was never the subject of a complaint to the Branch or a decision by the Director. Mr. Eid’s attempt to avoid the statutory complaint process by attempting to initiate this claim through the appeal process is, on its own, an abuse of process.
23. I find the appeal by Mr. Eid to be frivolous and an abuse of process.
24. Reviewing the Determination, the appeal and the submissions, I find that this appeal is entirely 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 Director failed to investigate and resolve his complaint appropriately.
25. 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.*

26. Mr. Eid alleges the Director erred in law and failed to observe principles of natural justice.

27. 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.

28. 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.

29. 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 to not find a contravention and had discretion to cease investigation the complaint.

30. Mr. Eid has failed to meaningfully address any of the above matters and has failed show there was an error of law by the Director on any of them. Mr. Eid contends the Director failed to properly investigate his complaint but has done nothing in the appeal that relates that contention to any part of the definition of “error of law”.

31. Mr. Eid says he did not receive the additional amount paid by N. Darji Pharmacy, but the Determination and the record say differently. He has not shown the Determination and the record are wrong on this.

32. 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.

33. 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.
34. 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.
35. There is simply no basis for this ground of appeal.
36. Based on all of the above, I also find this appeal is frivolous, an abuse of process and 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*.
37. Mr. Eid has attempted to add a claim for travel time and expenses in the appeal.
38. On May 19, 2020, the Tribunal received a request from Mr. Eid to refer this claim back to the Director under section 115 of the *ESA*, a request he has also made in his appeal of a determination relating to his complaint against another employer.
39. This request is made notwithstanding an earlier decision of another appeal by Mr. Eid which sought to raise a similar claim in similar circumstances, rejecting his effort to raise that matter in the appeal process. The response in that case, which I thought to be quite clear, was that the Tribunal has no authority to consider a claim under the *ESA* that had not been filed to an office of the Employment Standards Branch and which complied with the requirements of section 74 of the *ESA*. For the purposes of the *ESA*, Mr. Eid's "claim" for travel time and expenses does not exist unless and until he satisfies the statutory requirements of a complaint. Whether the complaint will be investigated and, if so, whether it is valid, are questions within the discretion of the Director once a complaint is properly made.
40. It is not a question of whether the Tribunal *might* refer the matter "back to the director" because there is no *matter* to refer back. The claim he advances simply does not exist as a claim under the *ESA*.

ORDER

41. Pursuant to section 115 of the *ESA*, I order the Determination dated February 6, 2020, be confirmed.

David B. Stevenson
Member
Employment Standards Tribunal