

Citation: Manvir Singh Benipal (Re)
2020 BCEST 63

An appeal

- by -

Manvir Singh Benipal
("Mr. Benipal")

- 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: Marnee Pearce

FILE NO.: 2020/040

DATE OF DECISION: June 3, 2020

DECISION

SUBMISSIONS

Manvir Singh Benipal on his own behalf

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “ESA”), Manvir Singh Benipal (“Mr. Benipal”) has filed an appeal of a determination issued by Ayn Lexi, a delegate (the “Delegate”) of the Director of Employment Standards (the “Director”) dated January 13, 2020 (the “Determination”).
2. Mr. Benipal filed a complaint with the Director on August 9, 2019, alleging that Blue Steel Trucking Ltd. (“Blue Steel”) contravened the *ESA* in failing to pay him wages for hours worked as a truck driver from June 1, 2019 – June 28, 2019.
3. Following an investigation, the Delegate concluded that the *ESA* did not apply to Mr. Benipal, as it only applies to trucking companies that solely operate within British Columbia, and Mr. Benipal in his employment with Blue Steel hauled freight across provincial borders.
4. The Determination issued January 13, 2020, advised that no further action would be taken on Mr. Benipal’s complaint as it is not within the jurisdiction of the *ESA*.
5. Mr. Benipal appealed the Determination to the Employment Standards Tribunal (the “Tribunal”) on the grounds that evidence became available after the Determination was made; the appeal was received by the Tribunal on February 28, 2020, a week past the legislated deadline.
6. Mr. Benipal provided no reasons or argument in support of his appeal, nor did he seek an extension for filing his appeal and provide reasons in support.
7. On March 2, 2020, the Tribunal sent a letter to the email address provided by Mr. Benipal asking that he submit, by March 9, 2020, legible copies of the Determination and supporting document; a completed appeal form indicating he wished an extension for filing his appeal; written reasons for requesting an extension of the appeal period; and written reasons and argument for the appeal.
8. Mr. Benipal did not provide a response to the March 2, 2020 letter.

ISSUE

9. The issues before the Tribunal are whether:
 - (a) the time period for filing the appeal should be extended pursuant to section 109(1)(b) of the *ESA*; and
 - (b) all or part of this appeal should be allowed or dismissed.

ARGUMENT

10. Mr. Benipal has provided no argument to support an appeal extension.
11. Mr. Benipal has provided no argument to support his appeal.

THE FACTS AND ANALYSIS

12. Mr. Benipal worked for Blue Steel in May and June 2019 as a long-haul truck driver. Although requested to do so, he provided no evidence to the Delegate regarding what routes he drove, and accordingly, the information provided by Blue Steel on this pivotal issue was accepted.
13. A director of Blue Steel stated that although based out of Surrey, BC, the company hired long haul truck drivers to deliver goods outside of the province for about 60% of their hauls, primarily to Alberta and Ontario. This included Mr. Benipal.
14. The Delegate correctly outlined that the *ESA* applies to trucking companies that solely operate in BC.
15. As Mr. Benipal was an interprovincial truck driver and his claim was outside of the jurisdiction of the *ESA*, the Delegate stopped any further investigation into the complaint.
16. Mr. Benipal's appeal of the Determination was received by the Tribunal one week after the legislated deadline of February 21, 2020.
17. Although the Tribunal provided him with an additional opportunity to do so, Mr. Benipal did not request an extension for filing his appeal nor provide reasons why the extension was needed.
18. Under section 114(1) of the *ESA*, the Tribunal has the discretion to dismiss all or part of the 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 that the appeal will succeed;
 - (g) the substance of the appeal has been appropriately dealt with in another proceeding;
 - (h) one or more the requirements of section 112(2) have not been met.

19. This appeal has not been filed within the applicable time limit, no efforts at correcting this failing have been made, and the appeal will be denied.
20. For completeness of this review I will now address whether, if this appeal were properly before me, there is a reasonable prospect of succeeding.
21. The grounds of appeal are statutorily limited to those found in subsection 112(1) of the *ESA*:
- 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.
22. Without providing reasons why, Mr. Benipal selected his ground of appeal to be “evidence has become available that was not available at the time the Determination was being made”.
23. The ‘new evidence’ is a copy of Mr. Benipal’s chequing account activity during August 2019 confirming a returned cheque in the amount of \$3,593.44 on August 8, 2019, along with an illegible photocopied cheque.
24. In the Determination, the Delegate references Mr. Benipal’s complaint that he received a cheque from Blue Steel that was returned due to insufficient funds; this cheque was for \$3,593,44 and was dated July 19, 2019.
25. In *Re Merilus Technologies*, BC EST # D171/03, the Tribunal established the following four-part test for admitting new evidence on appeal:
- (a) the evidence could not, with the exercise of due diligence, have been discovered and presented to the Director during the investigation or adjudication of the complaint and prior to the Determination being made;
 - (b) the evidence must be relevant to the material issue arising from the complaint;
 - (c) the evidence must be credible in the sense that it is reasonably capable of belief; and
 - (d) the evidence must have high potential probative value, in the sense that, if believed, it could, on its own or when considered with other evidence, have led the Director to a different conclusion on the material issue.
26. The copy of Mr. Benipal’s bank account and the canceled cheque supplementing his evidence to the Delegate could have, with the exercise of due diligence, been presented to the Director during the course of the investigation.
27. This appeal is dismissed because the appeal remains incomplete and out of time, and in any event, the appeal has no reasonable prospect of succeeding.

ORDER

28. Pursuant to section 115(1) of the *ESA*, I order the Determination dated January 13, 2020, be confirmed.

Marnee Pearce
Member
Employment Standards Tribunal