

Citation: Rajendar Singh Parmar and Emerald Taxi Ltd. (Re)  
2021 BCEST 24



EMPLOYMENT STANDARDS TRIBUNAL

Appeals

- by -

Rajendar Singh Parmar and Emerald Taxi Ltd.  
("Mr. Parmar")

- and by –

Emerald Taxi Ltd.  
("Emerald Taxi")

- 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 NOS.:** 2020/141 and 2020/142

**DATE OF DECISION:** March 9, 2021

## DECISION

### SUBMISSIONS

Rajendar Singh Parmar	on his own behalf
Balraj Bhangoo	on behalf of Emerald Taxi Ltd.

### OVERVIEW

1. This decision addresses appeals filed under section 112 of the *Employment Standards Act* (the “ESA”) by Rajendar Singh Parmar (“Mr. Parmar”) and Emerald Taxi Ltd. (“Emerald Taxi”) of a determination issued by Shane O’Grady, a delegate of the Director of Employment Standards (the “Director”), on August 28, 2020 (the “Determination”).
2. The Determination found Emerald Taxi had contravened Part 3, sections 16, 17, 18, 21, 27 and 28, Part 4, section 40, Part 5, section 45 and Part 7, section 58 of the *ESA* and section 46 of the *Employment Standards Regulation* (the “Regulation”) in respect of the employment of seven persons and ordered Emerald Taxi to pay wages to those persons in the amount of \$21,668.80, an amount which included interest under section 88 of the *ESA*, and to pay administrative penalties in the amount of \$5,000.00. The total amount of the Determination is \$26,668.80.
3. Mr. Parmar has appealed the Determination on all of the allowable grounds set out in section 112(1) of the *ESA*: error of law; failure to observe principles of natural justice; and evidence coming available that was not available when the Determination was being made.
4. Emerald Taxi has appealed the Determination on the ground the Director failed to observe principles of natural justice in making the Determination. Included in the appeal submission from Emerald Taxi are three documents that do not appear to have been provided to the Director. Emerald Taxi has not advanced the “new evidence” ground of appeal.
5. In correspondence dated October 13, 2020, the Tribunal, among other things, acknowledged having received each of the appeals, requested the section 112(5) record (“the record”) from the Director on each and notified the other parties that submissions on the merits of the appeal were not being sought from any other party at that time.
6. The record has been provided to the Tribunal by the Director for each of the appeals and a copy has been delivered to each of the parties. All have been provided with the opportunity to object to the completeness of each record.
7. In correspondence dated January 25, 2021, Mr. Parmar objected to the absence of what are described as “computer generated sheets provided by [the computer company working for Emerald Taxi Ltd. dispatch system]”. The Director has responded to the objection, advising the Tribunal that the documents referred to by Mr. Parmar were never provided by him (or any other party) to the Director before the Determination was made, but indicated there was a document inadvertently omitted from the record and

attached that document to the response. No further submission on the completeness of the record was received by Mr. Parmar.

8. I accept the document which was inadvertently omitted from the record should be added to it. No other objection to the completeness of the record has been received from any other party and, accordingly, the Tribunal accepts the records as now being complete.

9. I have decided these appeals are appropriate for consideration under section 114 of the *ESA*. At this stage, I am assessing each of the appeals based solely on the Determination, the reasons for Determination, the appeal, the written submission filed with the appeal, my review of the material that was before the Director when the Determination was being made and any additional material allowed to be added to the appeals. 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 the 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.*

10. If satisfied either of the appeals or parts of them has some presumptive merit and should not be dismissed under section 114(1), the Director and the respondent employees will be invited to file submissions. On the other hand, if it is found either, or both, of the appeals satisfy any of the criteria set out in section 114(1), they are liable to be dismissed. In this case, I am looking at whether there is any reasonable prospect either of the appeals can succeed.

## **ISSUE**

11. The issue in these appeals is whether either, or both, of the appeals should be allowed to proceed or be dismissed under section 114(1) of the *ESA*.

## THE FACTS

12. Emerald Taxi operates a taxi business in Prince George, BC.
13. Information obtained from the BC Corporate Registry lists four corporate directors for Emerald Taxi: Balraj S. Bhangoo; Jaswant Singh Chahal; Mr. Parmar; and Jagtar Singh Thiara.
14. On August 28, 2019, the Director received information from a third party indicating Emerald Taxi was not paying their employees at least minimum wage. Subsequently, two complaints were filed by individuals, including one by Percy Lloyd Pedersen (“Mr. Pedersen”), who alleged Emerald Taxi had contravened the *ESA* by failing to pay minimum wage, overtime wages, annual vacation pay, statutory holiday pay and by making unauthorized deductions from wages. The complaint filed by the other individual was resolved during the complaint investigation process.
15. A review of the complaints caused the Director to initiate an investigation under section 76(2) of the *ESA*. On October 23, 2019, the Director notified Emerald Taxi it would be conducting an audit of all their employees. This Notice of Investigation (the “Notice”) was accompanied by a Demand for Employer Records (the “Demand”) for the period from October 24, 2018, to October 23, 2019. The Notice and Demand was delivered to Emerald Taxi and to each of the corporate directors, which included Mr. Parmar.
16. Emerald Taxi participated in the investigation, providing most, but not all, of the payroll records demanded. The records provided were for fourteen persons, including dispatchers, drivers and an office worker, whose status as employees of Emerald Taxi was not disputed. There were cab drivers, including Mr. Pedersen, not included in their list of employees and whom Emerald Taxi contended were not their employees but were employees of the owner/operators whose cabs they drove. One of the “owner/operators” identified by Emerald Taxi was Mr. Parmar.
17. There were several communications between the Director and Emerald Taxi between October 22, 2019, and January 2, 2020, relating to the audit of all employees. The specific dates and nature of those communications are set out in the Determination. Included in those communications was a preliminary finding letter identifying several employees with potential outstanding wages owed and several contraventions of the *ESA*. Emerald Taxi was invited to, and did, provide a response to the preliminary findings.
18. Mr. Pedersen filed a second complaint alleging he had been terminated without cause, notice or compensation for length of service. The Director issued a separate Demand for Employer Records relating to that complaint, which was sent to Emerald Taxi and the corporate directors, which included Mr. Parmar.
19. Emerald Taxi disavowed any responsibility for the matters raised in Mr. Pedersen’s second complaint alleging he was working as a subcontractor for Mr. Parmar, and communications relating to the investigation of that complaint were conducted primarily between the Director and Mr. Parmar.
20. The Director found Emerald Taxi owed wages to seven persons in the total amount set out in the Determination. The calculations for each of those persons are set out in appendices attached to the Determination.

21. The Director found each of the seven persons to whom wages were owed, which included Mr. Pedersen, were employees of Emerald Taxi. The analysis of whether cab drivers were employees of Emerald Taxi is found in the Determination at pages R8 - R10 of the Determination.
22. The Director found there were wages owing for each of the seven employees in the amounts set out in the appendices and totaled in the Determination.

## ARGUMENT

23. Emerald Taxi does not dispute the majority of the Director's findings of wages owed, but argues the administrative penalties for what it characterizes as "honest mistakes" should not have been imposed.
24. Emerald Taxi disputes the finding that Mr. Pedersen is an employee of Emerald Taxi and is responsible for wages and contraventions of the *ESA* relating to his employment.
25. Mr. Parmar's appeal challenges the finding that Mr. Pedersen is an employee of either Emerald Taxi or him. Some aspects of Mr. Parmar's appeal challenge findings of hours worked and wage calculations made by the Director. Mr. Parmar says the appeal is being made on his own behalf and not on behalf of Emerald Taxi:

. . . I want to clarify this is my appeal submission as a Lease Operator of Emerald Taxi and it is independent of Emerald Taxi Ltd. Also, I want to state this fact again that Mr. Lloyd Pedersen did work in Emerald Taxi but not for Emerald Taxi. He worked with me on a commission basis that we agreed upon before he started driving with me in February of 2017 . . .

26. Notwithstanding Mr. Parmar's view, unless the finding on the employment status of Mr. Pedersen under the *ESA* is cancelled, he is potentially liable for the wages found owing to Mr. Pedersen under section 96 of the *ESA*, as a director of Emerald Taxi, and only has status to challenge the Determination on that basis.
27. I will affirm two points at this juncture: first, that the respective positions of Emerald Taxi and Mr. Parmar on the wage award to Mr. Pedersen is substantially identical: that he was not an employee of Emerald Taxi for the purposes of the *ESA*; and second, the Director made no decision on the nature of the relationship between Mr. Parmar and Mr. Pedersen. In respect of the latter point, it is apparent from the Director's comments at pages R9 - R10 that no analysis was being done and no decision was being made on whether there was an employment relationship between Mr. Pedersen and Mr. Parmar for the purposes of the *ESA*.
28. Mr. Parmar argues Mr. Pedersen does not fall within the definition of "employee" in the *ESA* for several reasons:
- i. Mr. Pedersen never received any wages/money from Mr. Parmar; the arrangement between he and Mr. Pedersen was a "settlement" of money every 10 days based on a 50/50 split of the money earned (less GST obligations) by Mr. Pedersen while driving Mr. Parmar's taxi cab;
  - ii. Emerald Taxi does not, directly or indirectly, employ Mr. Pedersen and, in fact, nobody employs Mr. Pedersen; potential drivers simply meet up with the taxi cab owner and consent to drive a taxi on terms mutually agreed;

- iii. Mr. Pedersen was not provided any formal training by Mr. Parmar;
  - iv. Mr. Pedersen never sought permission to take a leave of absence from driving for Mr. Parmar and used to take numerous breaks from driving time for personal reasons; and
  - v. Mr. Pedersen had no “right of recall”.
29. Mr. Parmar also argues he does not fall within the definition of “employer” in the ESA, for the following reasons:
- i. He had no control or direction over Mr. Pedersen; and
  - ii. He was not responsible for Mr. Pedersen’s decision to drive his taxi cab.
30. The submissions of Mr. Parmar that address whether he is an employer and whether Mr. Pedersen was his employee are largely irrelevant to the issue raised in the appeals, which is whether Mr. Pedersen was an employee of Emerald Taxi during the recovery period.
31. Mr. Parmar submits the Director failed to observe principles of natural justice by: overlooking the “clear discrepancy” between the computer-generated summary sheets and the summary sheets submitted by Mr. Pedersen; by failing to take account of time Mr. Pedersen admittedly “stole” to perform personal tasks during driving time; not considering the loss to Mr. Parmar generated by the “unprofessional/unethical conduct” of Mr. Pedersen; and overlooking the “degrading” performance of Mr. Pedersen from 2017 to 2019.
32. Mr. Parmar seeks to add additional evidence to the record in support of his appeal, comprising an article from the Prince George Citizen dated September 17, 2020, several statements from persons who have been, or are currently, driving taxi for Emerald Taxi and the above-mentioned computer-generated sheets provided by the computer company working for Emerald Taxi.

## ANALYSIS

33. The grounds of appeal are statutorily limited to those found in subsection 112(1) of the *ESA*, which 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.*
34. A review of decisions of the Tribunal reveals certain principles applicable to appeals that have consistently been applied. The following principles bear on the analysis and result of this appeal.
35. 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 an appellant to persuade the Tribunal there is an error in the Determination under one of the statutory grounds.

### New Evidence

36. I shall commence with an analysis of whether either Mr. Parmar or Emerald Taxi has established there is evidence which has become available that was not available when the Determination was being made that ought now to be included in the record and considered in their appeals. This ground of appeal is commonly referred to as the “new evidence” ground of appeal.
37. Both Mr. Parmar and Emerald Taxi have submitted material with their appeals that are not found in the record, as that record stands following the addition of the material that was inadvertently omitted and added following the exchange of submissions on the completeness of the record between Mr. Parmar and the Director.
38. Mr. Parmar has specifically raised this ground of appeal. Emerald Taxi has not identified new evidence as a ground of appeal, but their appeal submission appends material that was not provided to the Director during the investigation and is referred to in their appeal submission.
39. The Tribunal has discretion to accept or refuse new evidence. When considering an appeal based on this ground, the Tribunal has taken a relatively strict approach to the exercise of this discretion and tests the proposed evidence against several considerations, including whether such evidence was reasonably available and could have been provided during the complaint process, whether the evidence is relevant to a material issue arising from the complaint, whether it is credible, in the sense that it be reasonably capable of belief, and whether it is probative, in the sense of being capable of resulting in a different conclusion than what is found in the Determination: see *Davies and others (Merilus Technologies Inc.)*, BC EST # D171/03. New evidence which does not satisfy any of these conditions will rarely be accepted. This ground of appeal is not intended to give a person dissatisfied with the result of a Determination the opportunity to submit evidence that, in the circumstances, should have been provided to the Director before the Determination was made. The approach of the Tribunal is grounded in the statutory purposes and objectives of fairness, finality and efficiency: see subsections 2(b) and (d) of the *ESA*.
40. I am not persuaded to exercise my discretion to accept or consider any of the “evidence” included by Emerald Taxi and Mr. Parmar with their appeals and find against accepting or considering it.
41. There are several reasons for this finding.
42. First, and primarily, none of the evidence is “new”. All of it existed at the time the Determination was being made. As indicated above, this ground of appeal is not intended to give a party a second chance to present evidence that should have, and could have with some degree of diligence, been provided during the complaint process. The material included with the appeal submission of Emerald Taxi is a clear example of material that does not satisfy this most basic condition for allowing new evidence.
43. The above comment also applies to the computer-generated summary sheets prepared by the computer company working for Emerald Taxi on their dispatch system that Mr. Parmar wishes to include with his appeal.
44. Second, and on this point, I specifically refer to the article from the Prince George Citizen and the “statements” from current and former Emerald Taxi drivers. I find neither the newspaper article nor the

statements purporting to be from individual drivers can be considered “evidence” at all. The former is no more than an unrelated third party’s summary of the Employment Standards Branch investigation and the Determination, sprinkled with statements attributed to some of the persons involved in the investigation. The latter are framed in very vague language and generalities; none provide specifics. As well, the relevance of the newspaper article completely evades me. An individual’s motivation for seeking entitlement to the minimum employment standards is irrelevant to their right to those entitlements.

45. There was considerable discussion between Mr. Parmar and the Director. While Mr. Parmar took the position during the investigation that Mr. Pedersen often did not accurately record breaks and periods of unavailability, there is no indication of any attempt by Mr. Parmar to establish this position at the time of the investigation. With some diligence, support for this position could have been provided to the Director. The Director accepted and relied on the best evidence available. Statements of the kind added here, about Mr. Pedersen inaccurately recording his hours, were not part of that evidence.
46. None of this material is sufficiently credible to satisfy the burden of establishing the facts for which they are advanced.
47. Third, I do not find the assertions made in the statements concerning breaks and availability to be particularly probative. There is no indication the drivers had access to the same material as was provided to the Director. The records used by the Director to calculate hours worked were not exact, but they were based on the same material provided by both Mr. Parmar and Mr. Pedersen. The calculations made by the Director were based on the “best evidence” available. There is nothing to indicate those calculations were so unreasonable as to amount to a reviewable error.
48. I find the circumstances do not satisfy the conditions that would justify allowing new evidence to be entered with these appeals.

### **Natural Justice**

49. The alleged failure by the Director to comply with principles of natural justice in making the Determination, is a ground of appeal common to the appeals of both Mr. Parmar and Emerald Taxi.
50. 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. I find nothing in the appeals that would support a finding the Director failed to comply with principles of natural justice.
51. The Tribunal has summarized the natural justice principles that typically operate in the complaint process, including this complaint, in *Imperial Limousine Service Ltd.*, BC EST # D014/05:

Principles of natural justice are, in essence, procedural rights ensuring that parties have an opportunity to know the case against them; the right to present their evidence; and the right to be heard by an independent decision maker. It has been previously held by the Tribunal that the Director and her delegates are acting in a quasi-judicial capacity when they conduct investigations into complaints filed under the *Act*, and their functions must therefore be performed in an unbiased and neutral fashion. Procedural fairness must be accorded to the parties, and they must be given the opportunity to respond to the evidence and arguments presented by an adverse party: see *BWI Business World Incorporated*, BC EST # D050/96.



52. Provided the process exhibits the elements of the above statement, it is unlikely the Director will be found to have failed to observe principles of natural justice in making the Determination.
53. On the face of the material in the record and in the information submitted to the Tribunal in these appeals, Mr. Parmar and Emerald Taxi were provided with the opportunity required by principles of natural justice to present their positions to the Director and to respond to the evidence and arguments presented in support of the complaints and the section 76(2) investigation.
54. It is not a breach of principles of natural justice for the Director to make a finding on the evidence with which one of the parties disagrees.
55. As noted above, there is a burden on Mr. Parmar and Emerald Taxi on this ground to provide some objective evidence in support of this allegation.
56. The appeal by Emerald Taxi simply states it is “based upon our belief that the director of Employment Standards failed to observe the principles of natural justice in making the determination”. The appeal submission contains no analysis or argument demonstrating a basis for that statement.
57. The appeal is mainly directed at the administrative penalties, from which Emerald Taxi says it should be relieved because the contraventions of the *ESA* were honest mistakes. However, section 98 of the *ESA* requires that the Director impose a monetary penalty, the amount of which is prescribed by the *Regulation*, for a contravention of either the *ESA* or the *Regulation*. In other words, the penalty is mandatory once a contravention is found, and the Director has no ability to, in essence, “waive” that penalty.
58. I find no error of law in the Director’s finding of contraventions, nor in his decision to impose administrative penalties for the contraventions. The Tribunal has no authority to “waive” penalties on the basis that they are, in the Employer’s view, “honest mistakes”. Absent bad faith or abuse of process, the Tribunal may only cancel penalties if it determines that there were no grounds for finding a contravention. The Employer did not argue, and I do not find, that the Director’s finding of contraventions was in error.
59. Neither Mr. Parmar nor Emerald Taxi have provided any objectively acceptable evidence showing either was denied the procedural protections reflected in the *ESA* and in the natural justice concerns that typically operate in the context of the complaint process. It is absolutely clear from the files that both were afforded the procedural rights reflected in the *ESA* and captured by natural justice principles.
60. Mr. Parmar alleges a failure by the Director to observe natural justice by overlooking evidence, failing to consider evidence and failing to give effect to certain assertions. These allegations are more related to the error of law ground of appeal than natural justice, as they go to how the Director handled the evidence provided, rather than whether Mr. Parmar was denied the opportunity to present that evidence. This ground of appeal is more fully discussed below, but as stated above, it is not a denial of natural justice to make evidentiary findings with which one of the parties disagrees.
61. Nevertheless, I shall respond to these allegations here.

62. Mr. Parmar says evidence was “overlooked”. Mr. Parmar refers to “computer generated summary sheets”. If this description refers to the computer-generated summary sheets prepared by the computer company working for Emerald Taxi on their dispatch system, the Director could not have “overlooked” them as they were never provided. The following comment is found at page R25 of the Determination:
- Mr. Parmar stated that Emerald could provide documents that showed Mr. Pedersen was at home during many of the hours he indicated he was in his cab, however no documents to suggest as much were produced during the investigation. As Emerald Taxi has not provided any information to suggest that the hours of work indicated on the trip sheets are inaccurate, despite stating that they could provide such information on multiple occasions, I find the hours of work indicated on the trip sheet as the best evidence as to Mr. Pedersen’s hours of work.
63. If Mr. Parmar is referring to the “Closed Bookings - Trip Summary” document, the Director examined that information and found it insufficient for the purpose of calculating Mr. Pedersen’s hours of work: see Determination page R26.
64. It is apparent from the Determination that the Director did not “overlook” evidence when reaching conclusions on Mr. Pedersen’s hours of work. The Director relied on what he felt was the “best evidence”, which coincidentally, was evidence provided by both Mr. Parmar and Mr. Pedersen.
65. There is no indication in the Determination that Mr. Pedersen admitted to “stealing” hours, as alleged by Mr. Parmar. The Director’s analysis on Mr. Pedersen’s hours of work focused on documents, the trip sheets that were presented, and presumably relied on, by both Mr. Parmar and Mr. Pedersen. The Director notes there was no indication that the trip sheets, accepted by the Director as the best evidence of Mr. Pedersen’s hours of work, were ever questioned by Mr. Parmar and that Mr. Parmar only suggested during the investigation that Mr. Pedersen had not worked the hours shown on the trip sheets.
66. Mr. Parmar submits the Director failed to give effect to Mr. Pedersen’s deteriorating performance over the three years of his employment. There are two complete answers to this submission: first, the Director was alert to Mr. Parmar’s information – it is referred to on page R24 of the Determination; and second, Mr. Parmar has not shown this information can have any relevance to the wage claim made by Mr. Pedersen. The same response applies to the assertion by Mr. Parmar that Mr. Pedersen engaged in “unprofessional/unethical” conduct.
67. Nothing in any of the arguments made by Emerald Taxi and Mr. Parmar support a conclusion that they were not given the procedural protections provided by the *ESA* and the rules of natural justice.
68. There is simply no basis for this ground of appeal, and it is dismissed.

### **Error of Law**

69. 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.

70. The grounds of appeal under the *ESA* do not provide for an appeal based on errors of fact and the Tribunal has no authority to consider appeals which seek to have the Tribunal reach a different factual conclusion than was made by the Director unless the Director's findings raise an error of law: see *Britco Structures Ltd.*, BC EST # D260/03.
71. The Tribunal has held that findings of fact are reviewable as errors of law under prongs (3) and (4) of the *Gemex* test above: that is, if they are based on no evidence, or on a view of the facts which could not reasonably be entertained. The Tribunal has noted that the test for establishing an error of law on this basis is stringent, citing the reformulation of the third and fourth *Gemex* factors in *Delsom Estates Ltd. v. British Columbia (Assessor of Area No. 11 - Richmond/Delta)*, [2000] B.C.J. No. 331 (S.C.) at para. 18:
- . . . that there is no evidence before the Board which supports the finding made, in the sense that it is inconsistent with and contradictory to the evidence. In other words, the evidence does not provide any rational basis for the finding. It is perverse or inexplicable. Put still another way, in terms analogous to jury trials, the Appellant will succeed only if it establishes that no reasonable person, acting judicially and properly instructed as to the relevant law, could have come to the determination, the emphasis being on the word "could" . . .
72. The principal conclusion being challenged in these appeals – whether Mr. Pedersen was an employee of Emerald Taxi for the purposes of the *ESA* – is a question of mixed law and fact. In *Britco Structures Ltd.*, *supra*, the Tribunal considered the application of the *Gemex* test to questions of mixed fact and law, and concluded that "error of law" should not to be applied so broadly as to include errors of mixed law and fact which do not contain extricable errors of law.
73. The proper approach to deciding the question is to determine whether the relationship of the putative employee and employer can be found within the relevant provisions and purposes of the *ESA*. This is done by determining the reality of the relationship through objective facts. I find the Delegate engaged in an appropriate analysis of relevant legal factors.
74. I find the approach taken by the Director is consistent with that endorsed by the Tribunal in considering the question of employment status. I further note that, while the outcome of Tribunal decisions vary depending on the facts, the Determination is far from the first decision the Tribunal has upheld on appeal to conclude that persons who drive taxis are employees of the taxi company under the *ESA*: see for example, *Beach Place Ventures Ltd. and Black Top Cabs Ltd.*, 2019 BCEST 23 (Reconsideration denied: 2019 BCEST 61); *Victoria Taxi (1987) Ltd.*, BC EST # D601/97; *Sunshine Cabs Ltd.*, BC EST # D012/04; and *Trendtham Group Enterprises Inc. carrying on business as Star Taxi*, BC EST # D032/08. The conclusion reached in the Determination with respect to Mr. Pedersen is therefore not novel or particularly surprising in the context of determinations made under the *ESA* involving taxi drivers.

75. In the Determination, the Director analysed and made a decision on the issue on the facts and in accordance with, and for the purposes of, the *ESA*. I find that Mr. Parmar and Emerald Taxi have not shown an error of law in the Director's analysis. Effectively the appeals do no more than quarrel with the conclusions reached by the Director in the Determination from the facts as found, seeking either to have those conclusions ignored or to apply the facts toward a different conclusion. Neither of the appeals present a significant challenge to the findings of fact made by the Director. To reiterate, disagreement with findings of fact and inferences drawn therefrom does not provide a ground for appeal under section 112 of the *ESA*.
76. I find the Determination is consistent with the legal approach the Tribunal has mandated under the *ESA* for determining employee status and no error of law is shown. The facts support the conclusion reached. There is no apparent merit to this ground of appeal or in the allegation that the Director erred in law in finding Mr. Pedersen to be an employee of Emerald Taxi.
77. Much of the remainder of Mr. Parmar's appeal simply challenges findings of fact, such as how many hours Mr. Pedersen worked, without showing such findings amounted to error of law. There was evidence on which the findings of the Director could be made, and such findings were not perverse or inexplicable.
78. In sum, I find there is no apparent merit to these appeals and no reasonable prospect either will succeed. The purposes and objectives of the *ESA* would not be served by requiring the other parties to respond to them and they are, accordingly, dismissed.

## **ORDER**

79. Pursuant to section 115 of the *ESA*, I order the Determination dated August 28, 2020, be confirmed in the amount of \$26,668.80, together with any interest that has accrued under section 88 of the *ESA*.

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**David B. Stevenson**  
**Member**  
**Employment Standards Tribunal**