



Citation: Tejinder Dhaliwal (Re)  
2021 BCEST 34

EMPLOYMENT STANDARDS TRIBUNAL

An appeal

- by -

Tejinder Dhaliwal  
(the “Employee”)

- 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:** Carol L. Roberts

**FILE No.:** 2021/018

**DATE OF DECISION:** April 23, 2021

## DECISION

### SUBMISSIONS

Tejinder Singh Dhaliwal on his own behalf

### OVERVIEW

1. This is an appeal by Tejinder Dhaliwal (the “Employee”) of a January 26, 2021 Determination issued by a delegate of the Director of Employment Standards (the “Director”).
2. The Employee worked as a delivery driver for 518798 B.C. Ltd. carrying on business as Panago Pizza (the “Employer”) from January 14, 2009, until February 25, 2020. On October 8, 2020, the Employee filed a complaint with the Director alleging that the Employer had contravened the *Employment Standards Act* (the “ESA”) in failing to pay him statutory holiday pay.
3. The delegate determined that the Employee’s complaint had been filed outside the time limit established in section 74(3) of the *ESA* and asked the Employee to explain the reason for the delay.
4. The Employee informed the delegate that he had been advised by an Employment Standards Branch (the “Branch”) employee that he had one year to file his complaint, and that a friend who was to assist him in filing the complaint had been unable to return to Canada in a timely manner.
5. The delegate noted that the requirements to file a complaint in a timely fashion are explicit and publicly available on the Branch website. The delegate considered the Employee’s reasons for not filing the complaint within the statutory time period and concluded that he had not provided any compelling reasons to continue the investigation. The delegate decided not to proceed with the complaint.
6. Section 114 of the *ESA* provides that the Tribunal may dismiss all or part of an appeal without seeking submissions from the other parties or the Director if it decides that the appeal does not meet certain criteria. After reviewing the appeal submissions, I found it unnecessary to seek submissions from the Employer or the Director.
7. This decision is based on the section 112(5) “record” that was before the delegate at the time the Determination was made, the Employee’s submissions, and the Reasons for the Determination.

### ISSUE(S)

8. Whether the Employee has established grounds for interfering with the Director’s decision not to continue with an investigation of the complaint.

### ARGUMENT(S)

9. The Employee contends that the delegate erred in law and failed to observe the principles of natural justice in making the Determination.

10. In support of his appeal, the Employee sets out the same reasons he provided to the Director's delegate in explaining his reasons for filing his complaint outside the six month statutory time period; that is, that he was told by a Branch employee that he had one year to file his complaint and that a friend who was to assist him in making the complaint was unable to return to Canada due to the Covid-19 pandemic.

### **ANALYSIS**

11. Section 114(1) of the *ESA* provides that 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.
12. Section 112(1) of the *ESA* provides that a person may appeal a determination on the following grounds:
- the director erred in law;
  - the director failed to observe the principles of natural justice in making the determination;
  - evidence has become available that was not available at the time the determination was being made.
13. The burden is on an appellant to demonstrate a basis for the Tribunal to interfere with the decision. I am not persuaded that the Employee has met that burden. Not only has the Employee made no submissions on why the delegate's decision was in error, I find no basis, on a review of the record and the Determination, to interfere with the decision.
14. Natural justice is a procedural right which includes the right to know the case being made, the right to respond and the right to be heard by an unbiased decision maker. It does not mean that the Director's delegate must arrive at a conclusion the appellant considers just and fair.
15. There is nothing in the appeal submission that establishes that the delegate failed to provide the Employee with sufficient information about the time limit issue presented by his late filing of the complaint and afford him the opportunity to explain his situation. The record discloses that on December 29, 2020, the delegate e-mailed the Employee and explained to him that the complaint had been filed past the six-month statutory deadline. The e-mail contained a hyperlink to section 74 of the *ESA*. The delegate also asked the Employee to explain why he had delayed filing his complaint.

16. Although it is not recorded in the Determination, in the “Workflow Sheet”, which I infer is a record of the delegate’s communication with the parties, the delegate noted “[o]n balance of probabilities, unlikely ESB staff informed him of this deadline.” This view was also communicated to the Employee in a December 30, 2020 e-mail.
17. I find that the delegate informed the Employee of the late filing of the complaint and afforded him the opportunity to explain why he had done so. I am unable to conclude that the Employee was denied natural justice.
18. I am also unable to find that the delegate erred in law in deciding not to continue investigating the complaint.
19. Section 74(3) of the *ESA* establishes a six-month limit on the filing of complaints. Section 76(1) requires the Director to accept and review complaints, and section 76(3)(a) provides the Director with discretion to refuse to accept or continue investigating a complaint that is not made within the time limit. (see also *Karbalaieili v. British Columbia (Employment Standards)*, 2007 BCCA 533)
20. The delegate concluded that one of the reasons advanced by the Employee was unlikely and that, together with the second reason, that is that a friend who was to assist him was “stuck in India,” were not sufficiently compelling reasons for exercising her discretion in favor of extending the time limit.
21. The delegate did not expressly consider any of the purposes of the *ESA* in arriving at her decision, although she did consider the legislation generally. However, even if the delegate failed to specifically consider that the *ESA* is intended to provide for fair and efficient procedures for resolving disputes as well as to promote the fair treatment of both employers and employees (section 2 of the *ESA*), I am not persuaded that she erred in law. The Employee filed his complaint almost eight months following his last day of work, approximately two months beyond the statutory deadline. His explanation for why he did so was, as the delegate found, unlikely. I am not persuaded that the delegate’s decision not to extend the time period for filing a complaint is in error.
22. I dismiss the appeal.

## **ORDER**

23. Pursuant to section 115 of the *ESA*, I order that the delegate’s January 26, 2021 Determination to stop investigating the complaint be confirmed.

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**Carol L. Roberts**  
**Member**  
**Employment Standards Tribunal**