

Citation: Rajender Singh Parmar and Emerald Taxi Ltd.(Re)
2021 BCEST 47

EMPLOYMENT STANDARDS TRIBUNAL

Applications for Reconsideration

- by -

Rajender Singh Parmar
("Parmar")

- and -

Emerald Taxi Ltd.
("Emerald Taxi")

- of a Decision issued by -

The Employment Standards Tribunal
(the "Tribunal")

pursuant to section 116 of the
Employment Standards Act R.S.B.C. 1996, C.113 (as amended)

PANEL: Kenneth Wm. Thornicroft

FILE Nos.: 2021/026 and 2021/028

DATE OF DECISION: May 20, 2021

DECISION

SUBMISSIONS

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

OVERVIEW

1. I have separate applications for reconsideration before me filed by Rajender Singh Parmar (“Parmar”; EST File No. 2021/026) and Emerald Taxi Ltd. (“Emerald Taxi”; EST File No. 2021/028). Both applications were filed pursuant to section 116 of the *Employment Standards Act* (the “ESA”).
2. The applicants each seek to have 2021 BCEST 24, issued on March 9, 2021 (the “Appeal Decision”), either cancelled or varied. By way of the Appeal Decision, the Tribunal confirmed a Determination issued on August 28, 2020 by Shane O’Grady, a delegate of the Director of Employment Standards (the “delegate”).
3. In my view, these applications are not meritorious, and both must be summarily dismissed since neither application passes the first stage of the *Milan Holdings* test (see *Director of Employment Standards*, BC EST # D313/98).

PRIOR PROCEEDINGS

4. Emerald Taxi is a licensed taxi firm operating in Prince George. Following the receipt of two formal complaints, and other information from an unnamed third party, the Director of Employment Standards commenced an investigation under section 76(2) of the *ESA*. In due course, the Director’s delegate determined that seven Emerald Taxi employees had not been paid in accordance with the provisions of the *ESA*. The delegate’s findings are set out in his comprehensive “Reasons for the Determination” (the “delegate’s reasons”), which span 28 single-spaced pages including the “wage calculation” summaries. The total amount of unpaid wages found to be due and payable was \$21,668.80 including section 88 interest. The largest share of the unpaid wages (\$18,594.76 plus \$372.35 in interest) was awarded to one particular complainant – an individual who drove a taxi owned by Mr. Parmar.
5. Further, and also by way of the Determination, the delegate levied 10 separate \$500 monetary penalties (see section 98 of the *ESA*) and thus the total amount payable under the Determination is \$28,668.80.
6. Emerald Taxi is a B.C. corporation. B.C. Corporate Registry records indicate that there are four corporate directors, including one of the present applicants, Rajender Singh Parmar. Two of the four directors – not Mr. Parmar – are also listed as corporate officers. One of those director/officers, Balraj S. Bhangoo (Emerald Taxi’s president), acted on behalf of Emerald Taxi during the delegate’s investigation, and he also filed both the appeal and the subsequent reconsideration application on behalf of Emerald Taxi.
7. Mr. Parmar and another director/officer, Jagtar Singh Thiara (Emerald Taxi’s secretary), are described as “owner-operators” who make their taxis available to other drivers. Apparently one of the complainants

had such an arrangement with Mr. Parmar. However, it is important to note that the delegate *did not* determine that Mr. Parmar employed this particular complainant, or that Mr. Parmar had any liability to this, or any other, complainant under the Determination.

8. The delegate noted, at pages R6 and R10 of his reasons:

Emerald has several of its own employees, however, the company also has several owner/operators which own their own cabs and have their own drivers...

Emerald provides owner/operators with dispatch services and a passenger transportation board licence (PTB licence) which was previously known as a Motor Carrier Plate. Owner/operators in turn pay Emerald approximately \$990.00 per month for dispatch services, \$142.00 per month to lease the computer in each cab which connects the driver to the dispatch service, \$150 for the PTB licence, and \$500.00 to \$600.00 per month for insurance. Vehicle insurance for Emerald vehicles and owner/operator vehicles have both the name of the owner/operator as well as Emerald's name on the document.

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It is not disputed that Mr. Thiara or Mr. Parmar operated cabs under the Emerald brand and utilized Emerald's dispatch service and equipment. A different analysis of the employment relationship between the Complainants, Emerald, and owner/operators may indeed find that the owner/operators were also employers of the Complainants. However, a finding that the owner/operator was also an employer of the Complainants does not absolve Emerald of its responsibility as an employer as well.

The only owner/operator names put forward by Emerald as employers were Mr. Thiara and Mr. Parmar...While Mr. Thiara and Mr. Parmar may have exerted some level of control over their drivers, including, as claimed by Emerald, the maintenance of records and the issuance of T4A's, the evidence does not preclude Emerald from being excluded from the definition of employer regarding the Complainants. To the contrary, it appears that Emerald exerted a significant amount of control over the employment of each driver including control over discipline and the ability to earn wages through its control of the dispatch system...

...I find the Complainants, including the Complainant that Emerald argued was an employee of the owner/operator, are performing a service normally performed by an employee (driving a taxi) and that the labour they performed meets the definition of work. As Emerald controlled the taxi licence, dispatch system, disciplinary process, and ultimately the ability of each driver to earn wages, I find that Emerald is the Complainants' employer and that the Act applies to the employment relationship between the Complainants and Emerald.

9. The Determination (including the delegate's reasons) was served on Emerald Taxi at its business office and at its registered and records office. The Determination was also served on all four of its directors, including Mr. Parmar (this service on the directors constituted service on Emerald Taxi – see section 9(1)(c) of the *Business Corporations Act*).
10. Mr. Parmar purported to appeal the Determination in his *personal* capacity – he did not appeal the Determination on behalf of Emerald Taxi and, as noted above, Emerald Taxi's appeal was filed on its behalf, and was conducted by, its president, Mr. Bhangoo. Mr. Parmar could perhaps be held liable to the complainants under section 96(1) of the *ESA*, but Mr. Parmar purported to appeal a determination issued

against Emerald Taxi, not a determination issued against him personally as an Emerald Taxi director. There is nothing in the section 112(5) record to indicate that a section 96(1) determination was issued against Mr. Parmar and as noted above, he did not appeal such a determination, presuming one was ever issued against him. Further, the delegate did not make a section 95 “common employer” declaration such that Mr. Parmar and Emerald Taxi would be treated as a single employer for purposes of the *ESA*.

11. The Tribunal Member made the following findings in the Appeal Decision (at paras. 25 – 27 and 30):

Mr. Parmar’s appeal challenges the finding that [a particular complainant] 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...

Notwithstanding Mr. Parmar’s view, unless the finding on the employment status of [the complainant] under the *ESA* is cancelled, he is potentially liable for the wages found owing to [the complainant] under section 96 of the *ESA*, as a director of Emerald Taxi, and only has status to challenge the Determination on that basis.

I will affirm two points at this juncture: first, that the respective positions of Emerald Taxi and Mr. Parmar on the wage award to [the complainant] 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 [the complainant]. 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 [the complainant] and Mr. Parmar for the purposes of the *ESA*.

The submissions of Mr. Parmar that address whether he is an employer and whether [the complainant] was his employee are largely irrelevant to the issue raised in the appeals, which is whether [the complainant] was an employee of Emerald Taxi during the recovery period.

12. Although perhaps Mr. Parmar had the right to file an appeal of the Determination since it was “served” on him (see section 112(1) of the *ESA*), in my view, he was only entitled to appeal the Determination on behalf of Emerald Taxi, and not in his own *personal* capacity (see *Aquilini*, 2020 BCEST 90).

13. In any event, both Mr. Parmar and Emerald Taxi appealed the Determination. Mr. Parmar alleged all three statutory grounds, while Emerald Taxi restricted its appeal to the “natural justice” ground of appeal. The Tribunal held that Mr. Parmar’s appeal was not meritorious – the so-called “new evidence” was available when the Determination was being made and, in any event, was neither relevant nor probative. The Tribunal held that the delegate afforded the appellants a full and fair opportunity to present their evidence and argument, and appropriately weighed the evidence that was before him. The Tribunal correctly held that the delegate did not have any statutory authority to “waive” monetary penalties that were properly levied. The appellants’ principal argument on the “error of law” ground was that there was no employment relationship between one of the complainants and Emerald Taxi. The Tribunal held that the delegate’s decision in this regard was amply supported by the evidence, and supported by other factually similar Tribunal decisions. The two appeals were dismissed as having no reasonable prospect of succeeding, and the Determination was confirmed under section 115 of the *ESA*.

THE APPLICATIONS FOR RECONSIDERATION

14. As noted above, in my view, Mr. Parmar was not entitled to appeal the Determination in his *personal* capacity. However, leaving that matter to one side, I am also of the view that Mr. Parmar's application does not pass the first stage of the two-stage *Milan Holdings* test.
15. Mr. Parmar continues to assert that the complainant who drove his taxi was never an employee of Emerald Taxi. This issue was exhaustively addressed in the delegate's reasons and in the Appeal Decision. I see no error in either analysis, and adopt the delegate's and Tribunal Member's findings regarding this issue. Mr. Parmar also continues to assert that he has some sort of counterclaim against this driver but, again, these allegations have previously been addressed (see delegate's reasons, pages R25 – R26 and Appeal Decision, paras. 45 – 47 and 60 – 67). I see no error in either the delegate's or the Tribunal's treatment of Mr. Parmar's "counterclaim".
16. Mr. Parmar seeks to introduce new evidence in this application, and requests an adjournment so that he can gather up even more documentation (for example, computerized vehicle tracking records). This evidence, whatever its probative value might be, could have – and should have – been provided to the delegate. It is not admissible at this late stage of the proceedings.
17. Emerald Taxi's application was filed on April 8, 2021 and, in addition, Emerald Taxi seeks an approximate 2-month extension to, presumably, provide further evidence and argument. This extension is said to be needed due to the current pandemic.
18. Emerald Taxi's section 116 application appears to be predicated on three arguments. First, certain payroll deductions were, in fact, authorized by the employees in question. This issue was addressed at pages R13 – R14 of the delegate's reasons. I see no error whatsoever in the delegate's treatment of these so-called "taxi charges". Second, Emerald Taxi says that the driver of the taxi owned by Mr. Parmar was never an Emerald Taxi employee. For the reasons set out, above, I see no merit to this argument. Third, Mr. Bhangoo, on behalf of Emerald Taxi, states: "I do not know why director put all the penalties even I gave full cooperation" [*sic*]. The short answer to this argument is that penalties are mandatory and, in this case, each penalty was assessed based on a demonstrated contravention of the *ESA* or the *Employment Standards Regulation*. The Tribunal does not have any statutory authority to cancel monetary penalties that were properly levied.

SUMMARY

19. As stated in *Milan Holdings*, a reconsideration application should be summarily refused where, in essence, it constitutes an undisguised attempt to have the Tribunal overturn findings of fact (without demonstrating palpable and overriding error), or otherwise simply reiterates arguments that have previously been advanced and correctly rejected.
20. An application for reconsideration will only pass the first stage of the *Milan Holdings* test if it raises a serious question of law, fact, principle or procedure that calls into question the correctness of the Appeal Decision. The application must, on its face, raise an arguable case of sufficient merit so as to warrant reconsideration. In my view, and for the reasons discussed above, neither of these two applications can be properly so characterized.

ORDER

21. The two applications for reconsideration are both refused. Pursuant to section 116(1)(a) of the *ESA*, the Appeal Decision is confirmed.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal