Citation: Elisha Besinger (Re)
2021 BCEST 76

EMPLOYMENT STANDARDS TRIBUNAL

An appeal

- by -

Elisha Besinger
(the "Appellant")

- 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: Mona Muker

FILE NO.: 2021/057

DATE OF DECISION: September 1, 2021

DECISION

SUBMISSIONS

Elisha Besinger — on her own behalf

OVERVIEW

1. Elisha Besinger (the "Appellant") has filed an appeal under section 112 of *the Employment Standards Act* (the "*ESA*") of a determination issued by Rachel Smith, a delegate (the "Delegate") of the Director of the Employment Standards (the "Director"), on May 12, 2021 (the "Determination").

2. The Director found that A.S.S.H.A.T. Endeavours Inc., carrying on business as Barkey's Muttland (the "Employer"), did not contravene section 54(2) the *ESA*, and accordingly did not owe the Appellant wages.

3. The Appellant appealed the Determination alleging that the Director failed to observe the principles of natural justice in making the Determination, under section 112(1)(b) of the *ESA.*

4. In correspondence dated June 22, 2021, the Employment Standards Tribunal (the "Tribunal") notified the Employer and the Director that it had received the Appellant's appeal and it was enclosing the same for informational purposes only. They were further notified that no submissions on the merits of the appeal were being sought from them at this time. The Tribunal also requested the Director to provide a copy of the section 112(5) record (the "Record").

5. On July 14, 2021, the Tribunal received the Record from the Director and forwarded a copy to the Appellant and to the Employer on July 15, 2021. Both parties were provided an opportunity to object to the completeness of the Record. Neither party objected. Accordingly, the Tribunal accepts the Record as complete.

6. Section 114(1) of the *ESA* permits the Tribunal to dismiss all or part of an appeal without a hearing or seeking submissions from the other parties or the Director, if it decides that the appeal does not meet certain criteria. This appeal is appropriate to be considered under section 114(1) of the *ESA*. After reviewing the appeal submissions, I find it unnecessary to seek submissions from the Employer or the Director.

7. Accordingly, this decision is based on the Determination, the reasons for the Determination (the "Reasons"), the Appellant's appeal submissions, and the Record that was before the Director when the Determination was made.

ISSUES

8. The Tribunal takes a large and liberal view of the Appellant's explanation as to why the Determination should be varied, cancelled, or returned to the Director (*Triple S Transmission Inc.*, BC EST # D141/03; *Garrick Automotive Ltd (Re)*, 2020 BC EST 85).

9. Based on my review of the Appellant's submissions and supporting materials, I find that the Appellant's challenge to the Determination extends beyond the ground of appeal selected, and also seeks to challenge whether the Director erred in law.

10. Accordingly, the two issues are:

(1) whether the Director failed to observe the principles of natural justice in making the Determination under section 112(1)(b) of the *ESA;*

(2) and whether the Director erred in law in making the Determination under section 112(1)(a) of the *ESA*.

THE DETERMINATION

Background

11. Based on a corporate BC Registry search conducted on June 21, 2019, with a currency date of May 24, 2019, the Employer was incorporated in British Columbia ("BC") on December 12, 2018. Susan Joanna Paice ("Ms. Paice") and Adam Thomas Schulhauser were listed as the corporation's directors. No officers were listed. I will refer to the Employer and Ms. Paice interchangeably.

12. The Employer operates a pet grooming and day-care business (the "Business") in Kelowna, BC.

13. The Appellant was employed as a pet groomer. She was initially hired in September 2018 by Crystal Barclay ("Ms. Barclay"), the previous owner of the Business. The Appellant was fired by the previous owner and re-hired when the Employer purchased the Business on February 6, 2019. There was no written employment contract. The Appellant worked three days per week and was exclusively paid at a rate of 55% commission. The Appellant only did the work she was paid for, but occasionally answered the phone. The Appellant worked there until she was fired on May 28, 2019.

14. On May 28, 2019, the Appellant filed a complaint (the "Complaint") at the Employment Standards Branch (the "ESB") in which she complained that the Employer fired her because she was pregnant. The Record indicates that the Complaint was received by the Director on June 5, 2019.

15. The Delegate received evidence from the Employer and the Appellant during the investigation of the Complaint before making the Determination. I will only set out those aspects of the factual background directly relevant to the issues on appeal.

16. The Delegate began investigating the Complaint on June 25, 2019. According to the Record, between June 25, 2019, and July 30, 2019, the Delegate obtained evidence from a number of parties including the Appellant, Richard Besinger, and the Employer.

17. Evidence was obtained via telephone and email. The Delegate interviewed the Appellant on June 25, 2019. The Delegate received the Employer's submissions on July 30, 2019.

18. Thereafter the Record shows that the Delegate did not continue to investigate the Complaint until November 12, 2020. Before reconvening the investigation, the last email correspondence the Delegate

received was from the Employer on August 16, 2019, asking for an update; to which the Delegate did not respond.

19. On November 12, 2020, the Delegate discussed the Complaint with the Appellant via telephone. On the same day, the Delegate finally sent the Employer's July 30, 2019, submissions to the Appellant, so that the Appellant could respond. On November 19, 2020, the Delegate had a discussion with the Appellant, again, via telephone.

20. Between November 12, 2020, and December 16, 2020, the Delegate collected evidence from the Appellant; the Employer; the Appellant's witness, Megan Eyles ("Ms. Eyles"); and Ms. Barclay. The Delegate had a discussion with the Appellant, a fourth time, on December 10, 2020.

21. The Appellant emailed the Delegate on January 9, 2021, and March 3, 2021, asking for an update. The Delegate did not respond to the Appellant's emails. The Delegate spoke to the Appellant on the telephone on March 18, 2021, and March 26, 2021. The Determination was made on May 12, 2021.

Reasons

22. The issues before the Director were whether the Employer changed a condition of the Appellant's employment without her consent or terminated her employment because of her pregnancy.

23. In the Reasons, the Director noted information provided by the Appellant, the Employer, Ms. Eyles, and Ms. Barclay.

24. The Director noted that the Appellant provided the following evidence in the investigation of the Complaint: The Appellant was hired to work three days per week and was expected to have six to eight grooms per day. Soon after the Appellant announced her pregnancy to the Employer, in late March or early April, she received less work and had fewer dogs to groom. There were days when the Appellant had no work. Although the Appellant was completing course work to become a mortgage broker, she intended to work as long as possible, until her due date of September 25, 2019. The Appellant also intended to return to work after her leave.

25. The Appellant did not speak poorly of the Business. The Appellant was not made aware of any issues with the Employer. She recalled incidences in which Ms. Paice did not agree with how the Appellant dealt with unhappy customers. At one time, their disagreement escalated into a conflict. The Appellant found Ms. Paice difficult to work with. Their personalities conflicted.

26. The Director noted that the Employer provided the following evidence in the investigation of the Complaint: The Business unexpectedly became slow in the last couple of months the Appellant was employed—from April to May. There were days when the Appellant was asked not to come into work because there were few or no dogs booked for grooming. This was confirmed by the Appellant and Ms. Barclay. The Director noted that all other employees had their hours reduced as well.

27. The Employer hired a new full-time groomer, Nicole, because the Employer expected Ms. Barclay, who became an employee after selling the Business, to move soon after. However, Ms. Barclay stayed much longer than anticipated. Meanwhile, the Appellant was only available to work three days per week and

did not help with other tasks. Nicole was paid hourly, was available for full time work, and did other tasks besides grooming. The Employer initially offered to hire the Appellant on an hourly basis, but the Appellant declined the offer. The Record indicates that the Employer also hired Nicole because two other employees quit around this time, and the Employer assumed the Appellant would go on a maternity leave in due course.

28. The Director found that although hiring the new groomer coincided with the Business being slow, the new groomer was not hired to immediately replace the Appellant, who was pregnant. The Director found that the Appellant's conditions of employment were not changed because of her pregnancy.

29. The Director noted that Ms. Eyles and Ms. Barclay provided the following evidence in the investigation of the Complaint: The Appellant and Ms. Paice had a difficult working relationship. Ms. Paice had a difficult working relationship with several employees from the time she purchased the Business. This was confirmed by the Appellant.

30. Ms. Barclay planned to move out of the province, however, their move got delayed. Ms. Barclay got along with both parties. Ms. Barclay observed the conflicts between both parties and noted that their relationship was deteriorating because of the lack of communication and disconnect. The Appellant told Ms. Barclay that she was unhappy working for Ms. Paice and was frustrated with how the Business was being operated. In the four months the Appellant worked for Ms. Paice, two other employees quit because of Ms. Paice, including Ms. Eyles, prior to the Appellant being fired.

31. The Directed found that the Appellant and Ms. Paice had conflicts regarding how to operate the Busines and how to provide customer service. Ms. Paice did not appreciate being told how to operate the Business and was defensive towards criticism.

32. According to the Employer, they had many reasons to fire the Appellant, namely: incompetence, poor performance, fraudulently claiming commissions, speaking poorly of the business, refusing to be a team player, and disrespecting Ms. Paice. The Appellant was verbally reprimanded on several occasions.

33. The Employer did not confront the Appellant, confirm her maternity leave, or confirm if she was returning to work after her leave. The Employer assumed the Appellant was not returning to work based on her social media posts, mortgage broker course, and what the Employer heard from other employees. The Employer tried to ignore the problems with the Appellant by waiting for the Appellant to go on maternity leave. The Employer attempted to proceed cautiously because Ms. Eyles recently quit from the Business on bad terms and thereafter tried to damage the Business and sent hateful emails.

34. The Director found that the Employer failed to communicate their expectations to the Appellant. Ms. Barclay stated that the lack of communication between the parties was the root cause of the issues. The Director found Ms. Barclay's evidence to be reliable and credible because they were in a unique position to understand the issues between the parties, given they were the former Business owner who continued to work as an employee after the Business was acquired by the Employer. Ms. Barclay had no connection with the Business after they left their employment in January 2020. They were independent and had no interest in the outcome of Complaint.

35. The Director found that the Appellant and Employer had different versions of the incident that occurred on May 28, 2019. The incident was serious enough that the Appellant found it necessary to take all her grooming equipment with her when she left the Business. The Employer interpreted this as the Appellant's intent to quit. Nonetheless, the Employer immediately terminated the Appellant without cause and provided one week of compensation for length of service in lieu of notice.

36. The Director found that there was no dispute that there was an argument between the parties on May 28, 2019, after an intense text message exchange. The Director found that the Employer terminated the Appellant on May 28, 2019.

37. According to the Appellant, Ms. Paice said "you're pregnant, you don't want to work anyway". The Appellant believed this assertion to be proof of the reason she was terminated.

38. According to the Employer, the Appellant had an outburst at work and verbally attacked Ms. Paice, using abusive and derogatory language. The Employer denied making any statements or firing the Appellant because of her pregnancy. The Employer believed they had just cause to fire the Appellant yet chose to fire her without cause because of the incident on May 28, 2019.

39. The Director noted that while the Employer had the onus of proof that the Appellant was not terminated because of her pregnancy, the Determination must be made based on the evidence presented.

40. Other than the Appellant's statement, the totality of the evidence pointed to the termination occurring for reasons that had nothing to do with the Appellant's pregnancy. Ms. Barclay witnessed the growing and escalating tension between the parties. Ms. Barclay confirmed the Employer spoke about their belief that the Appellant was fraudulently claiming commissions. Ms. Barclay did not hear Ms. Paice make a comment about the Appellant's pregnancy. The Record indicates that Ms. Barclay believed that the Appellant was fired because both parties "hated each other".

41. The Director found that while some of the Employer's reasons for being unhappy with the Appellant may be unfair, it was clear that the parties had a difficult employment relationship from the beginning, before the Employer was aware of the Appellant's pregnancy. Their relationship only got worse, given how short it was, leading to the final incident of May 28, 2019.

42. The Director found that the Employer did not terminate the Appellant because of her pregnancy. The Employer did not contravene section 54(2) of the *ESA*. The Employer correctly paid the Appellant one week of compensation for length of service and therefore owed no wages under the *ESA.*

ARGUMENTS

43. The Appellant appeals the Determination alleging that the Director failed to observe the principles of natural justice in making the Determination; the Director failed to account for the context of her case; and the Director did not address the outstanding lack of just cause for her termination.

44. The Appellant submits that she was not pleased with the way her file was handled by the Delegate and that the Delegate displayed a gross lack of communication. The Delegate would not respond to emails or phone messages for months at a time. The Appellant waited for over twelve months before asking the

Delegate for an update in response to which the Delegate advised that she had forgotten about the Appellant's file and would start working on it.

45. The Appellant submits that, after filing the complaint, she waited for twelve months before contacting the Employment Standards Branch. She submits that the Delegate was then instructed to contact her. The Appellant submits that the Delegate expressed that she did not know how to proceed with the Appellant's file because she had not dealt with something like this before. The Appellant submits that when the Delegate did discuss the Appellant's complaint, the Delegate would mix up facts and seemed generally overwhelmed.

46. The Appellant submits that the Delegate was supposed to contact the Appellant before reaching out to her supervisor; however, the Delegate did not. Upon discussing her complaint with the Delegate after the supervisor was contacted, the Appellant found that the Delegate had mixed up several facts.

47. The Appellant submits that she would like her case to be re-evaluated. Her income, life, and health were impacted because of how she was treated by Ms. Paice. The Appellant submits she was subsequently not able to find work because she was visibly pregnant.

48. The Appellant also submits that she does not agree with the Director's factual findings. In particular, the Director found that the Appellant and Ms. Paice had a difficult relationship from the beginning. The Appellant disagrees with this finding because she perceives her relationship to deteriorate shortly after she announced her pregnancy.

49. The Appellant further submits the same facts she already testified to during the investigation of the Complaint. I will not be reproducing those facts here, but briefly, the Appellant reargues facts regarding tips; allegations of fraudulently taking commissions; comments made by Ms. Paice towards her pregnancy; slowdown of the Business; the hiring of a full-time groomer; and the incident of May 28, 2019.

ANALYSIS

50. Section 112 (1) of the *ESA* allows a party to appeal a determination on 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.

51. 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 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 of the requirements of section 112(2) have not been met.

52. The Tribunal has consistently held that an appeal is not another opportunity to argue the merits of a claim to another decision-maker. An appeal is an error correction process, and the burden is on the Appellant to persuade the Tribunal that there is an error in the Determination under one of the statutory grounds of review in section 112(1).

53. In this case, the Appellant appeals the Determination on the basis that the Director failed to observe the principles of natural justice in making the Determination. Taking a large and liberal view, I will also address the merits of the Determination to determine if the Director erred in law.

54. Where there is any doubt about the grounds of an appeal, the doubt should be resolved in favour of the Appellant (*Garrick Automotive Ltd (Re)*, 2020 BC EST 85). I have therefore considered whether or not the Appellant has demonstrated any basis for the Tribunal to interfere with the Determination. I conclude that the Appellant has only met a *part* of that burden.

55. I therefore dismiss the appeal for the reasons set out below.

Principles of Natural Justice

56. Natural justice is a procedural right that includes the right to know the case being made, the right to respond, and the right to be heard by an unbiased decision maker (*Re 607730 B.C. Ltd. (cob English Inn & Resort)*, BC EST # D055/05; *Imperial Limousine Service Ltd.*, BC EST # D014/05). The party alleging failure to comply with natural justice must provide evidence in support of the allegation (*Dusty Investments Inc. d.b.a. Honda North*, BC EST # D043/99).

57. In this case, the procedural fairness and natural justice issue relates to the slow pace of the investigation conducted by the Director. In other words, this case concerns *administrative delay*.

58. In assessing the issue of delay in the context of employment standards hearings, the Tribunal has relied on *Blencoe v. British Columbia (Human Rights Commission),* 2000 SCC 44. In *Blencoe*, the Supreme Court held that to determine whether a delay amounts to an abuse of process in the administrative law context, two things must be proven:

a. the delay was unacceptable or inordinate, determined by the context of the proceedings; and

b. the delay caused prejudice of a magnitude that affects the fairness of the hearing or the community's sense of decency and fairness.

59. Where there is no prejudice to the hearing process, the delay must directly cause significant personal or psychological prejudice. To constitute an abuse of process, the delay must be such that it brings the administrative process in issue into disrepute (*Blencoe* at paras. 104, 115, 122, 133).

60. Both delay and prejudice are separate factors, which must be weighed separately. I will address delay first.

Delay

61. To determine whether a delay has become inordinate depends on the nature of the case, its complexity, facts and issues, the purpose and nature of the proceedings, whether the respondent contributed to the delay or waived the delay, and other circumstances of the case. Whether a delay is inordinate is not solely based on the length of the delay alone, it also depends on contextual factors, including the nature of the various rights at stake in the proceedings, to determine whether the community's sense of fairness would be offended by the delay (*Blencoe* at para 122).

62. According to the Record, between June 25, 2019, and November 12, 2020, the Delegate had no contact with the Appellant. The Delegate received the Employer's submissions on July 30, 2019 but did not provide the Appellant an opportunity to respond until November 12, 2020—nearly fifteen months later. Thereafter, the Delegate did not respond to the Appellant's emails sent on January 9, 2021, and March 3, 2021 requesting an update.

63. In the Determination, the Delegate did not address the question of why the investigation was so lengthy and why there was a fifteen-month gap in the investigation. The Delegate did not follow up with the Appellant for nearly sixteen and a half months. Had the investigation continued at its original pace, the Determination would not have been issued for nearly two years after the Complaint was made.

64. The Record indicates that the Complaint was not legally complicated. There was no ongoing communication between the parties, or any preliminary determination issued for response. Although the Director was obligated to consider the evidence of a few witnesses, their evidence was not overly complex or lengthy. The Reasons for the Determination, even with the consideration of the witnesses' evidence, was only twelve and a half pages in length.

65. One of the purposes of the *ESA* is "to provide fair and efficient procedures for resolving disputes over the application and interpretation of the Act" (section 2(d)). A fifteen-to-sixteen-month gap in the investigation and taking nearly two years to issue what is a factually and legally uncomplicated Determination, fails to meet this statutory purpose and offends the community's sense of fairness. Furthermore, forgetting one's file or not knowing how to proceed are hardly excuses for causing administrative delay. The public must be satisfied that complaints are dealt with quickly and that they have finality.

66. I find that the delay was inordinate and brings the administration of the employment standards scheme into disrepute.

Prejudice

67. While remedies are available in administrative contexts to deal with state-caused delays, those remedies are only available when a party can demonstrate significant prejudice from the delay (*Garrick Automotive Ltd. (Re),* 2020 BCEST 85). In *Tung* (BC EST # D511/01), the Tribunal found that mere delay does not warrant a stay or cancellation of a Determination. There must be proof of substantial prejudice:

> 'To constitute a breach of the duty of fairness, the delay must have been unreasonable or inordinate. There is no abuse of process by delay *per se*. [It] must [be] demonstrate[d] that the delay was unacceptable to the point of being so oppressive as to taint the proceedings' (*Blencoe* at para. 121). While I am of the view that the delay in this case was inordinate (this was not a complicated matter and it ought to have been dealt with considerably more expeditiously), I cannot conclude that this delay 'tainted' the proceedings (*Tung*, BC EST # D511/01).

68. Although the Appellant suggests that she was seriously affected by what she considers to be an unreliable decision following a large delay, I am not persuaded that this constitutes significant prejudice for the purposes of the *Blencoe* test. The Appellant has not demonstrated, for example, that the delay seriously and negatively affected her reputation, health, or financial circumstances.

69. Undoubtedly this claim was outstanding for a while, but I fail to see how the stress associated with the ongoing issue of this case, *per se*, prejudiced the Appellant's ability to advocate for herself, amounted to an abuse of process, or led to a denial of natural justice.

70. There is ample evidence in the Record that shows that the Delegate afforded the Appellant many opportunities to discuss the Complaint and respond to the Employer's submissions during the investigation. The Delegate had a discussion with the Appellant and shared the Employer's submissions on the same day—November 12, 2020. Further, the Delegate and Appellant discussed the Complaint on November 19, 2020; December 10, 2020; March 18, 2021; and March 26, 2021, before the Determination was made on May 12, 2021.

71. While the Delegate may not have discussed the file with the Appellant immediately before speaking to her supervisor, the Delegate provided the Appellant with four opportunities to discuss the Complaint and respond to the Employer. The Delegate also had two initial fact-finding discussions with the Appellant regarding her Complaint and testimony. There is no basis to conclude that the Appellant was denied an opportunity to present her evidence or to respond to the Employer's submissions before the Determination was made.

72. The Delegate may have mixed up facts during discussions with the Appellant, however, the Appellant did not identify any evidence in the Record that would establish that the Reasons and Determination have palpable and overriding errors of fact. The Appellant's disagreement with the Director's findings or the evidence the Director found to be more credible, are not *errors of fact*. These do not provide a basis for setting aside the Determination based on delay. According to the Record, the Delegate recalled the parties' and witnesses' evidence in their Reasons accurately, despite there being a delay in the investigation. I find that the Director did not err in failing to consider relevant evidence, as alleged.

73. The *Blencoe* test has not been met. I find that no significant prejudice resulted from the undue delay.

74. According to administrative law principles of procedural fairness, a decision-maker may consult their supervisor on matters of law and policy, so long as the decision-maker has the freedom to make their own decision (*IWA v. Consolidated Bathurst Packaging Ltd.,* [1990] 1 S.C.R. 282; per Gonthier J; see also *2747-3174 Quebec Inc. v. Quebec (Regie des permis d'alcool),* [1999] 3 S.C.R. 919). Although the Appellant has not raised any issues with the Delegate seeking her supervisor's advice, taking a large and liberal approach for the purposes of finding a breach of natural justice, I believe it is important to note that there is no evidence to suggest that the Director's decision was not independent, impartial, or tainted with bias. For example, there is no evidence that the Delegate was forced by her supervisor to alter the Determination, or that the Delegate had her supervisor draft the Reasons. The Delegate also had no statutory duty to disclose her supervisor's advice to the Appellant.

75. Accordingly, I find that the Director did not breach the principles of natural justice.

Error of law

76. The Tribunal as 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.

77. As previously stated, an appeal is not an opportunity for the Appellant to reargue the merits of her claim. Yet much of the Appellant's submissions are an attempt to reargue facts that the Delegate dismissed in their Reasons.

78. The Appellant submits that the Director did not address the "lack of just cause" for terminating her. Being a non-legally trained party, it is possible that the Appellant miscommunicated her argument or misunderstood the meaning of "just cause" and when it is applicable. The Appellant's case is not about "just cause". The Appellant was terminated *without just cause*, which the law allows the Employer to do, so long as the Appellant received proper notice or pay in lieu of notice—which she did (*ESA,* section 63). This is something the Appellant cannot contest because she was correctly paid one week of compensation for length of service in lieu of notice. The Appellant's case is about whether her Employer changed a condition of her employment without her consent or terminated her because of her pregnancy, and not because of the other issues they had—for which she was terminated *without just cause*.

79. The Delegate has the authority to assess the reliability of evidence and credibility of witnesses. The issue of what weight should be given to certain evidence and credibility of witnesses are *questions of fact*, not law. Absent any persuasive evidence that the Delegate's assessment was, for example, affected by bias, or made findings of fact that were unsupported by the evidence, the Tribunal has no jurisdiction to interfere (*Garrick Automotive Ltd. (Re),* 2020 BCEST 85; see *Britco Structures Ltd.*, BC EST # D260/03).

80. There is ample evidence in the Record that supports the Appellant's termination for other issues she had with the Employer, which were present before she announced her pregnancy. Had there been no other issues, then the Appellant may have had a stronger claim for alleging she was terminated because of her pregnancy.

81. The parties had a very short relationship, which lasted no longer than approximately four months. Given its short duration, it was not unreasonable for the Delegate to find that the parties relationship had been problematic from the beginning.

82. I find it highly reasonable that the Delegate found Ms. Barclay's evidence to be more credible and reliable because Ms. Barclay was a unique third party who had no interest in the Business or Complaint.

83. I find the Delegate's acceptance of the parties' and witnesses' evidence on some issues while rejecting it on others to be supported by the evidence in the Record.

84. I find that the Director did not err in law.

85. Accordingly, I dismiss the appeal.

ORDER

86. The appeal is dismissed under section 114(1)(f) of the *ESA*. Pursuant to section 115(1) of the *ESA*, the Determination dated May 12, 2021, is confirmed.

Mona Muker
Member
Employment Standards Tribunal