

EMPLOYMENT STANDARDS TRIBUNAL

An appeal

- by -

Yudhvir Singh  
(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:** Brandon Mewhort

**FILE No.:** 2021/076

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

## DECISION

### SUBMISSIONS

Yudhvir Singh

on his own behalf

### OVERVIEW

1. This is an appeal filed by Yudhvir Singh (the “Appellant”) of a determination issued by Jackson Kemmis, a delegate of the Director of Employment Standards (the “Delegate”), on August 26, 2021 (the “Determination”). In the Determination, the Delegate found that the Appellant’s complaint was filed outside the six-month time limit established under section 74(3) of the *Employment Standards Act* (“ESA”). The Delegate found that the Appellant did not provide any compelling reason for the delay and the Delegate then exercised his discretion to refuse to investigate the complaint pursuant to section 76(3) of the *ESA*.
2. Section 114(1) of the *ESA* provides that 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, among other things, there is no reasonable prospect the appeal will succeed.
3. I have decided to dismiss this appeal pursuant to section 114(1) of the *ESA*, because there is no reasonable prospect it will succeed. I have assessed the appeal based on the Determination, the reasons for the Determination, the appeal, the Appellant’s written submission filed with the appeal, and my review of the material that was before the Director when the Determination was being made.

### ISSUE

4. Whether this appeal should be dismissed pursuant to section 114(1) of the *ESA*.

### BACKGROUND

5. The Appellant filed a complaint under section 74 of the *ESA* alleging that his former employer, Canada Tent House Ltd. (the “Employer”), failed to pay regular wages. In the Determination, the Delegate considered the preliminary matter of whether the Appellant’s complaint was filed within the time limit established under section 74(3) of the *ESA* and, if it was not, whether the Delegate should exercise his discretion to refuse to investigate the complaint.
6. The complaint was filed on December 30, 2020. The Delegate found that the Appellant’s last day of employment was March 23, 2019, and the six-month time limit for filing a complaint would have been September 23, 2019 in order for the complaint to have been filed on time.
7. The Delegate sought a submission from the Appellant on the timeliness of his complaint. The Appellant stated that he was new to Canada, so he did not understand Canadian employment laws.

8. In the Determination, the Delegate discussed how section 2(d) of the *ESA* states that its purpose is to, among other things, provide for fair and efficient procedures for resolving disputes. The Delegate discussed how one method of attaining this purpose is to require complaints to be submitted to the Employment Standards Branch (the “Branch”) within the six-month time limit. The Delegate found the Appellant had six months after his last day of employment to educate himself about his rights. The Delegate noted that the Branch has an information line, which the Appellant could have contacted on an anonymous basis in case he was concerned about his immigration status in Canada or other employment opportunities. The Delegate also noted that the requirements to file a complaint are explicit and available publicly on the Branch’s website. The Delegate went on to find that the Appellant did not provide a compelling reason for the delay in filing the complaint.

### **ARGUMENT**

9. The Appellant submitted a four-paragraph argument in his appeal materials. The Appellant states that he worked for 14 hours for the Employer and is owed approximately \$200.00. The Appellant quit because other employees had worked up to a month without their wages being paid. The Appellant alleges that he requested to be paid for the 14 hours of work, but the Employer said he would not receive any payment and the Appellant’s phone number was blocked. The Appellant says his complaint was late because, being new to Canada, the Appellant did not understand Canadian employment laws, so he did not realize what the Employer did was illegal.
10. The Appellant also submitted with his appeal materials undated text messages between himself and the Employer discussing the money that the Appellant was allegedly owed. Some of the text messages sent to the Appellant by the Employer had profanity and the Appellant says that he was harassed.

### **ANALYSIS**

11. Section 112(1) of the *ESA* provides that a person may 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.
12. The burden is on an appellant to demonstrate a basis for the Tribunal to interfere with a determination (see *Tejinder Dhaliwal (Re)*, 2021 BCEST 34 at para 13).
13. In this case, when asked in the appeal form to select the grounds of appeal, the Appellant indicated that the Delegate erred in law and that the Delegate failed to observe the principles of natural justice in making the Determination. However, the Appellant provided no explanation in his appeal materials about what error in law is alleged or how the Delegate allegedly failed to observe the principles of natural justice. Rather, the Appellant only reiterated his reason for why his complaint was late, which is that he did not understand the applicable employment laws because he was new to Canada.
14. During the investigation, the Appellant provided the Delegate with his reason for why the complaint was filed late and the Delegate determined that it was not a compelling reason for the Appellant’s delay in

filing the complaint. I note that this Tribunal has demonstrated “considerable reluctance to interfere with the exercise of discretion by the Director, only doing so in exceptional and very limited circumstances” (see *Victor Noakes (Re)*, 2021 BCEST 16 at para 28). I have reviewed the record in this case and I see nothing to suggest that the Delegate’s exercise of discretion should be interfered with.

15. I note that while the Appellant did not select new evidence becoming available as being a ground of appeal, he did submit text messages in his appeal materials that were not in the appeal record. However, those text messages do not, in my view, meet the test for fresh evidence that was set out by this Tribunal in *Davies et al.*, BC EST # D171/03. Specifically, the Appellant has not explained why these undated text messages could not have been presented to the Delegate before the Determination was issued, they do not appear to be relevant to the issue of why the complaint was filed late, and they do not appear to have a high potential probative value.
16. For the above reasons, I find that the Appellant has failed to demonstrate a basis for the Tribunal to interfere with the Determination and I dismiss the appeal under section 114(1)(f) of the *ESA* as there is no reasonable prospect the appeal will succeed.

## **ORDER**

17. I order that the Determination be confirmed pursuant to section 115 of the *ESA*.

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**Brandon Mewhort**  
**Member**  
**Employment Standards Tribunal**