

EMPLOYMENT STANDARDS TRIBUNAL

An appeal

- by -

Prime Deals International Ltd.  
(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:** John Chesko

**FILE NO.:** 2022/101

**DATE OF DECISION:** June 30, 2022

## DECISION

### SUBMISSIONS

Ramjit Pasricha

on behalf of Prime Deals International Ltd.

### OVERVIEW

1. Prime Deals International Ltd. (the "Appellant") appeals a determination issued on March 24, 2022 (the "Determination") by Shane O'Grady, a delegate (the "adjudicating Delegate") of the Director of Employment Standards (the "Director").
2. The Determination held the Appellant contravened the *Employment Standards Act* (the "ESA") by failing to pay regular wages, overtime wages, statutory holiday pay and annual vacation pay to its former employee, Prabhloch Singh (the "Complainant"). The Determination also included amounts for accrued interest and mandatory administrative penalties.
3. The Appellant submits the Director erred in law and failed to observe principles of natural justice in making the Determination.
4. I have before me the Appellant's appeal submission, the *ESA* section 112(5) record that was before the Director at the time the Determination was made (the "Record"), the Determination, and the Reasons for the Determination.
5. For the reasons set out below, I find the appeal should be dismissed pursuant to section 114(1) of the *ESA* as there is no reasonable prospect it will succeed.

### ISSUE

6. The issue at this stage of the proceeding is whether the appeal should proceed or be dismissed under section 114(1) of the *ESA*.

### BACKGROUND

7. The Appellant operates a wholesale distribution business in Surrey, British Columbia which falls within the jurisdiction of the *ESA*.
8. The Complainant was employed as a Wholesale Establishment Managing Supervisor from a disputed start date until February 21, 2020.
9. The Complainant filed a complaint against the Appellant on March 10, 2020, within the time period allowed under the *ESA*. The Complainant alleged the Appellant contravened the *ESA* by failing to pay wages, overtime and in making unauthorized deductions from his wages.

### **Investigation of Complaint**

10. The record before me shows that a delegate of the Director contacted the Appellant in June 2020 to advise that the Complainant had filed a complaint against the Appellant and requested information from the Appellant. On July 3, 2020, the Director issued a Demand for Employer Records to the Appellant. The delegate provided both the Complainant and Appellant's representative with updates and the opportunity to put forward their side of the story, present evidence, and respond to the evidence and submissions presented by the other side. Both the Appellant and the Complainant put forward conflicting submissions and timesheets in support of their positions.
11. On January 6, 2022, another delegate of the Director issued an Investigation Report. The Appellant and the Complainant were invited to make a response to the Investigative Report by January 20, 2022. The parties were advised that the Investigation Report and any responses would be considered in making a final determination. Both the Appellant and the Complainant provided further information by the deadline.
12. The Investigation Report and responses from the parties were submitted to the adjudicating Delegate for a determination.

### **Determination dated March 24, 2022**

13. On March 24, 2022, the adjudicating Delegate issued the Determination.
14. The Determination sets out the issues and the respective positions of the Complainant and the Appellant. The adjudicating Delegate reviewed the submissions and evidence and held the Complainant was performing work for the Appellant beginning from January 9, 2020. The adjudicating Delegate considered but did not accept the Appellant's submission that the Complainant was volunteering his time. The adjudicating Delegate considered the conflicting submissions and evidence of the parties and made reasoned findings of fact concerning the hours worked by the Complainant and the payments made by the Appellant.
15. The adjudicating Delegate held the Appellant failed to pay the Complainant regular wages totalling \$2,001.00 contrary to sections 17 and 18 of the *ESA*, overtime wages totalling \$2,077.13 contrary to section 40, statutory holiday pay of \$200.24 contrary to sections 45 and 46 and annual vacation pay of \$171.33 contrary to section 58. In addition, the adjudicating Delegate levied mandatory administrative penalties totalling \$1,000 made up of \$500 for failure to pay wages contrary to section 18 of the *ESA* and \$500 for failure to maintain daily records of hours contrary to section 28. Accrued interest of \$235.21 was also assessed pursuant to section 88 of the *ESA*. In total, the Appellant was ordered to pay \$5,684.91.
16. The adjudicating Delegate also considered and dismissed the Complainant's claims for return of business costs and unauthorized deductions. The adjudicating Delegate found the Complainant's evidence was insufficient to prove these claims.

### **Appeal filed by Appellant**

17. On April 19, 2022, the Appellant filed an appeal of the Determination.

### Appeal record completeness confirmed

18. On receiving the Appellant's appeal, the Employment Standards Tribunal (the "Tribunal") requested the section 112(5) record (the "Record") from the Director for purposes of the appeal. The Tribunal provided the Record to the Appellant and the Complainant on May 18, 2022 and no objections have been received about the completeness of the Record. I therefore find the Record complete for this appeal.

### ARGUMENTS

19. The Appellant submits that the Director erred in law and failed to observe the principles of natural justice. The Appellant points to the following in support of the appeal:
- The Appellant submits the Director's finding that the Complainant started work on January 9, 2020 was "totally unjustified" and requests the January 9-16 work hours be reviewed;
  - The Appellant submits the work hours determined from January 16-31 are in error and requests the Tribunal "look into this matter again";
  - The Appellant submits statutory holiday pay was paid to the Complainant;
  - Lastly, the Appellant submits it complied with the *ESA* and should not have to pay the penalties and accrued interest.

### ANALYSIS

20. These reasons are based on the written submissions of the Appellant, the Determination, the reasons for Determination, and the Record.

#### Section 112 of the *ESA*

21. 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.

22. The Tribunal has consistently maintained that the purpose of an appeal is to correct errors within the parameters of section 112(1). An appeal is not a re-hearing of the case. Nor is it a chance to reargue an appellant's view of the same facts again.

#### Section 114 of the *ESA*

23. 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.

### **Failure to Observe Principles of Natural Justice**

- 24. Natural justice has been described as the right to a fair procedure. It includes specific rights such as the right to know the case being made, the right to respond, and the right to be heard by an unbiased decision maker (See *Re 607730 B.C. Ltd. (cob English Inn & Resort)*, BC EST # D055/05, and *Imperial Limousine Service Ltd.*, BC EST # D014/05).
- 25. A party alleging there was a failure to observe principles of natural justice must do more than make a general allegation the determination was contrary to natural justice. The alleging party needs to provide submissions and evidence about how the determination procedure did not meet the specific requirements of natural justice (see *Dusty Investments Inc. d.b.a. Honda North*, BC EST # D043/99).
- 26. I have reviewed the Record and considered the Appellant's submissions carefully. I find there is no basis for the Appellant's argument on this ground nor is there any basis on the Record for concluding the Director failed to observe the principles of natural justice. The evidence shows that the Appellant was aware of the case and the evidence and had the right to respond and be heard. The Record shows both parties, including the Appellant, took part in the investigation and responded to the case as they saw fit.
- 27. So long as the Director follows the requirements of natural justice - in most cases, listens to both sides of the story and makes a reasoned determination - it is not a failure of natural justice to make findings that a party does not agree with.
- 28. I find there is no merit in this ground of appeal and it is dismissed.

### **Error of Law in the Determination**

- 29. To show an error of law the Appellant has the burden to show a material legal error in the decision. An error of law is not a finding the Appellant disagrees with. Examples of errors of law may include: i) a misinterpretation or misapplication of a section of the *ESA*; ii) a misapplication of an applicable principle of general law; iii) acting without any evidence at all; iv) acting on a view of the facts which could not be reasonably entertained; and v) exercising discretion in a fashion that is inconsistent with established principle. (see *Gemex Developments Corp. v. British Columbia (Assessor of Area #12)* 1998 CanLII 6466)
- 30. Findings of fact may in very rare cases amount to an error of law where the delegate acted without any evidence or on a view of the evidence that could not be reasonably entertained or arrived at a clearly wrong conclusion of fact. In cases where there is some evidence, the Tribunal will generally not re-evaluate the evidence or substitute its own view on the same evidence.

31. The Appellant in this case submits the findings made by the adjudicating Delegate were unjustified and not reasonable.
32. The Appellant's submissions are similar to those it previously made during the investigation of the complaint by the Director.
33. I have reviewed the Determination and the evidence in the Record carefully and do not find an error of law in the Determination. The adjudicating Delegate properly considered the submissions and evidence and came to a reasoned conclusion. I have also considered the calculation of the amount owing to the Complainant for regular wages, overtime wages, statutory holiday pay, annual vacation pay and interest, as well as the administrative penalties. I find there is no error of law in the calculation and confirm the amounts. Although the Appellant may not agree with the Determination, I find there was evidence the adjudicating Delegate could rely on to make the findings of fact and arrive at the legal conclusions in the Determination.
34. Lastly, I have also considered the Appellant's submission that it should not have to pay the administrative penalties. However, the law is clear that the administrative penalty owed by the Appellant is mandatory in the circumstances and there is no provision in the *ESA* for it to be cancelled where the Appellant believes they were in compliance. (See *537370 B.C. Ltd.*, BC EST # D011/06)
35. In summary, I find the Appellant is, for the most part, rearguing its view of the same facts and evidence that has already been properly considered and decided in the Determination. Absent an error of law as required under section 112(1) of the *ESA*, this Tribunal cannot re-hear the evidence and 'second-guess' the adjudicating Delegate. I find there is no error of law and dismiss this ground of appeal.
36. As set out above, I find there is no reasonable prospect the appeal will succeed and accordingly, I dismiss the appeal.

## **ORDER**

37. Pursuant to section 114(1)(f) of the *ESA*, the appeal is dismissed.
38. Pursuant to section 115 of the *ESA*, I confirm the Determination, together with any additional interest that has accrued pursuant to section 88 of the *ESA*.

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**John Chesko**  
**Member**  
**Employment Standards Tribunal**