

EMPLOYMENT STANDARDS TRIBUNAL

An appeal
pursuant to section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113 (as amended)

- by -

Swiftsure Taxi Co. Ltd.

- of a Determination issued by -

The Director of Employment Standards

PANEL: Kenneth Wm. Thornicroft

FILE NO.: 2022/113

DATE OF DECISION: July 28, 2022

DECISION

SUBMISSION

Anup Kang

on behalf of Swiftsure Taxi Co. Ltd.

INTRODUCTION

1. Swiftsure Taxi Co. Ltd. (the “appellant”) appeals a determination issued by Kara L. Crawford, a delegate of the Director of Employment Standards (the “delegate”), on April 14, 2022 (the “Determination”). This appeal has been filed pursuant to section 112(1)(b) of the *Employment Standards Act* (the “ESA”) – the appellant says that the delegate failed to observe the principles of natural justice in making the Determination.
2. By way of the Determination, the appellant was ordered to pay a former employee, a taxi driver (the “complainant”), the total sum of \$4,670.82 on account of unpaid regular wages, statutory holiday pay, vacation pay, and section 88 interest.
3. Further, and also by way of the Determination, the delegate levied five separate \$500 monetary penalties (see section 98 of the *ESA*) based the appellant’s contraventions of section 18 (failure to pay earned wages following termination of employment), 27 (failure to provide employee with wage statements each payday), 45 (failure to pay statutory holiday pay), and 58 (failure to pay vacation pay) of the *ESA*, and section 37.1 of the *Employment Standards Regulation* (the “*ESR*”). This latter provision concerns whether a taxi driver “recover[s] in fares an amount which, in total, is greater than or equal to the lease payment for the taxi plus the minimum wage for each hour worked, averaged monthly”.
4. Accordingly, and after accounting for the \$2,500 in monetary penalties, the appellant’s total liability under the Determination is \$7,170.82.
5. In my view, this appeal is completely without merit, and must be dismissed pursuant to section 114(1)(f) of the *ESA* (i.e., the appeal has no reasonable prospect of succeeding). My reasons for reaching that conclusion now follow.

THE APPEAL

6. The appellant appeals the Determination on the sole ground that the delegate failed to observe the principles of natural justice in making the Determination. The appellant outlined its reasons for appeal as follows:

We, Swiftsure Taxi are appealing part of the Determination by Director of Employment Standards dated April 14, 2022, we feel administrative penalties listed below were unfairly imposed [the appellant then listed the five separate penalties that were levied against it]...

Attached is copy of email from [the complainant] dated July 24, 2019, just a few days before she quit, in one paragraph of the email she states “**And even as a self employed contractor**”, yes later [the complainant] went on to state she was under pressure to work as self employed contractor, but this is incorrect as we had others who are working as employees at the same time and they

are given a choice when they are first hired. You will see in some of the pay periods in the determination by the delegate of the director of employment standards, it was determined we paid more than the required minimum wage, these extra amounts paid in those pay periods should be used for stat and holiday pay.

Under the circumstances we feel strongly the penalties to be withdrawn from the determination.

[emphasis in original text]

7. Thus, the appellant does not contest the Determination as it concerns the complainant's unpaid wage award; rather, the sole issue before me is whether the delegate correctly issued the disputed monetary penalties.

FINDINGS

8. There is nothing in the material before me that would suggest the delegate failed to observe the principles of natural justice in making the Determination (for example, that the delegate failed to comply with section 77 of the *ESA* or was, or appeared to be, biased against the appellant). The appellant's arguments could be characterized as raising the error of law ground of appeal (section 112(1)(a) of the *ESA*) and, that being the case, I will address this appeal under that statutory ground (see *Triple S Transmission Inc.*, BC EST #D141/03).

9. As noted in the delegate's "Reasons for the Determination" (the "delegate's reasons") issued concurrently with the Determination, there was no dispute about certain critical matters:

[The appellant] treated [the complainant] as a "lease operator" or an independent contractor although both parties agree that [the complainant] worked for [the appellant] as an "employee" and "taxi driver", as those terms are defined in the Act.

The parties agree that throughout the relationship the Complainant was not paid overtime, statutory holiday or vacation pay and was responsible for making her own statutory remittances (i.e., income tax, Canada Pension Plan and Employment Insurance).

(delegate's reasons, page R2)

10. In light of these concessions and given that monetary penalties are mandatory in the face of proven *ESA* or *ESR* contraventions, the only issue before me is whether the delegate correctly issued the penalties in question.
11. In light of the parties' agreement that the appellant failed to pay the complainant overtime pay, statutory holiday pay, and vacation pay, the penalties issued in relation to sections 18, 45 and 58 of the *ESA* are incontestable.
12. The circumstances relating to the section 27 (wage statements) contravention are set out at page R31 of the delegate's reasons. The appellant does not contest the delegate's finding that it failed to issue wage statements to the complainant as mandated by section 27. Although the appellant asserts that the complainant "was given weekly statement figures every Friday when her sheets were handed in", this assertion, even assuming it to be accurate, falls well short of meeting the requirements of section 27 (which lists the various items that must be set out in a compliant wage statement).

13. Finally, in relation to the section 37.1 (*ESR*) contravention, the delegate set out her detailed findings regarding this particular matter at pages R16-R25 and R31 of her reasons. The only “argument” in relation to section 37.1 that was advanced in the appellant’s appeal submissions is the following statement: “See attached copy of July 24, 2019 email from [the complainant]”. I have reviewed this e-mail, and it has absolutely nothing to do with the appellant’s section 37.1 liability; I do not see how this e-mail in any way provides a defence regarding the section 37.1 penalty.
14. Accordingly, in the absence of a credible argument that any of the separate \$500 monetary penalties were incorrectly issued, it follows that this appeal cannot succeed and must, therefore, be dismissed.

ORDER

15. Pursuant to section 114(1)(f) of the *ESA*, this appeal is dismissed. Pursuant to section 115(1)(a) of the *ESA*, the Determination is confirmed as issued in the amount of \$7,170.82, together with whatever further interest that has accrued, under section 88 of the *ESA*, since the date of issuance.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal