

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Aldergrove-Langley Taxi Ltd.  
(the “appellant”)

- of a Determination issued by -

The Director of Employment Standards

**PANEL:** Kenneth Wm. Thornicroft

**FILE NO.:** 2021/065

**DATE OF DECISION:** November 18, 2022

## DECISION

### SUBMISSIONS

Hardeep Johal	on behalf of Aldergrove-Langley Taxi Ltd.
Sanel Kadiric	delegate of the Director of Employment Standards

### INTRODUCTION

1. These reasons for decision address the outstanding issues in this appeal arising from my earlier decision, *Aldergrove-Langley Taxi Ltd.*, 2022 BCEST 42 (the “Appeal Decision”), issued on July 4, 2022. In the Appeal Decision I confirmed certain findings made by a delegate of the Director of Employment Standards (the “delegate”) and referred other matters back to the Director pursuant to section 115(1)(b) of the *Employment Standards Act* (the “ESA”).
2. On September 28, 2022, the delegate submitted a report to the Tribunal (the “Referral Back Report”), as directed by the Appeal Decision. The Tribunal provided copies of the Referral Back Report to both the appellant employer, Aldergrove-Langley Taxi Ltd. (the “appellant”), and the respondent employee, Muhammed Khalid (the “complainant”), both of whom were invited to file submissions in response to the Referral Back Report. The appellant filed a reply submission but the complainant did not.

### THE DETERMINATION

3. On June 18, 2021, the delegate issued a determination (the “Determination”), and his accompanying “Reasons for the Determination” (the “delegate’s reasons”), with respect to two complaints (later consolidated) filed by the complainant against the appellant. The delegate determined that the complainant was in an employment relationship with the appellant and awarded him \$47,944.81 (including section 88 interest), of which \$39,605.28 was awarded under section 21 of the *ESA* (unauthorized wage deductions and unlawfully requiring an employee to pay the employer’s business costs). Further, the delegate levied nine separate \$500 monetary penalties against the appellant (see section 98 of the *ESA*). Accordingly, the total amount payable under the Determination was \$52,444.81.

### THE APPEAL

4. The appellant appealed the Determination, alleging that the delegate erred law and that there was a failure to observe the principles of natural justice in making the Determination (sections 112(1)(a) and (b) of the *ESA*). In the Appeal Decision, I held that the delegate did not err in law in finding that the appellant and complainant were in an employment relationship, and that there were no natural justice breaches. I also confirmed the nine monetary penalties. However, I found that the delegate incorrectly calculated the complainant’s unpaid wage entitlement. Accordingly, I issued the following “referral back” order under section 115(1)(b) of the *ESA*:

Pursuant to section 115(1)(b) of the *ESA*, the calculation of the complainant’s section 16 (at least minimum wage for all hours worked), section 21 (unlawful deduction or payment of employer’s business costs), section 45/46 (statutory holiday pay), section 58 (vacation pay) entitlements

under the *ESA*, and the complainant's entitlement to compensation under section 37.1(3) of the *Employment Standards Regulation*, are referred back to the Director of Employment Standards to be recalculated in accordance with the directions set out in these reasons. These recalculations will also require the complainant's entitlement to section 88 interest to be re-calculated.

The Director shall prepare a report setting out the complainant's entitlements, as recalculated in accordance with the directions set out in these reasons. This report shall be delivered to the Tribunal within 90 days of the date of this decision. The Tribunal will then afford the parties an opportunity to respond to the report following which a final decision will be issued in this appeal.

### THE DELEGATE'S REFERRAL BACK REPORT

5. On September 28, 2021, the delegate filed his Referral Back Report with the Tribunal. The delegate recalculated the complainant's unpaid wage entitlement in accordance with the directions set out in the Appeal Decision. As noted above, the delegate originally awarded the complainant \$47,944.81 including section 88 interest. Of this latter amount, \$39,605.28 represented unlawful wage deductions or business costs the appellant unlawfully required the complainant to pay).
6. The delegate's revised calculations in the Referral Back Report show that the complainant is entitled to \$21,367.84 including section 88 interest [Note: the delegate, due to an arithmetic error, incorrectly stated in his report that the total amount due was \$21,412,84]. The largest two components of this latter proposed award are unlawful section 21 wage deductions and/or recoverable business costs (\$14,575.52) and section 58 vacation pay (\$3,987.28). The balance of the proposed award includes statutory holiday pay (\$976.60), overtime payable under section 37.1(3) of the *Employment Standards Regulation* (\$708.90), and unpaid regular and minimum wages earned during the months of October and November 2019 (\$179.28). The delegate calculated the complainant's revised section 88 entitlement at \$940.26.

### FINDINGS

7. As noted above, the complainant did not file a submission in response to the Referral Back Report. The appellant's submission, rather than directly responding the delegate's revised unpaid wage calculations, is an undisguised attempt to overturn findings made in the Appeal Decision.
8. In its November 7, 2022 submission, the appellant asserts that the complainant was an independent contractor, rather than an employee of the appellant. At paras. 74-81 of the Appeal Decision, I set out my analysis and findings with respect to the "employee versus contractor" issue. This matter was not referred back to the delegate in the Appeal Decision. It is not open to the appellant to challenge my finding in this regard by way of a reply submission to the Referral Back Report.
9. At para. 108 of the Appeal Decision, I held that "the complainant's vehicle's fuel, maintenance, and repair costs were business costs incurred during the recovery period, and thus were properly recoverable under section 21(2)." At para. 109 I held as follows:

Insofar as the PTB decal and plate lease fees are concerned, to the extent that the complainant paid the appellant directly for these items (I understand he paid \$400 per month directly to the appellant for a plate lease fee prior to April 2019), those payments constituted a portion of the

appellant's business costs that were unlawfully charged to, and paid by, the complainant. According to the appellant, these monthly payments were later merged into the dispatch fee solely "for the ease of keeping better track of finances" (delegate's reasons, page R46). In light of that admission, I consider that even after these payments were no longer being paid directly by the complainant, the appellant continued to "indirectly" withhold or deduct these payments, without written consent, from the complainant's wages and, as such, they continued to be recoverable business expenses under section 21.

10. The delegate calculated the complainant's entitlement to recover the "plate lease fee", the PTB decal, fuel costs, and vehicle repair/maintenance costs to be \$14,575.52 in total. Rather than challenging the delegate's calculations with respect to these items, the appellant seeks to relitigate the issue of whether these items were unlawful section 21 deductions: "We do not agree [that the complainant can recover monies on account of the] plate lease fee, decal cost as well the [sic] fuel cost...The Appellant maintains the position that the Determination's findings that the Claimant was an employee under the ESA and that the Monthly Expenses were unauthorized deductions under s. 21 of the ESA were errors of law."
11. These latter issues relating to the complainant's status and his entitlement to recover monies paid on account of the plate lease fee, the PTB decal, fuel and vehicle repair/maintenance costs were finally determined in the Appeal Decision. The appellant, as noted above, has not advanced any argument calling into question the delegate's calculations with respect to these latter items.
12. It follows that since there is no basis for questioning the delegate's calculations as set out in his Referral Back Report, these calculations must be confirmed, and the Determination varied accordingly.
13. To the extent that the appellant seeks to have the Appeal Decision reconsidered, I note the appellant must file an application for reconsideration with the Tribunal. The appellant may not seek reconsideration of matters that have been finally determined in an appeal decision by way of submissions in relation to a referral back report.

## **ORDERS**

14. Pursuant to section 115(1)(a) of the *ESA*, the Determination is varied to show that the complainant is entitled to recover \$21,367.84 on account of the following items: i) unlawful section 21 wage deductions and/or recoverable business costs (\$14,575.52); ii) section 58 vacation pay (\$3,987.28); iii) statutory holiday pay (\$976.60); iv) overtime payable under section 37.1(3) of the *Employment Standards Regulation* (\$708.90); v) unpaid regular and minimum wages earned during the months of October and November 2019 (\$179.28); and vi) a section 88 interest entitlement (\$940.26).
15. In all other respects, the Determination is confirmed.

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**Kenneth Wm. Thornicroft**  
**Member**  
**Employment Standards Tribunal**