

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Ramtin Lalehdashti
("Appellant")

- of a Determination issued by -

The Director of Employment Standards

PANEL: Brandon Mewhort

FILE No.: 2023/119

DATE OF DECISION: December 13, 2023

DECISION

SUBMISSION

Ramtin Lalehdashti on his own behalf

OVERVIEW

1. This is an appeal by Ramtin Lalehdashti (“Appellant”) of a determination issued by Kirsten Dzavashvili, a delegate (“Delegate”) of the Director of Employment Standards (“Director”), dated June 26, 2023 (“Determination”). The appeal is filed pursuant to section 112(1) of the *Employment Standards Act* (“ESA”).
2. The Appellant was employed by Robert J. Wist, carrying on business as Backbone Cabinet Solutions (“Employer”). The Appellant’s last day of employment was on October 28, 2021, so the six-month time period for delivering a complaint established under section 74(3) of the *ESA* ended on April 29, 2022. The Appellant filed his complaint on July 10, 2022, and he filed an application to extend the six-month time limit on July 17, 2022.
3. In the Determination, the Delegate found there were no special circumstances that precluded the Appellant from delivering the complaint within the six-month time period, and she declined to exercise her discretion to extend the time period pursuant to section 74(5) of the *ESA*.
4. 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.
5. For the reasons discussed below, I dismiss this appeal pursuant to section 114(1)(f) of the *ESA*, because there is no reasonable prospect it will succeed.

ISSUE

6. The issue is whether this appeal should be dismissed pursuant to section 114(1) of the *ESA*.

THE DETERMINATION

7. 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 her discretion to extend the time period to deliver a complaint.
8. The Delegate found the complaint was clearly not filed within the time limit established under section 74(3) of the *ESA*. Then, in deciding whether to exercise her discretion to extend the time period to deliver the complaint, the Delegate considered several factors, including:
 - a. the purpose of the *ESA* to provide fair and efficient procedures for resolving disputes over the application and interpretation of the *ESA*;

- b. the Appellant’s reasons for delivering the complaint late, specifically that he was recovering, both mentally and physically, from a workplace injury and the subsequent reaction by the Employer; and
 - c. the fact that the requirements to file a complaint are explicit and publicly available on the website of the Employment Standards Branch, and there is a toll-free information line for further information.
9. Considering those factors, the Delegate determined there were no special circumstances that precluded the Appellant from delivering the complaint within the six-month time period, and she therefore declined to exercise her discretion to extend the time period to deliver the complaint. The Delegate found it was unnecessary to consider whether an injustice would result under section 74(5)(b) of the *ESA*.

ARGUMENT

10. When asked in the appeal form to select his grounds of appeal, the Appellant indicated that the Director failed to observe the principles of natural justice in making the Determination. However, in his submission, the Appellant did not raise any alleged failures to observe the principles of natural justice.
11. The Appellant essentially reiterates the arguments he made to the Delegate, particularly that he was recovering, both mentally and physically, from a workplace injury and the subsequent reaction by the Employer, which prevented him from delivering the complaint within the six-month time period. The Appellant also gives reasons for why, in his view, not having his complaint heard would result in a substantial miscarriage of justice.

ANALYSIS

12. 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.
13. 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.
14. This Tribunal’s authority to interfere with a delegate’s exercise of discretion was well summarized in *Li Zheng (Re)*, 2020 BCEST 142 (“*Zheng*”) at paras 27 to 31. 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”: *Victor Noakes (Re)*, 2021 BCEST 16 (“*Noakes*”) at para 28.
15. This Tribunal has stated that it “will not interfere with that exercise of discretion unless it can be shown the exercise was an abuse of power, the Director made a mistake in construing the limits of her authority, there was a procedural irregularity or the decision was unreasonable”: *Re: Jody L. Goudreau and Barbara*

E. Desmarais, BC EST # D066/98. Absent any of those considerations, the Director even has the right to be wrong: *Zheng* at para 29, citing *Re: Ted N. Hunt*, BC EST # D089/11, at para 42.

16. This Tribunal has also relied on an excerpt from *Re Maple Lodge Farms Ltd. v. Government of Canada*, 1982 CanLII 24 (SCC), [1982] 2 SCR 2 at 7, in which the Supreme Court of Canada discussed the exercise of a statutory discretion:

It is, as well, a clearly established rule that courts should not interfere with the exercise of a discretion by a statutory authority merely because the court might have exercised the discretion in a different manner had it been charged with that responsibility. Where the statutory discretion has been exercised in good faith and, where required, in accordance with the principles of natural justice, and where reliance has not been placed upon considerations irrelevant or extraneous to the statutory purpose, the courts should not interfere.

17. In this case, the Appellant has not alleged an abuse of power, a mistake made by the Delegate in construing the limits of her authority, a procedural irregularity, or bad faith. There is also nothing in the Determination or on the record to suggest that the Delegate relied on considerations irrelevant or extraneous to the statutory purposes of the *ESA*, particularly section 74(5). To the contrary, in my view, the Delegate considered factors that were relevant to the question being considered and the Determination was made within the legal framework of the *ESA*.

18. As discussed above, the Appellant indicated in his appeal form that the Director failed to observe the principles of natural justice in making the Determination, but he did not raise any issues regarding procedural fairness in his submission. On my review of the record, it appears the Appellant was given a reasonable opportunity to explain why his complaint was late and to present his evidence, and he was heard by an independent decision maker.

19. Accordingly, 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 it will succeed.

ORDER

20. I order that the Determination be confirmed pursuant to section 115(1) of the *ESA*.

Brandon Mewhort
Member
Employment Standards Tribunal