

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Calla Miller

- of a Determination issued by -

The Director of Employment Standards

PANEL: Carol L. Roberts

FILE NO.: 2023/019

DATE OF DECISION: May 5, 2023

DECISION

SUBMISSIONS

Calla Miller on her own behalf

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “ESA”), Calla Miller (the “Appellant”) filed an appeal of a determination issued by a delegate (the “delegate”) of the Director of Employment Standards (the “Director”) on January 27, 2023 (the “Determination”).
2. On September 10, 2021, the Appellant filed a complaint with the Director alleging that Mielle Meadows Ltd. (“Mielle”) had contravened the *ESA* in failing to pay her wages.
3. The Director found that the Appellant had filed her complaint beyond the six-month statutory time period and that she had not demonstrated any special circumstances that prevented her from filing the complaint within the prescribed time period. The Director declined to extend the time period and determined that no further action would be taken.
4. The Appellant contends that the Director failed to observe the principles of natural justice in making the Determination.
5. Section 114 of the *ESA* provides that the Tribunal may dismiss all or part of an appeal without seeking submissions from the other parties or the Director if it decides that the appeal does not meet certain criteria. After reviewing the appeal submissions and the record, I found it unnecessary to seek submissions from Mielle or the Director.
6. This decision is based on the section 112(5) “record” that was before the Director at the time the Determination was made, the appeal submission and the Reasons for the Determination.

FACTS

7. Mielle operates an equestrian facility in Agassiz, British Columbia. The Appellant alleged that, commencing in August 2018, she volunteered at the facility one morning a week to pay for her riding lessons. She contended that, over time, her work expanded to 10-hour days, five days per week. In her complaint, the Appellant alleged, among other things, that she had not been paid for the work she had performed. The Appellant said that her last day of work was January 29, 2021.
8. Mielle contended that the Appellant was last at the barn “sometime” in the fall of 2020, and that she was a volunteer, not an employee.
9. On January 5, 2023, the Appellant provided the delegate with an explanation for not filing her application within six months after her last day at the facility. The Appellant said that she made multiple attempts to contact the Branch before filing her complaint, but those attempts were, as characterized by the delegate:

...stymied by long wait times. She was also sometimes disconnected after being put on hold. She did speak to someone at the Branch within the 6-months limitations period but was under the impression that the Branch would get back to her about filing her complaint due to the pandemic and its impact on processing time.

10. The Appellant also stated that she was the primary caregiver for her senior mother and special-needs brother, and that she was under 19 years old when she worked at the facility. She contended that it would be unfair for the delegate to stop the investigation due to her filing her complaint two months past the statutory deadline in these circumstances.
11. The delegate noted that there was no dispute that the complaint was filed more than six months after the Appellant's last day at the facility and determined that the complaint had not been filed within the statutory time period set out in section 74(3) of the *ESA*.
12. The delegate then turned to the issue of whether he should exercise his discretion under section 74(5) of the *ESA* to extend the time period in which to deliver a complaint.
13. The delegate considered that one of the purposes of the *ESA* was to provide for fair and efficient procedures for resolving disputes.
14. The delegate considered the Appellant's assertions that she had difficulty contacting the Branch and noted that she was able to speak to Branch staff within the six-month period. The delegate also considered the Appellant's contention that she was under the impression that the Branch would get back to her about filing a complaint and noted that requirements for filing complaints are publicly available on the Branch's website, and that Branch staff was available to provide additional information and clarification should parties ask that.
15. The delegate considered that the last day for the Appellant to file her complaint was July 29, 2021, and determined that there were no special circumstances precluding her from delivering the complaint within the statutory time period.
16. The delegate acknowledged that while the Appellant faced additional burdens due to being responsible for caring for family members, the Tribunal had previously determined that "similar everyday burdens such as a heavy work schedule" did not constitute special circumstances to justify not filing on time. (*James Daniel Peregrym*, BC EST #D085/14). The delegate also considered the Tribunal's decision in *Linda Margaret Pierre* (BC EST #D022/16) which found that a lack of time, energy, effort, courage and resources did not constitute special circumstances.
17. Finally, the delegate determined that the Appellant's misunderstanding of the complaint process also did not constitute a special circumstance, noting that although she was under 19 years of age when she filed her complaint, she had filed her complaint online. He considered that she had the capacity to inform herself about the requirements of the *ESA* utilizing the Branch's website.
18. The delegate declined to exercise his discretion to extend the time period in which to file the complaint and decided that no further action would be taken.

ARGUMENT

19. The Appellant contends that the Director failed to observe the principles of natural justice.
20. In her submission, the Appellant repeated statements she made to the Director, both as part of her complaint and during the delegate's investigation. She provided the name of a witness, indicating that the witness would be willing to "once again attest" to the information she provided to the delegate.
21. The Appellant also contends, for the first time on appeal, that she spoke with a "man" at the Branch about her allegation, who informed her that she "had a strong case." She states that she was under the impression that the man would call her back, and that he did not mention that she had a six-month time limit in which to file her complaint. She alleges she waited three months for a call back and filed her complaint after not hearing from him.
22. The Appellant argues that because she was a teenager at the time she filed the complaint and had no legal assistance, the Determination constitutes "an injustice."

ANALYSIS

23. Section 114 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, 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.
24. An appeal is not an opportunity for a party to re-argue a case that has been made before the Director. It is also not an opportunity for a party to provide new or additional details about a complaint that could have been presented to the Director's delegate during the investigation.

Failure to observe the principles of natural justice

25. Natural justice is a procedural right which includes the right to know the case being made, the right to respond and the right to be heard by an unbiased decision maker. It does not mean that the Director must make a decision that the Appellant considers to be "fair" or "just."

26. I find no basis for the Appellant's argument that she was denied the opportunity to present her case. She was informed that she had failed to make her complaint within the statutory time period and given the opportunity to make submissions on the reasons she was unable to file her complaint within that time period. The delegate's decision not to exercise his discretion to allow her to file her complaint late does not constitute a denial of natural justice. I find no basis for this ground of appeal.
27. Given that the Appellant feels she was unjustly treated, I have also considered whether the delegate erred in law in exercising his discretion under section 76 of the *ESA* not to extend the statutory time period.
28. The Tribunal's authority to interfere with the delegate's exercise of discretion has been considered in a number of cases including *Li Zheng (Re)* 2020 BCEST 142, *Mark Bridge* (BC EST #RD044/09) and *Joda M. Takarabe et. al.* (BC EST #D160/98). I am not persuaded that the delegate erred in law. He considered the Appellant's explanation as well as Tribunal authority and the purposes of the *ESA* in making his decision. His decision was logical, supportable and was not based on irrelevant considerations or wrong in principle.
29. I am not persuaded the delegate erred in law in exercising his discretion not to extend the time period in which the Appellant could file her complaint.
30. I find, pursuant to section 114(1)(f), that there is no reasonable prospect that the appeal will succeed.
31. I dismiss the appeal.

ORDER

32. Pursuant to section 114 (1)(f) of the *ESA*, I deny the appeal. Accordingly, pursuant to section 115(1) of the *ESA*, the Determination, dated January 27, 2023, is confirmed.

Carol L. Roberts
Member
Employment Standards Tribunal