Citation: QMI Manufacturing Inc., Avcom Systems Inc. and
Geo Alert Incorporated (Re)
2023 BCEST 55

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

QMI Manufacturing Inc., Avcom Systems Inc. and Geo Alert Incorporated
(collectively, "QMI" or the "associated employer")

- of a Determination issued by -

The Director of Employment Standards

PANEL: David B. Stevenson

FILE NOS.: 2023/041, 2023/043 and 2023/044

DATE OF DECISION: July 17, 2023

DECISION

SUBMISSIONS

Raymond Wood and John Lenos	on behalf of QMI Manufacturing Inc., Avcom Systems Inc. and Geo Alert Incorporated

OVERVIEW

1. This decision addresses appeals filed under section 112 of the *Employment Standards Act* (*"ESA"*) by QMI Manufacturing Inc. ("QMI Manufacturing"), Avcom Systems Inc. ("Avcom"), and Geo Alert Incorporated ("Geo Alert") (collectively, "QMI" or "associated employer") of a determination issued by Carrie Manarin, a delegate of the Director of Employment Standards ("deciding Delegate"), on February 24, 2023 ("Determination").

2. The deciding Delegate associated QMI Manufacturing, Avcom, and Geo Alert as one employer under section 95 of the *ESA*.

3. The Determination also found the associated employer had contravened Part 3, sections 17, 18, 27 and 28, and Part 8, section 63, of the *ESA* in respect of the employment of Michael Hanrahan ("Mr. Hanrahan") and ordered the associated employer to pay Mr. Hanrahan wages in the total amount of $44,132.81, an amount that included interest under section 88 of the *ESA*, and to pay administrative penalties in the amount of $2,500.00. The total amount of the Determination is $46,632.81.

4. Each of the companies associated under section 95 have appealed the Determination, alleging the deciding Delegate failed to observe principles of natural justice in making the Determination and asserting new evidence has come available that was not available when the Determination was being made. The latter ground of appeal is colloquially described as the 'new evidence' ground of appeal.

5. Correspondence from the associated employer following an inquiry from the Tribunal clarified that each company associated under section 95 is appealing the wages awarded to Mr. Hanrahan, and that Geo Alert is also appealing the decision to associate that company with QMI Manufacturing and Avcom under section 95 of the *ESA*.

6. In correspondence dated April 13, 2023, the Tribunal, among other things, acknowledged having received appeals from each of the associated employer, requested the section 112(5) record (the "record") from the Director, invited the parties to file any submissions on personal information or circumstances disclosure and notified the other parties that submissions on the merits of the appeals were not being sought from them at that time.

7. The record has been provided to the Tribunal by the Director and a copy has been delivered to QMI and to Mr. Hanrahan. In decision 2023 BCEST 50, this panel addressed a question that arose concerning the completeness of the record.

8. The record provided by the Director has been amended following that decision and, for the purposes of these appeals, the Tribunal accepts the record is now complete.

9. I have decided this appeal is appropriate for consideration under section 114 of the ESA. At this stage, I am assessing the appeals based solely on the Determination, the reasons for Determination, the appeal submission, my review of the material that was before the Director when the Determination was being made, and any additional material that is accepted, added to, and considered in, the appeals.

10. Under section 114(1) of the *ESA*, the Tribunal has discretion to dismiss all or part of an appeal, without a hearing, for any of the reasons listed in the subsection, which reads:

> *114 (1) At any time after an appeal is filed and without a hearing of any kind the tribunal may dismiss all or part of any 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.*

11. If satisfied the appeals or a part of them has some presumptive merit and should not be dismissed under section 114(1) of the *ESA*, the Director and Mr. Hanrahan will be invited to file submissions. On the other hand, if it is found the appeals satisfy any of the criteria set out in section 114(1) of the *ESA*, they are liable to be dismissed. In this case, I am looking at whether there is any reasonable prospect the appeals can succeed.

ISSUE

12. The issue in these appeals is whether they should be allowed to proceed or be dismissed under section 114(1) of the *ESA*.

THE DETERMINATION

13. QMI Manufacturing manufactures and markets safety systems designed to detect gas and water leaks and seismic vibrations in residential and commercial properties. Avcom manufactures and operates earthquake early warning systems. Geo Alert is a marketer of QMI Manufacturing and Avcom products that detect seismic events and the presence of gas and water leaks.

14. BC Registry Services Searches shows QMI Manufacturing (previously known as Smart Sensor Technologies Inc.) was incorporated in British Columbia on September 2, 2005, Avcom was incorporated in British

Columbia on September 2, 2015, and Geo Alert was incorporated in British Columbia on March 3, 2020. The searches show the sole director and officer of each of those companies is Raymond Wood.

15. Mr. Hanrahan commenced his employment with the associated employer on February 6, 2001 as an electronics technician. In 2004, Mr. Hanrahan was promoted to Production Manager and in 2007, his job title was changed to Vice President of Engineering.

16. In December 2020, Mr. Hanrahan filed a complaint under the *ESA* alleging he was owed regular wages, annual vacation pay, and length of service compensation.

17. The associated employer resisted all of the claims made by Mr. Hanrahan.

18. Based on the claims made by Mr. Hanrahan and the position taken by the associated employer, the deciding Delegate identified six issues that needed to be addressed:

1. Should QMI Manufacturing, Avcom, and Geo Alert be associated as one employer under section 95 of the *ESA*;
2. Is Mr. Hanrahan an officer, as described in section 96(4) of the *ESA*, of one, or more, of the companies associated under section 95 and, if so, is he entitled to recover wages under the *ESA*;
3. Was a new employment, or other, relationship created by the parties after January 15, 2020;
4. Did the associated employer substantially alter a condition of Mr. Hanrahan's employment after January 15, 2020 and, if so, is he entitled to compensation for length of service;
5. Is Mr. Hanrahan entitled to regular wages; and
6. Is Mr. Hanrahan entitled to annual vacation pay?

19. On those issues, the deciding Delegate found:

1. On the evidence and on an assessment of the statutory requirements and purposes for an association under section 95, QMI Manufacturing, Avcom, and Geo Alert was one employer for the purposes of the *ESA*;
2. At all material times Mr. Hanrahan was an "employee" under the *ESA* and as such was entitled to recover regular wages, annual vacation pay, and compensation for length of service, all of which are included as "wages" under the *ESA*;
3. Mr. Hanrahan did not begin a new working relationship with the associated employer (as an independent contractor) after January 15, 2020, but continued his employment uninterrupted after that date until it was ended;
4. The associated employer substantially altered a condition of Mr. Hanrahan's employment, effectively terminating his employment on August 31, 2020, and he was entitled to length of service compensation in the amount set out in the Determination;
5. The associated employer had failed to pay all regular wages owed to Mr. Hanrahan and he was entitled to be paid the amount of regular wages set out in the Determination; and

6. Mr. Hanrahan was entitled to annual vacation pay in the amount set out in the Determination.

20. The deciding Delegate calculated the total amount of wages which Mr. Hanrahan was owed or to which he was entitled to be $40,932.83; accrued interest added $3,199.98 to the wages amount.

21. The deciding Delegate found the associated employer had contravened five requirements of the *ESA* and, applying section 98(1) of the *ESA* and section 29(1) of the *Employment Standards Regulation* (the *"Regulation"*), imposed administrative penalties in the amount of $2,500.00.

ARGUMENTS

22. The associated employer has raised the natural justice and new evidence grounds of appeal.

23. The submission made on behalf of the associated employer, after making some preliminary points, addresses all of the issues except that set out at point three, which is whether a new employment relationship was created after January 15, 2020.

24. The associated employer says the administrative penalties relating to a contravention of sections 27 and 28 should be removed. The argument on this point is not very clear, but appears to be based on an assertion that none of the companies had a "work location" at "12A 81 Golden Drive". Nothing in this assertion explains why this fact, even if correct, should warrant the removal of the administrative penalties.

25. On the issues addressed in the Determination, the submission of the associated employer contains the following:

1. According to payroll information, Mr. Hanrahan spent no more than 8 eight hours creating a logo and setting up 'Shopify' for Geo Alert. He was never an employee of Geo Alert. Geo Alert was owned by Lynn Wood, who retained Raymond Wood as "an unpaid director to run the company". The office of Geo Alert was at a different location than QMI Manufacturing or Avcom.
2. Mr. Hanrahan referred to himself as the former Vice President of QMI Manufacturing in his job experience on various job applications, so he "therefore must feel that he had that position".
3. Mr. Hanrahan is not owed compensation for length of service since, by his own admission, he resigned several times.
4. Mr. Hanrahan provided no evidence that he performed any services for the wages he claimed.
5. According to the payroll clerk, Mr. Hanrahan took vacation time well in excess of those to which he was found to be entitled.

26. The submission of the associated employer attaches one document – an e-mail from February 2018 that appears on its face to have come from Mr. Hanrahan. The submission does not otherwise identify the document or indicate whether it is being provided as new evidence, and if so, on what basis it is being provided, what fact or issue it is intended to address, and why it should be accepted.

ANALYSIS

27. The grounds of appeal are statutorily limited to those found in subsection 112(1) of the *ESA*, which says:

> *112 (1) Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of 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.*

28. A review of decisions of the Tribunal reveals certain principles applicable to appeals that have consistently been applied. The following principles bear on the analysis and result of this appeal.

29. An appeal is not simply another opportunity to argue the merits of a claim to another decision maker. An appeal is an error correction process, with the burden in an appeal being on the appellant to persuade the Tribunal there is an error in the determination under one of the statutory grounds.

30. Neither ground of appeal warrants extensive analysis.

31. A party alleging a failure to comply with principles of natural justice, as the associated employer has done in this appeal, must provide some evidence in support of that allegation: see *Dusty Investments Inc. dba Honda North*, BC EST #D043/99. I find nothing in the appeals that would support a finding the deciding Delegate failed to comply with principles of natural justice.

32. The Tribunal has summarized the natural justice principles that typically operate in the complaint process, including this complaint, in *Imperial Limousine Service Ltd.*, BC EST # D014/05:

> Principles of natural justice are, in essence, procedural rights ensuring that parties have an opportunity to know the case against them; the right to present their evidence; and the right to be heard by an independent decision maker. It has been previously held by the Tribunal that the Director and her delegates are acting in a quasi-judicial capacity when they conduct investigations into complaints filed under the *Act*, and their functions must therefore be performed in an unbiased and neutral fashion. Procedural fairness must be accorded to the parties, and they must be given the opportunity to respond to the evidence and arguments presented by an adverse party. (see *BWI Business World Incorporated*, BC EST # D050/96)

33. Provided the process exhibits the elements of the above statement, it is unlikely the deciding Delegate will be found to have failed to observe principles of natural justice in making the Determination.

34. The associated employer's submission has not identified or argued any natural justice concerns with the Determination. I find the required natural justice elements described above were met by the deciding Delegate. This ground of appeal has no merit whatsoever.

35. If there is any new evidence the associated employer seeks to have the Tribunal consider in these appeals, it is not adequately identified or addressed in the context of the considerations applied by the Tribunal when deciding whether material advanced under the ground of appeal set out in section 112(1)(c) will be accepted and considered. When considering an appeal based on this ground, the Tribunal has taken a relatively strict approach; testing the proposed evidence against several considerations, including whether such evidence was reasonably available and could have been provided during the complaint process, whether the evidence is relevant to a material issue arising from the complaint, whether it is credible, in the sense that it be reasonably capable of belief, and whether it is probative, in the sense of being capable of resulting in a different conclusion than what is found in the Determination: see *Davies and others (Merilus Technologies Inc.)*, BC EST #D171/03.

36. New evidence which does not satisfy any of these conditions will rarely be accepted. This ground of appeal is not intended to give a person dissatisfied with the result of a determination the opportunity to submit evidence that, in the circumstances, should have been provided to the Director before the determination was made. The approach of the Tribunal is grounded in the statutory purposes and objectives of fairness, finality, and efficiency: see section 2(b) and (d) of the *ESA*.

37. As indicated above, the submission on the appeals does not address any of the considerations applied by the Tribunal when considering whether to accept and consider material that is purported to be new evidence. The appeals do not indicate the 'new evidence' advanced was not reasonably available during the complaint process; how it is relevant to any issue arising from the complaint; that it is credible; or that it is probative. There is no basis upon which it can be said the associated employer has met the conditions necessary for the purported 'new evidence' to be accepted on these appeals.

38. There is no merit to this ground of appeal and it is also dismissed.

39. While not raised as a ground of appeal, I have also assessed whether there might be some basis for an argument that the deciding Delegate committed an error of law in the Determination. The Tribunal is not necessarily bound by the grounds of appeal selected on the Appeal Form: see *Triple S Transmission Inc. o/a Superior Transmissions*, BC EST # D141/03.

40. In that regard, my assessment indicates the deciding Delegate made no error of law in making the Determination. The factual findings made in the Determination are adequately supported by the record and the applicable statutory provisions and legal principles were correctly applied by the deciding Delegate to the facts as found.

41. At its core, the submission presented on behalf of the associated employer does not do more than express disagreement with the conclusions reached by the deciding Delegate on the issues listed in the Determination that have been challenged in these appeals. Most of the points raised in the submission simply reiterate the position taken during the investigation. An analysis of the Determination clearly indicates each of these points were addressed, some of them extensively, in the reasons provided by the deciding Delegate.

42. The submission relating to the attempt to have some, or perhaps all (it is not clear), of the administrative penalties removed makes no sense. The Determination supports the conclusion that the associated employer had contravened the provisions for which the administrative penalties were imposed. The

Determination expressly, and correctly, notes that when a contravention is found and a requirement under section 79 of the *ESA* is made, as it was in this case, the imposition of an administrative penalty is mandatory and that the amount of such administrative penalty is dictated by section 29(1) of the *Regulation*.

43. In sum, and to reiterate comments made above, I find there is no merit to the appeals and no reasonable likelihood they would succeed.

44. For all of the above reasons, these appeals are, accordingly, dismissed; the purposes and objects of the *ESA* would not be served by requiring the other parties to respond to them.

ORDER

45. Pursuant to section 115(1) of the *ESA*, I order the Determination dated February 24, 2023 be confirmed in the amount of $46,632.81, together with any interest that has accrued under section 88 of the *ESA*.

David B. Stevenson
Member
Employment Standards Tribunal