



EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

L.W. Murphy Ltd. carrying on business as Murphy & Associates  
("Appellant")

- of a Determination issued by -

The Director of Employment Standards

**PANEL:** John Chesko

**FILE NO.:** 2023/045

**DATE OF DECISION:** August 10, 2023

## DECISION

### SUBMISSIONS

Lloyd W. Murphy

on behalf of L.W. Murphy Ltd. carrying on business as  
Murphy & Associates

### OVERVIEW

1. L.W. Murphy Ltd. carrying on business as Murphy & Associates (“Appellant”) appeals a determination issued on February 28, 2023 (“Determination”), by a delegate (“Delegate”) of the Director of Employment Standards (“Director”).
2. The Determination held the Appellant had contravened the *Employment Standards Act* (“ESA”) in respect of the employment of Benjamin Franklin (“Employee”). The Determination ordered the Appellant to pay the Employee wages, annual vacation pay, compensation for length of service and interest totaling \$13,811.64. The Determination also levied administrative penalties totaling \$1,500.00 for a total amount payable of \$15,311.64.
3. The Appellant appeals on the two grounds that the Director failed to observe the principles of natural justice and the Director erred in law in making the Determination.

### BACKGROUND

4. The Appellant operates a bankruptcy and insolvency trusteeship business in Delta, B.C. that falls within the jurisdiction of the *ESA*.
5. The Employee was employed as an administrator and office manager from July 2007 to March 31, 2021.
6. The Employee resigned his employment with the Appellant when the Appellant refused to pay the Employee on the ground the Appellant had previously overpaid the Employee.
7. The Employee filed a complaint under section 74 of the *ESA* and alleged the Appellant contravened the *ESA* by failing to pay wages earned.
8. A delegate of the Director (“Investigative Delegate”) followed up with the parties and requested evidence and submissions from each side about their respective positions.
9. The Investigative Delegate prepared a report for the Appellant and the Employee dated January 25, 2023, summarizing the information provided by the Appellant, the Employee and witnesses and included a list of relevant records and documents (“Investigation Report”). The Appellant and the Employee were requested to review the Investigation Report and provide a response within a deadline.
10. The Investigative Delegate did not make any findings in the Investigation Report. As noted above, the Investigation Report summarized the information provided by the parties. I also note the Investigation Report set out the main issues were whether the Employee was owed wages and vacation pay.

11. The Appellant and the Employee reviewed the Investigation Report and had the opportunity to respond and provide further clarification. The Investigation Report and any responses from the parties were submitted to the Delegate for a determination.
12. The Delegate issued the Determination dated February 28, 2023.
13. As noted above, the Determination held the Appellant failed to pay the Employee wages, annual vacation pay, compensation for length of service and interest totalling \$13,811.64. In addition, the Determination levied administrative penalties totalling \$1,500.00 for a total amount payable of \$15,311.64.
14. Subsequent to the appeal of the Determination, the Employment Standards Tribunal (“Tribunal”) received notice the Employee had recently passed away.
15. The Tribunal received a copy of the death certificate from the executor for the Employee.
16. I note the definition of ‘employee’ in the *ESA* includes a ‘deceased person’ (see *ESA*, section 1) and specifically provides for payment to the estate of an employee (see *ESA*, section 99(5)(c)).
17. As necessary the Tribunal varies the style of cause as *L.W. Murphy Ltd. carrying on business as Murphy & Associates -and - Estate of Benjamin Franklin*.

## **ARGUMENTS**

18. On the Appeal Form the Appellant submits that the Director failed to observe the principles of natural justice and the Director erred in law in making the Determination.
19. The Appellant sets out submissions and evidence in support of the Appellant's appeal.
20. The Appellant submits that the Employee’s schedule evidence was “completely fabricated.”
21. The Appellant further submits there was no basis for compensation for length of service when the Employee ‘abruptly’ quit without notice.
22. The Appellant also submits that the Employee was paid for vacation to the end of 2020. The Appellant acknowledges outstanding vacation pay would be owed for 2021 “once it is determined what the quantum of his salary is.”

## **ANALYSIS**

23. These reasons are based on the written submissions of the Appellant, the Determination, and the Record.
24. On receiving the Appellant’s appeal, the Tribunal requested the section 112(5) record (“Record”) from the Director for purposes of the appeal. The Tribunal provided the Record to the parties and sought submissions on the completeness of the Record. As the Tribunal did not receive any objections to the completeness of the Record, the Tribunal accepts the Record as complete.

### Appeal of Determination

25. 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.

26. An appeal is limited to the specific grounds set out in the *ESA*. An appellant bears the onus to demonstrate that the appeal meets one or more of the specified grounds of appeal. It is not a new hearing of the case nor is it an opportunity to resubmit an appellant's facts and arguments and 'try again.'

### Failure to Observe Principles of Natural Justice

27. The Appellant alleges the Director failed to observe the principles of natural justice in making the Determination.

28. Natural justice has been described as the right to a fair procedure. It includes specific rights such as the right to know the case being made, the right to respond, and the right to be heard by an unbiased decision maker (see *Re 607730 B.C. Ltd. (cob English Inn & Resort)*, BC EST # D055/05, and *Imperial Limousine Service Ltd.*, BC EST # D014/05).

29. A party alleging failure to comply with natural justice must provide evidence in support of the allegation. It isn't sufficient to just simply allege a failure of natural justice without more. An appellant must submit specific evidence or argument about how the determination procedure did not meet requirements of natural justice (see *Dusty Investments Inc. d.b.a. Honda North*, BC EST # D043/99).

30. I have reviewed the Record and considered the Appellant's submissions. I find there is no basis for the Appellant's argument on this ground nor is there any basis on the Record for concluding the Director failed to observe the principles of natural justice. The Appellant does not point to any specific deficiencies in the procedure, but merely submits facts and arguments that were previously before the Delegate.

31. The Record indicates the Appellant was aware of the case to be made and had the right to present their case and respond to the evidence. The Record also indicates the Investigative Delegate conducted an investigation of the issues and the parties had ample opportunity to present and respond. The Record shows the parties were involved in the investigation process and had every opportunity to respond and provide evidence and submissions.

32. In sum, the Appellant has not shown the Director failed to observe the principles of natural justice in making the Determination.

33. I find there is no merit in this ground of appeal, and it is dismissed.

### Error of Law

34. On the Appeal Form, the Appellant also alleges the Director erred in law in making the Determination.

35. To show an error of law, the Appellant has the burden to show a material legal error in the decision. Examples of errors of law may include: i) a misinterpretation or misapplication of a section of the *ESA*; ii) a misapplication of an applicable principle of general law; iii) acting without any evidence at all; iv) acting on a view of the facts which could not be reasonably entertained; and v) exercising discretion in a fashion that is inconsistent with established principle (see *Gemex Developments Corp. v. British Columbia (Assessor of Area #12)* 1998 CanLII 6466).
36. A disagreement with a finding of fact does not amount to an error of law. In cases where there is some evidence, the Tribunal will generally not re-evaluate the evidence or substitute its own view on the same evidence. The assessment and weighing of evidence is considered a question of fact properly within the purview of the Delegate.
37. I have reviewed the Determination and the evidence in the Record and do not find an error of law in the Determination. The Delegate properly considered the submissions and evidence and came to a reasoned conclusion.
38. I find there was no error of law in the Determination in finding the Employee did not quit. The Determination properly considered the legal test and came to a reasoned conclusion on the evidence. As noted in the Determination, section 66 of the *ESA* provides that the Director may find a substantial alteration in a condition of employment may result in termination of an employee. The finding that the refusal to pay the Employee was contrary to the *ESA* and amounted to a substantial alteration in a condition of employment is supported by the evidence and law (see *Ilse Three Holdings Ltd.*, BC EST # RD124/08). The payment of wages is generally considered fundamental to the employment relationship and the withholding of wages has been said to go to the root of the employment contract and is contrary to section 21 of the *ESA* (see *Anodyne Computers 97 Ltd.*, BC EST # D389/98, upheld on reconsideration BC EST # D545/98; *Alpha Neon Ltd.*, BC EST # D105/11, upheld on reconsideration BC EST # RD032/12; *Health Employers Association of B.C. v B.C. Nurses Union*, 2005 BCCA 343).
39. I have also considered the finding in the Determination that there was no just cause for dismissal. I find the Delegate properly considered the evidence and the circumstances, including the position held by the Employee. The test applied of whether there was just cause for dismissal was based on the correct legal test and supported on the evidence. I find there was evidence supporting the Delegate's conclusions and that it is not open to the Tribunal to re-consider the evidence. Again, I would find there was no error of law in the Determination finding that there was no just cause for dismissal.
40. I have also considered the calculation of the amount owing to the Employee for wages, annual vacation pay, compensation for length of service and interest. I find there is no error of law in the calculation and confirm the amounts. Although the Appellant may not agree with the Determination, I find there was evidence the Delegate could rely on to make the findings of fact and arrive at the calculations and conclusions in the Determination. As noted, it is clearly established in Tribunal decisions that this Tribunal will not re-hear the case, nor will it re-evaluate the evidence and substitute its own view of the same evidence.
41. Lastly, I have also considered the administrative penalties. The law is clear the administrative penalties owed by the Appellant are mandatory in the circumstances and there is no provision in the *ESA* for them to be cancelled (see *537370 B.C. Ltd.*, BC EST # D011/06).

42. In summary, I find the Appellant is, for the most part, rearguing its view of the same facts and evidence that has already been properly considered and decided in the Determination. Absent an error of law as required under section 112(1) of the *ESA*, this Tribunal cannot re-hear the evidence and ‘second-guess’ the Delegate.

43. I find there is no error of law and would dismiss this ground of appeal.

#### **Summary dismissal**

44. Section 114(1)(f) of the *ESA* provides that at any time after an appeal is filed, the Tribunal may dismiss the appeal if there is no reasonable prospect the appeal will succeed.

45. I find there is no reasonable prospect the appeal would succeed and dismiss the appeal.

#### **ORDER**

46. Pursuant to section 114(1)(f) of the *ESA*, the appeal is dismissed.

47. Pursuant to section 115(1) of the *ESA*, I confirm the Determination, together with any additional interest that has accrued pursuant to section 88 of the *ESA*.

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**John Chesko**  
**Member**  
**Employment Standards Tribunal**