Citation: Blue-O Technology Inc. (Re)
2023 BCEST 79

EMPLOYMENT STANDARDS TRIBUNAL

An application for reconsideration
pursuant to section 116 of the
Employment Standards Act R.S.B.C. 1996, C.113 (as amended)

- by -

Blue-O Technology Inc.

- of a Decision issued by -

The Employment Standards Tribunal

PANEL: Kenneth Wm. Thornicroft

FILE NO.: 2023/133

DATE OF DECISION: October 3, 2023

DECISION

SUBMISSIONS

Hanson Ruan — on behalf of Blue-O Technology Inc.

INTRODUCTION

1. This is an application for reconsideration filed by Blue-O Technology Inc. ("applicant") pursuant to section 116 of the *Employment Standards Act* ("*ESA*"). This application concerns 2023 BCEST 58, an appeal decision issued by Tribunal Member Chapnick on July 27, 2023 ("Appeal Decision").

2. Member Chapnick dismissed the applicant's application to extend the time to appeal the Determination that was issued by a delegate of the Director of Employment ("delegate") on February 10, 2023. Member Chapnick dismissed the applicant's late appeal under section 114(1)(b) of the *ESA*, and confirmed the Determination under section 115(1) of the *ESA*.

3. The applicant asks that "at least three members of EST to conduct a reconsideration of my appeal request", and also seeks "a public hearing session for this reconsideration." This application, on its face, is entirely without merit, and must be dismissed since it does not pass the first stage of the two-stage *Milan Holdings* test (see *Director of Employment Standards*, BC EST # D313/98). That being the case, there is no need for either a three-person panel or a public hearing. I note that the Tribunal is not obliged to hold hearings open to the public (*ESA*, section 103(d)(ix)), and is entitled to hear matters by way of one-person panels (section 106(4)).

PRIOR PROCEEDINGS

4. By way of the Determination, the delegate ordered the applicant to pay a former employee the total sum of $1,437.90, including section 88 interest. The unpaid wage award included $144.25 reflecting five hours worked for which the former employee was not paid, and $1,154.00 as one week's wages for compensation for length of service payable under section 63 of the *ESA*.

5. The delegate also levied two separate $500 monetary penalties against the applicant based on its contraventions of sections 17 (failure to pay earned wages at least semimonthly and within 8 days after the end of a pay period) and section 63 (failure to pay compensation for length of service). Accordingly, the applicant's total liability under the Determination is $2,437.90.

6. The applicant filed a late appeal, arguing that the Determination should be varied or cancelled based on all three statutory grounds (as set out in section 112(1) of the *ESA*). Member Chapnick found that the applicant had not met its evidentiary burden of satisfying the Tribunal that an extension of the appeal period was warranted and, in any event, none of the asserted reasons for appeal had any merit.

THE APPLICATION FOR RECONSIDERATION

7. The reasons advanced in support of the reconsideration application are set out under five separately numbered headings in the applicant's written submission:

- "[The Tribunal Member] was unfairly putting the [applicant] in a fault position, which perverse the nature justice and legal appealing fairness."
- "[The Tribunal Member] covered up the deceit or ambush of [the delegate] towards [the applicant's principal] and Blue-O by accusing them of not providing the needed timesheet."
- "[The Tribunal Member] favored [the delegate] by accusing [the applicant's principal's] accusations was false without any solid proof."
- "[The Tribunal Member] was biased and bitter hearted by ignoring all good works and legal business practices throughout the years but picked on one single justified missing pay date."
- "[The Tribunal Member] ignored the legal medical ground for the cause of the delay, which was an insult of nature justice."

[*sic*]

FINDINGS

8. I will briefly address each of these assertions in turn.

9. The applicant's first assertion appears to concern the monetary penalty that was issued for the applicant's section 17 contravention. However, this penalty was issued based on the uncontroverted evidence set out in the applicant's *own documents* (see Appeal Decision, paras. 46-48). The first assertion also relates to the delegate's finding that the former employee was dismissed without just cause. The delegate's findings in this regard are set out at page R4 of his "Reasons for the Determination" (the "delegate's reasons"). I fully agree with and endorse the delegate's findings on the just cause issue. The applicant's appeal on this matter was wholly devoid of merit.

10. The applicant's second assertion relates to its failure to provide payroll records, which the applicant says it was never asked to provide. However, this latter assertion is plainly untenable. As the Appeal Decision (and the section 112(5) record) makes clear, at para. 32:

> …the [applicant] argues it was never asked to submit "records of ... wage statement[s] with dates," and the Director erred in law (and failed to observe the principles of natural justice) "by ignoring the availability of such records." I reject this argument because it is not accurate. The Record shows that the Investigative Delegate made several requests for wage statements, but the [applicant] did not provide them. The Record also shows that the [applicant] was made aware that the Employee alleged it paid him and others late on several occasions. If the Company had evidence to refute this claim, it should have proffered that evidence during the investigation process.

11. The applicant's third assertion appears to be grounded in a belief that Member Chapnick was biased against the applicant and in favour of the delegate. The applicant asserts that the Appeal Decision contains "lies", and that the Member should be "disciplined." However, having reviewed the complete record in

this matter, I am fully satisfied that all of the delegate's findings were supported by a proper evidentiary foundation. Member Chapnick did not err in law in rejecting the applicant's challenges to the delegate's findings of fact.

12. The applicant's fourth allegation reiterates the wholly groundless allegation of bias and misconduct on the part of Member Chapnick, and further claims that it was "punitive" to impose a monetary penalty for the proven section 17 contravention. The short answer to this argument is that monetary penalties are mandatory in the face of proven contraventions (see Appeal Decision, para. 48).

13. The applicant's fifth and final assertion concerns the applicant's reason for failing to file a timely appeal and, in particular, the applicant's principal's medical condition. Member Chapnick did not "ignore" the medical evidence in question. Rather, he found that this evidence was undermined by the applicant's admission that it was well aware of the appeal deadline, but simply failed to file a timely appeal (see Appeal Decision, paras. 23 and 27). Further, even if there had been a reasonable explanation for failing to file a timely appeal, the application to extend the appeal period fell short of the mark in terms of other relevant considerations.

14. Although the applicant's appeal was dismissed under section 114(1)(b) of the *ESA*, it seems clear from Member Chapnick's findings that the appeal could have equally been dismissed under section 114(1)(f) as having no reasonable prospect of succeeding. Either way, I fully endorse Member Chapnick's reasons for dismissing the appeal.

15. Finally, while I recognize that the applicant's representative is not legally trained, and that he appears to misapprehend the extent of an employer's obligations under the *ESA*, that does not excuse, in any way, the barrage of ill-considered, wholly unsubstantiated, and defamatory statements that litter his written submission. I will not repeat the most inflammatory of the defamatory statements here; however, I note that the final missive in his diatribe was to characterize the appeal process as "not a tribunal, but worse than a dictator or gangster style single handed case review filled with prejudice and unfairness." The Tribunal does not have any statutory authority to make a costs order against the applicant, since the costs provisions in the Administrative Tribunals Act do not apply to the Tribunal. If I had the authority to award costs, I would not have hesitated to issue a costs order under section 47(1)(c) of the Administrative Tribunals Act.

ORDER

16. This application for reconsideration is dismissed and the Appeal Decision is confirmed.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal