

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

1253653 B.C. Ltd.
("Appellant")

- of a Determination issued by -

The Director of Employment Standards

PANEL: John Chesko

FILE No.: 2023/090

DATE OF DECISION: October 3, 2023

DECISION

SUBMISSIONS

Deepak Raval

on behalf of 1253653 B.C. Ltd.

OVERVIEW

1. 1253653 B.C. Ltd. (“Appellant”) appeals a determination issued on May 12, 2023 (“Determination”), by a delegate (“Delegate”) of the Director of Employment Standards (“Director”).
2. The Determination held that the Appellant had contravened the *Employment Standards Act* (“ESA”) in respect of the employment of [name omitted], who is a minor child (“Employee”). The Determination ordered the Appellant to pay the Employee wages and interest totaling \$7,659.04. The Determination also levied administrative penalties totaling \$1,500.00 for a total amount payable of \$9,159.04.
3. The Appellant appeals on the two grounds - that the Director failed to observe the principles of natural justice and that evidence has become available since the time the Determination was being made.
4. These reasons are based on the written submissions of the Appellant, the Determination, and the Record.

BACKGROUND

5. The Appellant operates a restaurant in Peachland, B.C. that falls within the jurisdiction of the *ESA*.
6. The Employee was employed at the restaurant from March 15, 2020 to July 24, 2021.
7. As noted above, the Employee is a minor child who was 15 years old when they began working for the Appellant in 2020.
8. The Employee submitted the Appellant regularly failed to pay wages owing. The Employee submitted that the Appellant had repeatedly promised to pay the Employee the wage shortfall in the future, but did not do so.
9. The Employee eventually filed a complaint under section 74 of the *ESA* and alleged the Appellant contravened the *ESA* by failing to pay wages earned. The complaint was filed on behalf of the Employee by the legal guardian of the Employee.
10. A delegate of the Director (“Investigative Delegate”) followed up with the parties and requested evidence and submissions from each side about their respective positions.
11. The Investigative Delegate prepared a report for the Appellant and the Employee dated January 12, 2023, summarizing the information provided by the Appellant, the Employee, and witnesses and included a list of relevant records and documents (“Investigation Report”). The Investigative Delegate set out the main issues to be determined and noted certain discrepancies in the evidence but did not make findings in the Investigation Report.

12. The Appellant and the Employee were requested to review the Investigation Report and provide a response within a specified deadline.
13. Both the Appellant and the Employee provided responses to the Investigation Report.
14. The Investigation Report and the responses from the parties were considered by the Delegate in making the Determination dated May 12, 2023.
15. As noted above, the Determination held the Appellant had failed to pay the Employee wages and interest totaling \$7,659.04. The Determination also levied administrative penalties totaling \$1,500.00 for a total amount payable of \$9,159.04.

ARGUMENTS

16. On the Appeal Form the Appellant submits that the Director failed to observe the principles of natural justice and that evidence has become available since the time the Determination was being made.
17. The Appellant sets out submissions and evidence in support of the Appellant's appeal.
18. The Appellant “would like to appeal for further investigation and inquiry.”
19. The Appellant further submits the Employee's claim was based on improper motives of “revenge.”
20. The Appellant notes that it has “already submitted documents related to payments” during the investigation and submits that wages that were paid may have been misappropriated.

ANALYSIS

21. On receiving the Appellant's appeal, the Tribunal requested the section 112(5) record (“Record”) from the Director for the purposes of the appeal. The Tribunal provided a copy of 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

22. 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.
23. An appeal is limited to the 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 the appeal. The appeal 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

24. The Appellant alleges the Director failed to observe the principles of natural justice in making the Determination.
25. Natural justice has been described as the right to a fair procedure and 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).
26. A party alleging failure to comply with natural justice must provide evidence in support of the allegation. It isn't sufficient to simply allege a failure of natural justice. An appellant must submit evidence or argument about how the determination procedure did not meet the requirements of natural justice (see *Dusty Investments Inc. d.b.a. Honda North*, BC EST # D043/99).
27. 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 resubmits facts and arguments previously before the Delegate.
28. 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.
29. In sum, the Appellant has not shown the Director failed to observe the principles of natural justice in making the Determination.
30. I find there is no merit in this ground of appeal, and it is dismissed.

New Evidence

31. The Appellant alleges new evidence has become available since the time the Determination was being made.
32. In *Bruce Davies and others, Directors or Officers of Merilus Technologies Inc.*, BC EST # D171/03, the Tribunal set out the following requirements for introducing new evidence:
- (a) the evidence could not reasonably have been discovered and presented to the Director during the investigation or adjudication of the complaint;
 - (b) the evidence must be relevant to a material issue from the complaint;
 - (c) the evidence must be credible in the sense that it is reasonably capable of belief; and
 - (d) the evidence must have high potential probative value in the sense that if believed it could make a difference and lead to a different conclusion in the Determination;
33. Each of the above requirements need to be met. Previous decisions of the Tribunal make it clear that parties are expected to present all relevant evidence during the investigation and determination of

complaints. The introduction of new evidence at appeal that could and should have been introduced prior to a determination will generally result in the dismissal of the appeal.

34. The Appellant's submission generally resubmits the arguments presented during the investigation and requests "further investigation and inquiry." The Appellant also notes in the appeal submission that it had "already submitted documents related to payments." As the Appellant's arguments were before the Delegate, I find the Appellant's submissions do not meet the requirements for new evidence.
35. I find there is no merit in this ground of appeal, and it is dismissed.

Error of Law

36. It is established law that the Tribunal may take a broad view of an appeal (see *Triple S Transmission Inc, d.b.a. Superior Transmissions*, BC EST # D141/03).
37. Even though I have found the Appellant has not demonstrated a breach of natural justice in the Determination or that there is new evidence that should be admitted on appeal, I have considered the Appellant's submissions on the other ground of appeal in the alternative.
38. While not specifically noted on the Appeal Form, the Appellant's submission also appears to allege the Director erred in law in finding wages were owed as they "did all settlement for payment in aug 2021."
39. 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 of 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).
40. 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.
41. I have reviewed the Determination and the evidence in the Record and do not find an error of law in the Determination. Timely payment for work is one of the most fundamental obligations of the employment relationship (see section 17 of the *ESA* and *Re Digital Accelerator Corporation*, BC EST # D396/02). The Delegate properly considered the submissions and evidence and came to a reasoned conclusion.
42. I have also considered the calculation of the amount owing to the Employee for wages 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.

43. Lastly, I have also considered the administrative penalties. The law is clear that 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).
44. In summary, I find the Appellant is, for the most part, rearguing its view of the same facts and evidence that have 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.
45. I find there is no error of law and would also dismiss this ground of appeal.

Summary dismissal

46. 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.
47. I find there is no reasonable prospect the appeal would succeed and dismiss the appeal.

ORDER

48. Pursuant to section 114(1)(f) of the *ESA*, the appeal is dismissed.
49. 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*.

John Chesko
Member
Employment Standards Tribunal