

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Coin Masters Capital Inc.

- of a Determination issued by -

The Director of Employment Standards

PANEL: Carol L. Roberts

FILE NO.: 2023/068

DATE OF DECISION: October 20, 2023

DECISION

SUBMISSIONS

Sunny Khosla	on behalf of Coin Masters Capital Inc.
Sanel Kadiric	delegate of the Director of Employment Standards

OVERVIEW

1. This is an appeal by Coin Masters Capital Inc. (“Coin Masters”) of a decision of a delegate of the Director of Employment Standards (“Director”) made on January 3, 2023 (“Corporate Determination”).
2. On July 7, 2021, Anna-Elizaveta Lim (“Complainant”) filed a complaint with the Director alleging that Coin Masters had contravened the *Employment Standards Act* (“ESA”) in failing to pay her regular wages.
3. An Adjudicative delegate of the Director determined that Coin Masters had contravened sections 18, 21 and 58 of the *ESA* in making unauthorized deductions from the Complainant’s wages, and in failing to pay the Complainant wages and annual vacation pay. The Adjudicative delegate also determined that Coin Masters had failed to deliver payroll records in response to a Demand for Employer Records, contrary to section 46 of the *Employment Standards Regulation* (“Regulation”).
4. The Director concluded that the Complainant was entitled to the total amount of \$671.61 including accrued interest and imposed five \$500 administrative penalties for Coin Masters’ contravention of the *ESA* and the *Regulation*, for a total amount payable of \$3,171.61.
5. Coin Masters appeals the Corporate Determination on the grounds that the Director failed to observe the principles of natural justice in making the Corporate Determination. Coin Masters also seeks an extension of time in which to file the appeal.
6. After reviewing the appeal submissions, I sought submissions from the Director. I was unable to seek submissions from the Complainant as the Tribunal, despite several attempts to contact her, could not confirm the Complainant’s current contact information.
7. This decision is based on the section 112(5) record that was before the Director at the time the Corporate Determination was made, the appeal submissions, and the Corporate Determination.

ISSUE

8. At issue is whether the Tribunal should grant Coin Masters’ application for an extension of time in which to file the appeal and whether Coin Masters has demonstrated a basis for interfering with the Director’s determination.

BACKGROUND

9. Sunny Khosla is one of Coin Masters' two directors, the other being his spouse, Neesha Gaind. Mr. Khosla submits that he first heard about the January 3, 2023, Corporate Determination on April 19, 2023, when he received a telephone call from an individual at the Employment Standards Branch ("Branch") regarding a payroll related debt. Mr. Khosla says that although the caller was able to provide some publicly available information regarding the corporation, the caller was unable to furnish any additional details. Mr. Khosla believed the call to be a scam since Coin Master never had any employees and requested that the caller mail him "official documents" related to the matter. Mr. Khosla provided the caller with his current mailing address.
10. Mr. Khosla received a copy of the Corporate Determination by regular mail on May 1, 2023. The Corporate Determination sets out the amount of money owed to the Complainant, the sections of the *ESA* and *Regulation* that the Director determined had been contravened, and the penalty amounts.
11. Included within the Corporate Determination is a notice to the parties that any requests for written reasons for the Corporate Determination must be made by January 13, 2023, if the Corporate Determination was sent by email, or by January 18, 2023, if the Corporate Determination was sent by ordinary or registered mail. When Mr. Khosla sought written reasons, the Adjudicative delegate informed him that "the Branch is no longer able to provide written reasons" since any request for written reasons had to have been made by January 18, 2023.
12. Upon receiving Coin Masters' appeal, the Tribunal sought the section 112(5) "record" from the Director. The record includes the Investigate Report that was prepared by the Investigative delegate, which the Adjudicative delegate relied upon in issuing the Corporate Determination.
13. According to the record, the Complainant alleged that she was hired as an assistant buyer for Coin Masters on June 28, 2021, and that she worked for a total of 14 hours over five days for which she was not paid.
14. Attached to the complaint was a copy of an employment contract purportedly signed by Neesha Gaind, who identified herself as Chief Executive Officer, on behalf of Coin Masters, dated June 23, 2021. The Complainant also attached a June 23, 2021, email from an individual identifying herself as the Human Resources Manager of Coin Masters informing the Complainant that she had successfully "passed the interview." The email further informed the Complainant that she would "complete a full training with our instructor" and that her regular hours of work would be from 9 – 5 pm from Monday to Friday.
15. As a condition of employment, the Complainant alleged that she was to purchase Bitcoin and transfer the funds to Coin Masters. The Complainant provided documents confirming that she did so, after which all communication with the Human Resource Manager were blocked. The Complainant also alleged that her trainer's contact "disappeared from her contacts" and that her communications with the trainer had been deleted.
16. The Investigative delegate sent two emails to the address of Coin Masters' Human Resource Manager which were refused by the server.

17. The record discloses that the Investigative delegate conducted a corporate search of Coin Masters Capital Inc. on or about July 27, 2021. That search indicated that Coin Masters was incorporated federally on March 19, 2019, with Mr. Khosla and Ms. Gaind as the two directors. The address for the two directors was the same as the registered office address for the company.
18. The Investigative delegate issued a Demand for Employer Records to Coin Masters' registered office on December 24, 2021. Although Canada Post tracking information indicated that a notice card was left on January 6, 2022, the mail was not picked up.
19. On July 14, 2022, the Investigative delegate issued the Investigative Report setting out the Complainant's allegations and indicating that no evidence had been submitted by Coin Masters.
20. The record shows that copies of the Investigation Report sent by regular mail to the company and the two directors at the address listed in the Federal Corporate registry were all returned to the Director on August 8, 2022, with the notation "wrong address" handwritten on the envelopes.

ARGUMENT

21. Mr. Khosla says that Coin Masters is a holding company for real estate investments only and that it has never had any employees. He denies knowing the two individuals identified in the complaint as the "Human Resource Officer" and the "Trainer." He also says that the email used by those individuals is not one used by Coin Masters.
22. The employment contract submitted by the Complainant bears the signature "Neesha Gaind" as the Chief Executive Officer. Attached to the appeal submission is a photocopy of Ms. Gaind's passport, along with her actual signature, which bears no resemblance to the signature on the contract. Mr. Khosla says that Ms. Gaind is not the CEO of Coin Masters nor has she ever referred to herself as that.
23. The Director argues that the appeal is without merit as Coin Masters has failed to establish that the principles of natural justice were not observed. The Director contends that it made every effort to contact Coin Masters on multiple occasions and relied on information provided by both the Complainant and the Federal Corporate registry to do so. The Director submits that although online searches were conducted to locate alternative contact information for Coin Masters, no new information was obtained. The Director submits that Coin Masters' failure to update its corporate annual filings does not amount to a denial of natural justice.
24. Finally, the Director submits that, had Coin Masters met its filing requirements under the *Canada Business Corporations Act*, it could have presented the evidence submitted on appeal during the investigation of the complaint.

ANALYSIS

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. The burden is on an appellant to demonstrate a basis for the Tribunal to interfere with a determination. I conclude that Coin Masters has met that burden.

Extension of time in which to file the appeal

27. The deadline for filing an appeal of the Corporate Determination was February 10, 2023.

28. The Tribunal will not grant extensions of time as a matter of course; it will only do so where there are “compelling reasons” (see *Re: Wright*, BC EST # D132/97). The onus is on an appellant to show that the time period should be extended (see *Moen & Sagh Contracting Ltd.*, BC EST # D298/96).

29. Appellants seeking to extend the time period in which to file an appeal from decisions of the Director should satisfy the Tribunal that:

- i) there is a reasonable and credible explanation for the failure to request an appeal within the statutory time limit;
- ii) there has been a genuine and ongoing *bona fide* intention to appeal the Determination;
- iii) the respondent party (*i.e.*, the employer or employee), as well the Director, must have been made aware of this intention;
- iv) the respondent party will not be unduly prejudiced by the granting of an extension; and
- v) there is a strong *prima facie* case in favour of the appellant.

(see *Niemisto*, BC EST # D099/96)

These criteria are not exhaustive. There may be other factors that ought to be considered and not all the above factors may be applicable in determining whether or not to grant an extension.

30. Coin Masters filed the appeal over three months after the statutory time period had expired. Mr. Khosla submits that he was not aware of the Corporate Determination until he received the Corporate Determination by regular mail on May 1, 2023. I accept that is the case, based both on the record and on Mr. Khosla’s submissions. There is nothing in the record that suggests Coin Masters had any knowledge of the complaint, the investigation or the Corporate Determination prior to the Corporate Determination being sent to a new address provided by Mr. Khosla to Branch collections staff in April 2023.

31. While there is no evidence Coin Masters had a genuine and ongoing *bona fide* intention to appeal the Corporate Determination before the statutory appeal deadline, I find that Coin Masters took timely steps to file the appeal once they became aware of it. The Director was made aware of Coin Masters’ intention to appeal on May 19, 2023, when Mr. Khosla requested reasons for the Corporate Determination.

32. Coin Masters had a duty to maintain accurate and up to date information in the Federal Corporate registry. It did not do so, and all Branch correspondence was sent to an address at which the directors no longer reside. I am satisfied that Coin Masters had no notice of the complaint, the investigation process, or the Corporate Determination until May 2023.

33. I find that Coin Masters has established a strong *prima facie* case on appeal for the reasons that follow.
34. I am not persuaded that, in the circumstances, the Complainant would be prejudiced by the granting of an extension.

Was Coin Masters denied natural justice?

35. 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.
36. I find that Coin Masters was denied the opportunity to know the allegations and respond fully to them. The record demonstrates that while the Adjudicative delegate made some attempts to contact Coin Masters, it did not receive any of the mailed correspondence due to the company's failure to maintain updated information in the Federal Corporate registry. In my view, the Director cannot simply say that it complied with natural justice requirements by mailing correspondence to the address listed in the Federal Corporate registry, particularly when some of the correspondence, including the Investigative report, was returned to the Branch with the notation "Moved." Given that a Branch collections staff was able to successfully speak to Mr. Khosla, it is unclear why either of the delegates were not able to.
37. Furthermore, given the inadequacy of the record, I am unable to determine what investigative steps were taken in this matter to determine the accuracy of the allegations or the identity of the employer.
38. There is nothing in the record to indicate, for example, whether the Complainant was asked about the nature of the "interview" process she underwent, whether she met any of the named individuals from the company in person, what type of work she did, or what questions she inquired about her "employer." It appears from the record that all communications between the complainant and the "employer" were conducted online.
39. The record, which contains the Investigative delegate's notes of communications with the complainant, are less than helpful in this matter. For example, the entries from 22-01-05 are as follows:

EE EMT 8:44 a.m.

Told them how I planned to proceed

EE EMF 1:03 p.m.

Asked a question

EE EMT 1:04 p.m.

Gave an answer

40. In my view, the information provided by the Complainant, along with the fact that emails sent by the Investigative delegate to the individual whom the Complainant indicated was the Human Resources Manager were refused, had many of the hallmarks of a fraudulent scheme. Those included the lack of any details in the "employment contract" about the nature of the job the Complainant was applying for or the duties she was to perform, the lack of any company web presence, the absence of any information regarding the nature of business the company engaged in, the fact that the Complainant was required to

pay the company for the job in Bitcoin, a virtually untraceable currency, and the fact that the “employer” ceased communicating with her and deleted her emails after she deposited the funds.

41. Confronted by these factors, one would have thought one or both delegates would have suspected that the employment scheme was fraudulent and conducted a more thorough inquiry into the accuracy of the identity of the employer.
42. Furthermore, once the “employer’s” email server did not accept the delegate’s emails, in my view, a more concerted effort ought to have been taken to ensure that the alleged employer had an opportunity to respond.
43. I accept Coin Masters’ assertions that it has never had an employee and that it has never heard of the Complainant.

CONCLUSION

44. I allow the appeal.

ORDER

45. Pursuant to section 115(1)(a) of the *ESA*, I cancel the Corporate Determination dated January 3, 2023.

Carol L. Roberts
Member
Employment Standards Tribunal