



An appeal

- by -

Onison (Canada) Corporation  
("Onison")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

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

**TRIBUNAL MEMBER:** Carol L. Roberts

**FILE No.:** 2015A/162

**DATE OF DECISION:** January 13, 2016

## DECISION

### SUBMISSIONS

Sophia Nourozi

on behalf of Onison (Canada) Corporation

### OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), Onison (Canada) Corporation (“Onison”) has filed an appeal of a Determination issued by the Director of Employment Standards (the “Director”) on October 22, 2015.
2. On December 29, 2014, Lorenzo Aguilar (“Mr. Aguilar”) filed a complaint with the Director of Employment Standards alleging that Onison contravened the *Act* in failing to pay him regular wages.
3. Following a hearing, a delegate of the Director concluded that Onison had contravened sections 17 and 18 of the *Act* in failing to pay Mr. Aguilar wages. The delegate determined that Mr. Aguilar was entitled to wages, including overtime wages, statutory and vacation pay, and interest in the amount of \$6,079.39. The delegate also imposed two administrative penalties in the total amount of \$1,000 for Onison’s contraventions of the *Act*, for a total of \$7,079.39.
4. Onison contends that the Director failed to observe the principles of natural justice in making the Determination.
5. Section 114 of the *Act* and Rule 22 of the Tribunal’s *Rules of Practice and Procedure* provides that the Tribunal may dismiss all or part of an appeal without seeking submissions from the other parties or the Director if it decides that the appeal does not meet certain criteria.
6. These reasons are based on Onison’s written submissions, the section 112(5) “record” that was before the delegate at the time the decision was made and the Reasons for the Determination.

### ISSUE

7. Whether or not the Director failed to observe the principles of natural justice in making the Determination.

### FACTS AND ARGUMENT

8. A delegate of the Director held a hearing into Mr. Aguilar’s complaint on June 1, 2015.
9. Mr. Aguilar was studying English at ILSC Education Group (“ILSC”), a private institution, in May 2014. ILSC offers a program whereby students study English for three months and work for three months. ILSC helps the students apply for necessary work permits.
10. On May 29, 2014, responding to a Craigslist advertisement, Mr. Aguilar applied to work as a mechanical engineer for Onison, a software development company. On June 6, 2014, Sophia Nourozi (“Ms. Nourozi”) and Hans Tschudi (“Mr. Tschudi”), Onison’s directors, offered Mr. Aguilar a “4-6 month internship” commencing June 16, 2014. The parties entered into a written “internship agreement” which provided that Mr. Aguilar would work as an “Intern Software Developer” from June 16, 2014, until September 16, 2014.

11. During his employment with Onison, Mr. Aguilar worked on a project designing mechanical parts under the supervision of two engineers, for which he was paid \$100 per week.
12. On August 18, 2014, Mr. Aguilar informed Ms. Nourozi and Mr. Tschudi that although he wanted to continue to work on the project, his work permit was due to expire in three months. In September, the parties worked with an immigration consultant to prepare paperwork necessary for Mr. Aguilar to obtain a further work permit.
13. On or about September 8, 2014, the parties entered into an employment agreement which provided that Mr. Aguilar was to be paid \$70,000 per year commencing November 1, 2014. On or about September 15, 2014, the parties also entered into an employment agreement in which Mr. Aguilar was to work as an Energy Research Officer on a full-time basis from November 1, 2014, until November 1, 2016 at a rate of \$35 per hour.
14. Mr. Aguilar received a work permit valid until November 1, 2016, to work as a mechanical engineer with Onison.
15. On November 17, 2014, Onison notified Mr. Aguilar that, since it had lost his engineering supervisors, it was unable to offer him employment under the terms of the original agreement. However, given that Mr. Aguilar's visa restricted Mr. Aguilar's employment to Onison, Onison indicated that it would extend his internship until it replaced the supervisors. Onison stated that it would continue to pay Mr. Aguilar \$250 per week commencing November 15, 2014.
16. On November 28, 2014, Mr. Aguilar quit his employment with Onison. Onison paid Mr. Aguilar \$360 for his final three weeks of work.
17. Mr. Aguilar's evidence was that, during his employment, he asked Onison to be paid minimum wage. He testified that he was told that interns were not paid a minimum wage but that, once his internship was completed, he would be offered a position at a better salary. Mr. Aguilar remained working at Onison because the project was interesting and because, if he remained with Onison, he could apply for a new work permit, which he did.
18. When the parties were preparing the work permit, Ms. Nourozi initially indicated Mr. Aguilar would be paid a salary of \$40,000 per year. That amount was changed following discussions with the immigration consultant, as the wages had to be increased to meet permitting requirements. Although neither party was comfortable with the wage rate indicated, their priority was to obtain a work permit for Mr. Aguilar. Ms. Nourozi said that the parties would adjust the salary to meet Onison's needs once the permit was obtained. Mr. Aguilar testified that he agreed to those conditions, and testified that he expected to be paid \$40,000 per year as indicated in the initial draft.
19. Mr. Aguilar said that, after receiving the work permit on October 20, 2014, Onison "changed everything," firing his supervisors, leaving him to work alone. His evidence was that, on October 21, 2014, Ms. Nourozi told him that if he wanted to stay, it would be as an intern and at the same wages he had been paid previously, that is, at \$100 per week. Because Mr. Aguilar had no other options, he continued working and found a second job at a restaurant. Several days later, the parties agreed on wages of \$200 per week.
20. Mr. Aguilar presented the delegate with a record of his hours of work he prepared based on a program used by Onison. Mr. Aguilar agreed that he did not initially work for Onison as an engineer, despite the job posting title, stating that he worked as an intern. He also agreed that from October 17 until October 26,

2014, he attended school full-time, but worked approximately 2 hours per day for Onison. He also agreed that he took a 30 minute lunch break on every day he worked in excess of 5 hours.

21. Onison contended that, rather than working as an intern for Onison, Mr. Aguilar participated in a practicum for ILSC. Mr. Aguilar's evidence was that he found the position with Onison himself and interrupted his studies at ILSC to take the position.
22. Onison said that, although the June 16, 2014, agreement between the parties was titled "Internship Agreement", it should read "Practicum Agreement." Onison also contended that Mr. Aguilar was training to obtain his Canadian engineering license.
23. Onison argued that Mr. Aguilar was not hired in response to the Craigslist advertisement; contending that most applicants had doctorate degrees while Mr. Aguilar had only a bachelor's degree. Onison also asserted that Mr. Aguilar's command of the English language was poor, which hindered his job performance.
24. Onison asserted that the immigration officer dictated the essential terms of Mr. Aguilar's employment agreement, including the salary, and that Onison was just asked to sign the agreement. Onison argued that it should not be punished for being charitable to Mr. Aguilar.
25. Onison also contended that the funds it was seeking to hire Mr. Aguilar's supervisors did not materialize, and that it could not afford to pay its employees or practicum students. It said that it could either terminate Mr. Aguilar's employment or continue to pay him at his previous wage rate. Onison said that Mr. Aguilar chose to work at his previous rate. Onison disputed Mr. Aguilar's hours of work, particularly the period of October 6 to October 31, 2014.
26. One of Mr. Aguilar's supervisors, Assad Abdulwahab ("Mr. Abdulwahab"), also testified. Mr. Abdulwahab said that Mr. Aguilar was hired as an intern, that the project they worked on was extremely difficult, and that he had no difficulty with the quality of Mr. Aguilar's work.
27. The delegate noted that practicums, which are part of a formal educational process, are not considered work, while internships, which provide on-the-job training, are. The delegate also noted that ILSC is a language school rather than a post-secondary institution and that Mr. Aguilar was not applying classroom-taught theory to his work at Onison. The delegate also noted Mr. Abdulwahab's evidence that Mr. Aguilar was an intern and concluded that Mr. Aguilar participated in an internship rather than a practicum.
28. The delegate rejected Onison's argument that Mr. Aguilar was in training to obtain his engineering license, noting that it had provided no evidence of the requirements of such a license or how Mr. Aguilar's work at Onison would contribute to meeting those requirements.
29. Finally, the delegate noted that Mr. Aguilar's contract with Onison provided that Mr. Aguilar would devote his normal productive time, ability and attention to the performance of his duties as an intern software developer. He noted that Mr. Aguilar was provided with an office and compiled daily reports outlining his tasks. The delegate also considered that Mr. Aguilar's work was directed by Mr. Abdulwahab for Onison's benefit, and concluded that Mr. Aguilar was an employee.
30. After reviewing the parties' records of Mr. Aguilar's hours of work, which he noted were similar in many respects, the delegate found the daily reports as being the most reliable. The delegate was unable to conclude that there was a "meeting of the minds" on Mr. Aguilar's wage rate, and determined that Mr. Aguilar was entitled to minimum wage for all hours worked.

31. Onison makes the following points in its appeal submission:
- Mr. Aguilar joined Onison for reasons other than his job qualifications, that his education and experience marked him as a student in engineering;
  - Mr. Aguilar, Onison and ILSC were all under the impression and in agreement that Mr. Aguilar would complete his practicum and fulfill his English language requirements, and that, without a practicum to complete the English program, his documentation to stay in Canada would be invalid. As a result, Onison contends that it is against natural justice that Mr. Aguilar be entitled to minimum wage;
  - Mr. Aguilar lied about asking Onison to be paid minimum wage. It contends that, had Mr. Aguilar done so, Onison “would have recognized immediately that there are some illegal circumstances which Mr. Aguilar is attempting to conceal and Onison would have terminated his practicum at once”;
  - The administrative penalties have been imposed in the absence of any finding of a violation of the law, which is contrary to natural justice; and
  - Mr. Aguilar “fraudulently used Onison and the Canadian legal system for faulty documentation of his status.”

## ANALYSIS

32. Section 112(1) of the *Act* 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.
33. The Tribunal has consistently said that the burden is on an appellant to persuade the Tribunal that there is an error in the Determination on one of the statutory grounds.
34. Although Onison alleges a failure to comply with principles of natural justice as the ground of appeal, the appeal submissions are, in essence, an assertion that the delegate’s conclusion is wrong.
35. The Tribunal recognizes that parties without legal training often do not appreciate what natural justice means. Principles of natural justice are, in essence, procedural rights that ensure that parties know the case being made against them, the opportunity to reply, and the right to have their case heard by an impartial decision maker. Natural justice does not mean that the delegate accepts one party’s notion of “fairness.”
36. I am satisfied that Onison had a fair hearing. There is no suggestion that Onison did not have full opportunity to present its case and to respond to the evidence presented by Mr. Aguilar. I find no merit to this ground of appeal.
37. I understand Onison’s argument to be that the Determination is wrong and that it was deceived in some way by Mr. Aguilar. Having reviewed the Determination, the submissions and the record, I find the appeal submissions to consist of nothing more than a repetition of the position Onison advanced, or ought to have advanced, before the delegate.

38. Although Onison has not suggested that the delegate erred in law, I would find no basis to arrive at such a conclusion on the evidence in any event. In my view, the delegate properly considered the evidence and arguments before him and concluded that Mr. Aguilar was entitled to wages. I find his conclusions to be well-founded and have no basis to interfere with them.
39. In my view, Onison's arguments are entirely without merit. The appeal is dismissed.

### **ORDER**

40. Pursuant to section 115 of the *Act*, I order the Determination dated October 22, 2015, be confirmed in the amount of \$7,079.39 together with whatever further interest that has accrued under section 88 of the *Act* since the date of issuance.

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**Carol L. Roberts**  
**Member**  
**Employment Standards Tribunal**