

An appeal

- by -

Imperial Limousine Service Ltd.

- 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

**TRIBUNAL MEMBER:** Carol Ann Hart

**FILE No.:** 2004A/188

**DATE OF DECISION:** January 20, 2005

## DECISION

### SUBMISSIONS

Djavad Hemas	on behalf of Imperial Limousine Service Ltd.
Ivy Hallam	on behalf of the Director of Employment Standards
Bennie Agee	on his own behalf

### OVERVIEW

This is an appeal by Imperial Limousine Service Ltd. ("Imperial") pursuant to section 112 of the *Employment Standards Act* (the "*Act*") of a Determination issued on 5 October 2004 by a delegate of the Director of Employment Standards (the "Director").

Bennie Agee ("Agee") complained that Imperial had contravened the *Act* by failing to pay compensation for length of service after the termination of his employment.

Following an investigation, the Director's delegate determined that Imperial had contravened the *Act*, and that Agee was entitled to compensation for length of service in the amount of \$507.00, plus 4% vacation pay in the amount of \$20.28. Administrative penalties of \$500.00 for contravention of section 63 of the *Act*, and \$500.00 for contravention of section 46 of the *Act* were also imposed.

Imperial argues that the Director failed to observe the principles of natural justice, and seeks to have the Determination cancelled.

The Tribunal has decided that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

### ISSUE

Did the Director fail to observe the principles of natural justice in making the Determination?

### FACTS

The Determination under appeal is dated 5 October 2004. The complaint originally brought by Bennie Agee ("Agee") was referred to a delegate of the Director, Ted Mitchell. On 10 May 2004, Imperial and Agee attended a mediation session, but the dispute was not resolved. A letter dated 11 May 2004 was sent by Xpress Post (certified mail) to Imperial by Mr. Mitchell with a Demand for Employer Records requiring that Imperial deliver the records specified on or before 27 May 2004. Imperial did not deliver the records in accordance with the Demand for Employer Records. On 2 June 2004 Mr. Mitchell sent a letter by Xpress Post to Imperial together with a Notice of Complaint Hearing notifying Imperial of the hearing which was scheduled for 9 July 2004. On 3 June 2004 Djavad Hemas ("Hemas") signed to accept delivery of that letter. Finally, on 25 June 2004, Mr. Mitchell sent by Xpress Post to Imperial a

letter reminding Imperial of the hearing scheduled for 9 June 2004, and outlining the documentation that had been submitted by Agee to the Director and copied to Imperial.

A hearing was conducted on 9 July 2004 by Ivy Hallam, Delegate of the Director of Employment Standards (the “Delegate”). Only Agee was present. No one attended for Imperial, there were no written submissions or evidence provided by Imperial, and no adjournment was requested.

The Delegate found that Agee had been terminated from his employment by Imperial without just cause.

## SUBMISSIONS

Hemas submitted with the Appeal Form a letter dated 27 October 2004 in which he wrote in part as follows: *“I was supposed to attend a hearing to resolve our dispute with Bennie, but unfortunately I missed the hearing”*.

Hemas contended that it was not true that the employment of Agee had been terminated. Rather, Agee had found another job with Translink, and had left Imperial without giving notice. Hemas wrote that on the Record of Employment sheet for Agee, he had mistakenly indicated that the reason for the termination of employment was “fired”. Once he had realized the mistake, he had corrected it, and submitted a corrected Record of Employment stating that Agee had quit his job. Hemas made no submission concerning the rules of natural justice.

The Delegate submitted that the Director had complied with the principles of natural justice. Imperial had been served, or was deemed to have been served with the Notice of Complaint Hearing, the Demand for Employer Records and the letter reminding Imperial of the hearing. No one had participated in the hearing for Imperial, and no response to Agee’s complaint had been received.

Agee maintained that his employment was terminated by Imperial. He wrote that he had been hired as a casual on-call employee for Translink on 17 September 2003, and had continued to work for Imperial after that time until he was terminated. Agee did not make any submission concerning the principles of natural justice.

## ANALYSIS

Section 112(1) of the *Act* sets out the grounds upon which an appeal may be made to the Tribunal from a Determination of the Director. That section provides as follows:

*112(1) Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of 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 made.*

The burden rests with the party alleging an error of natural justice to demonstrate that error. An appeal to the Tribunal is not a re-investigation of the complaint. It is a proceeding to decide whether there is any error in the Determination.

Principles of natural justice are, in essence, procedural rights ensuring that parties have an opportunity to know the case against them; the right to present their evidence; and the right to be heard by an independent decision maker. It has been previously held by the Tribunal that the Director and her delegates are acting in a quasi-judicial capacity when they conduct investigations into complaints filed under the *Act*, and their functions must therefore be performed in an unbiased and neutral fashion. Procedural fairness must be accorded to the parties, and they must be given the opportunity to respond to the evidence and arguments presented by an adverse party. (see *BWI Business World Incorporated BC EST #D050/96*).

Parties alleging a denial of natural justice must provide some evidence in support of that allegation. (see *Dusty Investments Inc. dba Honda North BC EST #D043/99*).

There is no evidence of a denial of natural justice on the Appeal Form, or in the letter dated 27 October 2004 attached to the appeal. Clearly, Imperial takes issue with the findings which were made by the Delegate in the Determination. However, there was no evidence adduced, and no submissions were made to support the assertion that the Delegate had failed to observe the principles of natural justice.

Notice of a hearing is fundamental to natural justice. Hemas does not dispute that Imperial was given notice of the hearing. Once a party is given a notice of hearing, if the party is unable to attend on the date set, it is up to that party to apply for an adjournment of the hearing. In this case, it appears Hemas did not apply for an adjournment of the hearing before the Delegate, and he has not given any details concerning his reasons for non-attendance, or reasons why Imperial did not send a representative to the hearing.

The Delegate conducted an oral hearing and, based on what is written in the Determination, the Delegate reviewed the material before her and arrived at reasoned conclusions. Imperial's appeal is solely based on its disagreement with the Delegate's findings. The appeal does not disclose any evidence to support a finding that Imperial was denied natural justice. I therefore deny the appeal.

## **ORDER**

I Order pursuant to Section 115 of the *Act*, that the Determination dated 5 October 2004 is confirmed.

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**Carol Ann Hart**  
**Member**  
**Employment Standards Tribunal**