

An appeal

- by -

Prakash B. Murthy Srinivasa
(“Mr. Srinivasa”)

- 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: Shafik Bhalloo

FILE No.: 2009A/162

DATE OF DECISION: March 10, 2010

DECISION

SUBMISSIONS

Prakash B. Murthy Srinivasa	on his own behalf
Harvey S. Delaney	Counsel for Golden Boy Foods GP (2007) Inc.
Jim Dunne	on behalf of the Director of Employment Standards

OVERVIEW

1. This is an appeal pursuant to section 112 of the *Employment Standards Act* (the “*Act*”) brought by Prakash B. Murthy Srinivasa (“Mr. Srinivasa”) of a Determination that was issued on November 9, 2009, by a delegate of the Director of Employment Standards (the “Director”). The Determination dismissed Mr. Srinivasa’s claim that his former employer, Golden Boy Foods GP (2007) Inc. (“GBF”) contravened Part 2, Section 8 of the *Act* by misrepresenting to him the type of work he would be performing when it hired him in the position entitled Business Analyst.
2. The Determination was issued following an investigation in which both Mr. Srinivasa and GBF’s representatives participated by, *inter alia*, presenting written submissions setting out their respective positions.
3. In the appeal, Mr. Srinivasa states that the Director erred in law and failed to observe the principles of natural justice in making the Determination. Mr. Srinivasa is asking the Tribunal to cancel the Determination.
4. Pursuant to section 36 of the *Administrative Tribunals Act* (the “*ATA*”), which is incorporated in the *Act* (pursuant to section 103) and Rule 17 of the Tribunal’s *Rules of Practice and Procedure*, the Tribunal may hold any combination of written, electronic and oral hearings. In this case, neither party has requested an oral hearing of the appeal and in my view, the appeal can be adjudicated on the basis of the section 112(5) “record”, the written submissions of the parties and the reasons for the Determination.

ISSUES

5. The issues in this appeal are whether the Director failed to observe the principles of natural justice in making the Determination or erred in law in concluding that GBF did not contravene section 8 of the *Act*.

FACTS

6. GBF operates a manufacturing and food processing business and employed Mr. Srinivasa as Business Analyst from November 17, 2008 to February 24, 2009 at the rate of pay of \$55,000.00 per year.
7. On August 17, 2009, almost six months after the termination of his employment with GBF, Mr. Srinivasa filed a complaint under section 74 of the *Act* alleging that GBF contravened section 8 of the *Act* by misrepresenting to him the type of work he would be performing when they hired him as Business Analyst (the “Complaint”).
8. The sole issue for investigation by the Delegate of the Director arising from the Complaint was whether or not GBF misrepresented the type of work Mr. Srinivasa would be performing when they hired him.

9. Included in the section 112(5) record are written submissions of both Mr. Srinivasa and GBF which were submitted to the Delegate during the latter's investigation of the Complaint.
10. In the case of Mr. Srinivasa's written submissions, I note that his submissions dealt with numerous matters not relevant to the issue in his Complaint and the Delegate therefore opted not to mention those irrelevant submissions in the Determination but focussed only on those that pertained to the issue of the representations GBF made to Mr. Srinivasa at the time of his hiring. In this regard, I point out that the Delegate noted Mr. Srinivasa's claim that while GBF hired him as Business Analyst, in reality he only performed the tasks associated with that position part of the time and for the balance of his time, he was involved in tasks unrelated to that position, namely, information technology related tasks such as creating user access accounts, performing server maintenance, and attending to server access issues.
11. The Delegate also notes in the Determination that Mr. Srinivasa listed 18 witnesses who would be able to support his position that he only worked as Business Analyst part of the time and performed other unrelated tasks for the balance of his time and on a regular basis.
12. The Delegate further notes that Mr. Srinivasa submitted the federal government's occupation code and description for the positions of Information Assistant Analyst and Consultants and Computer Network Technicians with a view to showing that in his position as Business Analyst, he should have been performing tasks under the first position and not the second, which he was doing with GBF.
13. With respect to GBF's position, as with Mr. Srinivasa's submissions, the Delegate only focused on the relevant submissions, which he succinctly summarizes in the Determination. More specifically, the Delegate notes that while GBF acknowledged that Mr. Srinivasa performed the functions he claimed in his Complaint, GBF asserted that these were also functions that were regularly performed by GBF's previous business analysts.
14. The Delegate also notes in the Determination that GBF stated that when Mr. Srinivasa was hired in the Business Analyst position, there was no exact job description for the said position provided to him but he was told at the time that GBF only had two employees in the IT department and that he would be "required to pitch in all areas that the Company could use on a daily basis".
15. The Delegate also notes that GBF in its submissions observed that Mr. Srinivasa had not presented any documentation or facts as to what was represented to him with respect to his duties and responsibilities in the Business Analyst position at the time of his hire and thus, GBF argued that it has "no case to meet".
16. The Delegate also notes in the Determination that GBF argued that Mr. Srinivasa continued in his position throughout the three-month probationary period of his employment without complaining about the work he was assigned. It was only after his employment was terminated, according to GBF, that Mr. Srinivasa claimed that he had been misrepresented the position by GBF. Therefore, argues GBF, if Mr. Srinivasa had a valid claim of misrepresentation, he would have raised the matter much earlier.
17. I also note in the case of GBF's submissions that it argued that Mr. Srinivasa's Complaint was statute barred. More specifically, GBF asserted that Mr. Srinivasa commenced his employment on November 17, 2008 and was aware of his allegations forming the subject of his Complaint during the probationary period of his employment but did not file his Complaint until August 18, 2009. Therefore, argued GBF, Mr. Srinivasa was three months past the deadline to file his Complaint and thus statute barred.
18. The Delegate, in concluding in the Determination that no misrepresentation was made by GBF to Mr. Srinivasa in relation to the type of work the latter would be performing in the position of Business Analyst, relied on the

finding that Mr. Srinivasa failed to provide any documentation or argument in support of his contention that he performed tasks for GBF different than what was conveyed to him prior to his hiring. The Delegate also reasoned that while there is no disagreement between the parties as to the nature of the tasks Mr. Srinivasa performed for GBF, there appears to be a disagreement on whether the job title “business analyst” could encompass general IT tasks as well. According to the Delegate, Mr. Srinivasa appears to be of the view that the title of his position, “business analyst”, should have precluded GBF from asking him to perform IT tasks. However, notes the Delegate, Mr. Srinivasa did not argue actual misrepresentation on the part of GBF in support of his Complaint. Furthermore, states the Delegate, even if the employment offered to Mr. Srinivasa were by the title “business analyst” without any description of the duties and responsibilities, there still would be no case of misrepresentation. The Delegate goes on to conclude:

(t)he complainant states that the job involved some ‘business analyst’ work, and some general information technology work. As the job of business analyst often relates to information technology on some level, it would be nonsensical to dictate a percentage number or a specific form to that involvement, as the level of this involvement no doubt is approached differently by every company, based on their particular requirements. As the employer states in their submissions, the job of business analyst in their particular company involves a fair amount of computer support in addition to other more typical business analyst tasks. Without some representation by the employer to the employee to the contrary, I see no reason why the job described by the Complainant could not support the title ‘business analyst’.

SUBMISSIONS OF MR. SRINIVASA

19. Having carefully read all of the submissions of Mr. Srinivasa in his appeal, I note that a significant number of pages are devoted to what he describes as the “real context behind (his) unfair termination”. I do not propose to set out those submissions here, as they do not relate to the dispute in the Complaint, namely, whether or not GBF misrepresented to Mr. Srinivasa the type of work he would be performing in the Business Analyst position at the time of his hiring.
20. I have also reviewed the balance of Mr. Srinivasa’s original appeal submissions in numbered paragraphs starting at paragraph 2 on page 3 and continuing to paragraph 12, which ends on page 8, and find that Mr. Srinivasa is unequivocally challenging the conclusions and findings of facts made by the Delegate in the Determination. He continues this in the final reply submissions he makes in his appeal as well. While I do not propose to set out his challenges of the Delegate’s findings of facts, I note that he makes those challenges by posing questions, which are sometimes rhetorical sounding but clearly meant to question the validity of specific findings and conclusions reached by the Delegate in the Determination. I will discuss the propriety or more accurately the impropriety of challenging the Delegate’s findings of fact in an appeal under the heading Analysis below.
21. As concerns those submissions that are relevant to the issues in this appeal, I note first that Mr. Srinivasa states the following in response to GBF’s contention that its IT department had only two employees and Mr. Srinivasa, therefore, was informed at the time of his hiring that he would be required to pitch in:

Is the law fully satisfied with this claim of verbal, informal understanding taken as true and sufficient factual evidence with no claim verification? On the contrary, I can confidently state that I was interviewed and hired only for the purpose of Business Analyst to design and implement Business Intelligence solutions and I will be more than happy to provide more details under oath.
22. Mr. Srinivasa does not elaborate what “more details” may comprise of or why he did not provide these details to the Delegate during the investigation of the Complaint.

23. I also note Mr. Srinivasa's following response in relation to the Delegate's consideration or mention in the Determination of GBF's questioning of Mr. Srinivasa's decision not to complain about the work he was assigned during his employment but only after its termination:

(5) The employer argues that the employee stayed in his position until his last day of employment and during his employment period, he did not complaint (sic) about the work that was assigned to him. I was under probation for 3 months and my termination occurred just a week after the probation period. In the real world, would you expect an employee in a non-union environment to risk his job by formally complaining about his job conditions including mis-representation?

Was this argument verified by ESB as a true fact?

Does this argument by the employer also indirectly not imply it actually was a case of mis-representation?

24. In response to GBF's contention during the investigation of the Complaint that Mr. Srinivasa failed to put forth any documentation pertaining to what was represented to him when he was hired by GBF and therefore there is "no case" to be met on the part of GBF, I note that Mr. Srinivasa's response is that he is prepared to "state the details of what (he) was told and hired for under oath and using a lie detector test". However, he does not explain what he may have been told by GBF at the time of his hiring (if anything) nor why he would not have disclosed this information to the delegate during the investigation of the Complaint and at least before the Determination was made.

25. I further note in Mr. Srinivasa's submissions that he challenges GBF's stated reason for the termination of his employment, namely, shortage of work in the IT department by pointing to GBF's subsequent hiring of an employee in its IT department. Again, I do not reiterate in full Mr. Srinivasa's submissions here except to say that they do not relate to the matter of what was conveyed to him about his position of business analyst at the time he was hired by GBF.

26. As concerns the natural justice ground of appeal I observed in the submissions of Mr. Srinavasa that he appears to be alleging bias or lack of impartiality on the part of the Delegate. He states in the preamble to his written submissions on appeal:

I request the appeals board to overturn the decision and advise on the steps to have the Government agencies do a thorough but most importantly an impartial and unbiased investigation, procure documentary evidence and enforce the law correctly and appropriately.

27. Subsequently, later in his submissions, he repeats his allegation of bias when he states:

(d) ESB accepts employer's claim of informal understanding as documentary evidence and rejects mine. Is this not proof of ESB's clear violation and also contradictory stands (sic) and a very clear bias?

28. Further submissions of Mr. Srinivasa, arguably going to the natural justice ground appeal, include allegations by him of hostility and mistreatment by the Delegate. More specifically, Mr. Srinivasa alleges that the Delegate had a "hostile approach and somewhat coercive behaviour" towards him. In support of these allegations he points to three examples of the Delegate's conduct. First, when the Delegate volunteered to drive to Mr. Srinivasa's home to deliver him a partial settlement offer from GBF comprising of termination pay. The second instance Mr. Srinavasa points to is where the Delegate advised him of an offer from GBF to settle the matter. The final instance is where the Delegate who was conducting mediation between the parties communicated with him by email and not in person.

29. Finally, on the error of law ground of appeal, I am unable to identify any submissions of Mr. Srinivasa that would qualify under this ground. It appears to me that he may be raising this ground of appeal based on his challenge of the findings of fact by the Delegate and particularly the finding of the Delegate that GBF made no misrepresentations to Mr. Srinivasa at the time of his hiring and therefore was not in breach of S. 8 of the *Act*.

SUBMISSIONS OF THE DIRECTOR

30. The Director submits that Mr. Srinivasa's appeal of the Determination mostly deals with issues pertaining to the termination of his employment and the events surrounding that termination which is not what was in dispute in the Complaint that the Employment Standards Branch (the "branch") investigated.
31. The Director also notes that GBF, having terminated Mr. Srinivasa's employment, sought to pay him two weeks compensation for length of service, which Mr. Srinivasa refused to accept by returning the payment back to GBF. GBF subsequently sent another cheque for an additional week's wages in fulfilment of its obligation to Mr. Srinivasa for termination pay under section 63 of the *Act*.
32. With respect to Mr. Srinivasa's natural justice ground of appeal, the Director, as I have stated above, recognizes that Mr. Srinivasa is levelling allegations of bias against the Delegate and the Branch in the conduct of the investigation of the Complaint. According to the Director, there is no basis or support whatsoever for Mr. Srinivasa's allegation of bias.
33. As for Mr. Srinivasa's allegation that the Delegate had a "hostile approach and somewhat coercive behaviour" towards him, the Director submits that the evidence adduced by Mr. Srinivasa in support of this allegation (which I delineated above in context of Mr. Srinivasa's submissions) does not support it. Instead, the evidence supports a case for a very helpful delegate perhaps going a step beyond the call of his duty.
34. With respect to the error of law ground of appeal, the Delegate notes that Mr. Srinivasa appears to be disputing or disagreeing with the Delegate's findings of facts and posits questions in his written submissions challenging the same. However, the questions Mr. Srinivasa poses are not supported with any details, arguments or reasons to show an error of law, according to the Director. Moreover, the Director also notes that the questions Mr. Srinivasa raises in his appeal submissions "appear to be fully dealt with in the Determination itself" and no error of law is demonstrated by Mr. Srinivasa.
35. According to the Director, Mr. Srinivasa is merely seeking to re-argue his case on its merits with a view to obtaining a different conclusion.
36. Finally, the Director submits that Mr. Srinivasa fully participated in the Branch's investigation of the Complaint and was afforded a sufficient opportunity to submit his evidence, make his arguments and test the arguments of GBF. The Director contends that the Delegate considered all relevant evidence presented to him by both parties in making the Determination and therefore, there is neither a basis for the natural justice nor the error of law grounds of appeal and therefore, the appeal should be dismissed.

SUBMISSIONS OF GBF

37. Counsel for GBF makes lengthy submissions in response to Mr. Srinivasa's appeal. I have reviewed those submissions carefully and with respect to those parts of the submissions that largely repeat the submissions of GBF made during the investigation of the Complaint, I do not find it necessary to set them out here. I also do not propose to set out submissions of GBF in response to what I consider to be Mr. Srinivasa's challenge or dispute with the Delegate's findings of fact based on my decision herein on those submissions. However, I do

note that GBF submits with respect to the latter submissions that while Mr. Srinivasa makes “observations” and asks “questions”, he fails to set out or support with any argument his grounds for appeal.

38. GBF also submits that the Delegate properly analyzed the evidence and arguments regarding the sole issue in dispute in the Complaint - whether or not GBF made any misrepresentations to Mr. Srinivasa with respect to the position of Business Analyst at the time of his hiring - and properly arrived at the conclusion he did.
39. With respect to the error of law ground of appeal, GBF refers to the decision of the British Columbia Court of Appeal in *Genex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)* [1998] BCJ (C.A.) and submits that none of the elements of error of law defined by the Court in that decision are met in this case and therefore there is no basis for the error of law ground of appeal here.
40. GBF also contends that there is no evidence of breach of natural justice as the Delegate afforded Mr. Srinivasa a full opportunity to provide evidence and also gathered evidence from both parties during the investigation of the Complaint.
41. GBF also contends that Mr. Srinivasa has not shown any evidence that the Delegate failed to consider relevant evidence. According to GBF, the issues raised by Mr. Srinivasa in the Complaint were considered and summarized in the Determination and this is merely the case of a complainant disagreeing with the conclusion of the delegate.
42. GBF also notes that in its original submissions made to the Delegate during the investigation of the Complaint, it argued that Mr. Srinivasa’s Complaint was out of time but the Delegate made no finding nor any reference to the timeliness issue as the director dismissed the Complaint on the merits of the substantive issue holding that GBF did not misrepresent the position of Business Analyst to Mr. Srinivasa. However, in this appeal, GBF is resuscitating the issue of the timeliness or lack thereof of Mr. Srinivasa’s Complaint and repeating its earlier submission that Mr. Srinivasa’s Complaint was filed out of time. GBF is specifically seeking this Tribunal to dismiss the original Complaint as being out of time.

ANALYSIS

43. I have reviewed the Determination including the section 112(5) “record” and the submissions of the parties and I propose to deal with each ground of appeal of Mr. Srinivasa under separate subheadings below.

(i) Natural Justice

44. In *Re: 607730 B.C. Ltd.* (c.o.b. English Inn & Resort) [2005] B.C. E.S.T.D. no. 55 (Q.M.) the Tribunal stated that principles of natural justice are, in essence, procedural rights ensuring the parties have an opportunity to learn the case against them, the right to present their evidence and the right to be heard by an independent decision-maker.
45. In *Imperial Limousine Service Ltd.*, BC EST # D014/05, the Tribunal expounded on the principles of natural justice as follows:

Principles of natural justice are, in essence, procedural rights ensuring that parties have an opportunity to know the case against them; their 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 respond to

the evidence and arguments presented by an adverse party: see *B.W.I. Business World Incorporated*, BC EST # D050/96.

46. In this case, I find that Mr. Srinivasa has not provided any evidence in support of his allegation that the Director breached the principles of natural justice in making the Determination or made an impartial or biased decision. My review of the Determination, including the section 112(5) record, leads me to conclude that Mr. Srinivasa was aware of the submissions of GBF in response to his Complaint and was afforded an opportunity to respond to those submissions.
47. As for Mr. Srinivasa's suggestion of bias and partiality on the part of the Delegate in favour of GBF during the investigation of the Complaint, I note that the Tribunal has time and again indicated that the onus of demonstrating bias lies with the person who is alleging its existence. As indicated by the Tribunal in *Re: Pro Gas & Heating*, BC EST # D037/04, "mere suspicions, or impressions, are not enough".
48. In this case, I find Mr. Srinivasa's allegation of bias against the Delegate are based on his contention that the Delegate accepted the employer's submissions, without documentary evidence, and rejected his submissions, according to Mr. Srinivasa is an indication of "very clear bias". I find that this assertion of Mr. Srinivasa is without any foundation. Furthermore, I do not find any evidence in the Determination of bias on the part of the Delegate and conclude that Mr. Srinivasa has failed to discharge the onus on him to demonstrate bias.
49. With respect to Mr. Srinivasa's allegations that the Delegate had a "hostile approach" towards him and he experienced "coercive behaviour" or treatment from the Delegate, I note that these allegations relate to the natural justice ground of appeal. Having said this, I note that the evidence Mr. Srinivasa submits in support of these allegations comprise of three instances. First, Mr. Srinivasa states that the Delegate repeatedly asked him if he could deliver to his (Mr. Srinivasa's) home the partial settlement GBF offered Mr. Srinivasa. The second instance Mr. Srinivasa complains of is that the Delegate informed him that GBF was not willing to recall him back to work but that the Delegate could get Mr. Srinivasa one additional month of his salary as part of a settlement. Lastly, Mr. Srinivasa states that the Delegate sent him email communications despite the fact that he was in "constant touch" with the Delegate. I do not find these instances at all supporting Mr. Srinivasa's contention that the Delegate had a "hostile approach" towards him or afforded him "coercive" treatment. Accordingly, I do not find any evidence of bias or impartiality on the part of the Delegate on this front either and dismiss the natural justice ground of appeal as baseless and without any merit.

(ii) Error of Law

50. While I am not quite clear on the written submissions of Mr. Srinivasa, the basis for his allegation that the Director erred in law in making the Determination, it appears from the tenor of his submissions that Mr. Srinivasa is challenging the Delegate's finding that GBF did not misrepresent the type of work Mr. Srinivasa would be performing when they hired him as well as the Delegate's resulting conclusion that GBF did not contravene section 8 of the *Act*. In my view, the Delegate's finding that GBF did not contravene section 8 of the *Act* is a finding of fact and the *Act* does not provide for an appeal based on errors of fact. The *Act* is quite specific in section 112(1) and provides that a person may only 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; or
 - (c) evidence has become available that was not available at the time the determination was being made.
51. While I have not reiterated Mr. Srinivasa's submissions in my decision, it is clear to me from having reviewed them very carefully that Mr. Srinivasa is largely questioning findings of facts made by the Delegate in the

Determination. The Tribunal has no authority to consider appeals based on alleged errors in findings of fact except where such findings raise an error of law. In *Britco Structures Ltd.*, BC EST # D260/03, the Tribunal adopted the following definition of “error of law” in *Gemex Development Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)*, [1998] B.C.J. No. 2275:

1. A misinterpretation or misapplication of a section of the *Act*;
2. A misapplication of an applicable principle of general law;
3. Acting without any evidence;
4. Acting on a view of the facts which could not reasonably be entertained; and
5. Adopting a method of assessment which is wrong in principle.

52. In my review of the record and the Determination, I do not find any misinterpretation or misapplication of the *Act* or any applicable principles of general law on the part of the Delegate. I find that the Delegate’s determination that no misrepresentation was made by GBF with respect to the type of work that Mr. Srinivasa would be performing when they hired him was both rationally supported in the law and the evidence adduced by both parties. More specifically, it appears clear to me that the Delegate, in the face of Mr. Srinivasa’s failure to present in his written submissions during the investigation of the Complaint any evidence of what representations or misrepresentations were made to him by GBF, preferred the evidence of GBF that Mr. Srinivasa was told that he would be “required to pitch in all areas that the Company could use on a daily basis”. In my view, it was open to the Delegate to make that deduction and it is not for this Tribunal to interfere with it.

53. I also note that in the appeal submissions of Mr. Srinivasa he states that he is “more than happy to provide more details under oath” of what he was told at the time of his hiring by GBF and repeats later in his submissions the same when he states “I will state the details of what I was told and hired for under oath and using a lie detector test and challenge the employer to do the same”. However, the time for him to have done so was during the investigation of the Complaint. I fail to understand why he would hold back, during the investigation of his Complaint, any information that may be helpful to him to establish his Complaint. An appeal is not a forum for adducing for the first time relevant evidence that was available to the complainant at the time of the investigation of his complaint. Mr. Srinivasa’s evidence of what he was told during his hiring by GBF (whatever that may be) would likely fail the test for adducing “new evidence” on appeal as it would not constitute “new evidence” if it was available to him during the investigation of his Complaint and could have been submitted to the Delegate then or at least before the Determination was made.

54. In the circumstances, I find there is no basis for the error of law ground of appeal (nor the “new evidence” ground of appeal although that is not raised in this appeal by Mr. Srinivasa).

(iii) Timeliness of the Complaint

55. Subsection 74(4) of the *Act* provides:

- (4) A complaint that a person has contravened a requirement of Section 8, 10 or 11 must be delivered under subsection (2) within 6 months after the date of the contravention.

56. In the submissions of GBF during the investigation of the Complaint, GBF argued that Mr. Srinivasa, during his three-month probationary period of employment with GBF commencing November 17, 2008, was aware of the facts he claims constituted a breach of section 8 of the *Act*. However, he did not file the Complaint until August 18, 2009, almost six months after the termination of his employment by GBF. According to GBF, Mr. Srinivasa’s claim should be statute barred as it was filed three months after the expiry date for filing claims related

to section 8 of the *Act* and GBF is asking this Tribunal to dismiss the “original application” or the Complainant as being out of time.

57. As far as his knowledge of the facts he claims constituted breach of section 8 of the *Act*, I note that Mr. Srinivasa stated in his written submissions to the Delegate during the investigation of the Complaint:

I was in no position to officially complain that the duties I was performing are not that of my role or position and I could not possibly do the same (as) I was under probation and take the risk for possible consequences (sic).

58. Further, in his final appeal submissions, he states with respect to this very subject, namely, the matter of raising with GBF the matter of his performing IT related tasks in his Business Analyst position:

I have adequately explained this more than once *and had in fact raised this issue both during my employment and immediately after termination.* [emphasis added]

59. While I find some inconsistency in the submissions of Mr. Srinivasa made during the investigation of his Complaint and later in the appeal of the Determination, the purpose of my referring to these submissions is only to point out that Mr. Srinivasa was aware, during his employment, of the facts he relied upon in advancing his Complaint under section 8 of the *Act* against GBF.

60. Having said this, I note that in the Determination, the Delegate states “(t)he complaint was filed on August 17, 2009, within the time allowed under the *Act*” but does not provide his reasons for arriving at this conclusion. I also note that GBF, understandably, did not independently appeal this finding in light of the disposition of the Complaint in the Determination. While I am not persuaded whether the issue of the timeliness of Mr. Srinivasa’s appeal is properly raised now in Mr. Srinivasa’s appeal, I need not deal with it in light of my decision to dismiss the appeal on the basis that Mr. Srinivasa failed to discharge his onus to show that the Director erred in law or breached the principles of natural justice in making the Determination.

ORDER

61. Pursuant to Section 115 of the *Act*, I order that the Determination dated November 9, 2009, be confirmed as issued.

Shafik Bhalloo
Member
Employment Standards Tribunal