

An appeal

- by -

Kuljinder Pal Singh Sandhu  
(“Mr. Sandhu”)

- 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:** Kenneth Wm. Thornicroft

**FILE No.:** 2016A/10

**DATE OF DECISION:** March 8, 2016

## DECISION

### SUBMISSIONS

Kuljinder Pal Singh Sandhu

on his own behalf

### INTRODUCTION

1. On January 11, 2015, the appellant, Kuljinder Pal Singh Sandhu (“Mr. Sandhu”) filed an unpaid wage complaint, under section 74 of the *Employment Standards Act* (the “*Act*”), against First Gen Holdings Inc. (the “Employer”), a firm that operates a “Pita Pit” sandwich franchise in Surrey. Mr. Sandhu claimed that he was owed over \$16,000 in wages and that his employer was engaged in “human trafficking”. Mr. Sandhu maintained he had never been paid any wages since, for each pay period, he was required to repay the net amount of his earned wages, as reflected on his paycheque, to his employer by way of a cash payment.
2. Mr. Sandhu’s complaint was the subject of an oral hearing before a delegate of the Director of Employment Standards (the “delegate”) on May 12, 2015. The delegate issued a Determination and written “Reasons for the Determination” approximately seven months later, on December 10, 2015. There is no explanation in the delegate’s reasons regarding why she took so long to issue her reasons. I do not consider the delay involved in this case to be in keeping with subsection 2(d) of the *Act* which states that one of the purposes of the *Act* is “to provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act”.
3. In any event, the delegate did not find Mr. Sandhu’s story about having repaid all of his earned net wages by way of cash payments to his Employer to be credible, and she dismissed the complaint.
4. Mr. Sandhu filed an appeal with the Tribunal on January 18, 2016, on the sole ground that the delegate failed to observe the principles of natural justice in making the Determination (see subsection 112(1)(b) of the *Act*). However, as I explain in greater detail, below, the allegations made in support of the appeal are more appropriately addressed in terms of the “error of law” statutory ground of appeal (subsection 112(1)(a) of the *Act*) and, in addition, Mr. Sandhu has submitted some documents that, so far as I can determine, were not part of the record before the delegate and, as such, Mr. Sandhu’s appeal also potentially invokes the “new evidence” ground of appeal (subsection 112(1)(c) of the *Act*).
5. At this juncture, I am considering whether this appeal should be summarily dismissed as having no reasonable prospect of succeeding (see subsection 114(1)(f) of the *Act*). If the appeal is dismissed on this latter basis, the Determination will be confirmed. If the appeal is not summarily dismissed, the respondent parties will be given an opportunity to provide submissions and Mr. Sandhu will be given a final right of reply following which I will issue written reasons for decision.
6. In considering this matter, I have reviewed Mr. Sandhu’s appeal submissions, the Determination, the delegate’s accompanying reasons and the subsection 112(5) record that was before the delegate when she issued the Determination.

### FACTUAL BACKGROUND

7. As recounted in the delegate’s reasons, Mr. Sandhu worked for the Employer under the auspices of the federal government’s Temporary Foreign Worker Program (“TFWP”) and his employment was facilitated

through a firm known as “Regency Immigration”. Mr. Sandhu commenced his employment, at a \$12 hourly wage rate, in early February 2014 and worked for approximately 8 months when his employment ended. In his complaint form, Mr. Sandhu indicated he quit his employment; the Employer issued a Record of Employment indicating that Mr. Sandhu was dismissed.

8. Mr. Sandhu alleged that the Employer, some of the Employer’s other employees, and Regency Immigration were all part of a larger conspiracy whereby he was cheated out of all his wages and that he essentially provided his labour for no compensation whatsoever. Mr. Sandhu maintained that while he regularly received a paycheque, he was “required to repay his [net] wages in full” (delegate’s reasons, page 4) by way of a cash payment before he was physically given his cheque. Mr. Sandhu maintained he went along with this scheme to avoid being returned to India and because he felt threatened by the Employer’s principals.
9. The Employer wholly rejected Mr. Sandhu’s claims and maintained that he was motivated to harm the Employer because he was upset that he was not permitted to remain in Canada as a permanent resident following modifications to the TFWP and the Employer’s changed position that it would no longer support Mr. Sandhu’s request to remain in Canada. The Employer also presented evidence from four of its employees to the effect that Mr. Sandhu was very unhappy with his situation and planned to file a complaint in order to “ruin” the Employer’s business.
10. Mr. Sandhu claimed he worked until mid-September 2014 whereas the Employer maintained his employment ended in mid-August. The delegate rejected Mr. Sandhu’s position, finding that there was absolutely no evidence, other than Mr. Sandhu’s assertion, to support it. The Employer’s evidence, on the other hand, was corroborated by various documentary evidence.
11. With respect to the central point in dispute – namely, Mr. Sandhu’s story that he was forced to repay his “net” pay each pay period to the Employer by way of a cash payment – the delegate noted that the documents before her clearly showed Mr. Sandhu received and deposited all of his paycheques and that the Employer’s records showed Mr. Sandhu to have been paid in full. The delegate found that Mr. Sandhu’s evidence was unreliable in several respects and that one of his witnesses gave “vague” and “unsubstantiated” testimony while his other witness “evaded” or otherwise failed to answer direct questions and that, overall, this latter person’s evidence was “unreliable” and was thus given “little weight” (page 13 of the Determination).
12. Although the delegate did not make an affirmative finding that Mr. Sandhu’s complaint was entirely retaliatory in nature – and this would have justified dismissing the complaint under subsection 76(3)(c) of the *Act* – the delegate did conclude that Mr. Sandhu wholly failed to meet his evidentiary burden of proving his allegations (page 14 of the Determination):

The burden rests with the Complainant to prove wages are owed and based on the balance of probabilities I am not convinced he has met the burden. The information provided is vague and unsubstantiated. There is no documentary evidence to support Mr. Sandhu’s testimony and his witnesses were unable to provide clear corroborating evidence.

Based on the above reasons, I find [the Employer] did not contravene section 17 of the Act and regular wages are not owed. Accordingly, I find no further action will be taken with respect to the complaint.

## **FINDINGS AND ANALYSIS**

13. As noted at the outset of these reasons, Mr. Sandhu’s appeal is based on the assertion that the delegate failed to observe the principles of natural justice. However, there is nothing in Mr. Sandhu’s submissions that

presumptively raise a “natural justice” issue (such as, for example, a direct allegation of bias on the delegate’s part or a refusal to hear the evidence of a material witness). Mr. Sandhu’s appeal, for the most part, is predicated on proving that the delegate made various errors in finding certain facts. For example, he maintains that he worked until mid-September 2014. However, the delegate was very much aware that this was Mr. Sandhu’s position but, as discussed above, she rejected it as having not been proven.

14. A finding of fact can amount to an error of law but only where the factual finding is wholly unreasonable in the sense that there was no evidence to credibly support it. However, simply because a factual finding was made in the face of conflicting evidence, it does not inevitably follow that the impugned finding constitutes an error of law.
15. Mr. Sandhu takes issue with several of the delegate’s findings and, in general, I would observe that quite apart from the fact that these findings were made in the face of disputed facts, none of these findings is particularly relevant to the key question before the delegate, namely: Did Mr. Sandhu prove his allegation about having to repay his net wages each pay period? On that critical matter, I am unable to conclude that the delegate’s finding was unreasonable. To the contrary, in my view, based on the evidence before her, it would have been unreasonable for the delegate to have found in Mr. Sandhu’s favour.
16. Mr. Sandhu submitted some documents that do not appear in the record and thus, I must assume, were not before the delegate when she issued the Determination. Mr. Sandhu also submitted a 1-page written statement from a person identified as “Jashandeep Singh Aulakh” in which he states that he observed the “exchange of cheque by cash” transfer on “two or three” occasions and a 1-paragraph statement from “Jyoti Sidhu” in which this person states “Kuljinder used to pay in cash in exchange of his pay cheque”. Although Mr. Sandhu had two witnesses testify on his behalf at the hearing, neither Messrs. Aulakh or Sidhu testified on his behalf at the hearing. These two statements do not meet the test for admissibility of new evidence set out in *Davies et al.*, BC EST # D171/03, most particularly because these witnesses could have provided their evidence at the hearing had Mr. Sandhu wished to present their testimony to the delegate. Mr. Sandhu’s material does not explain why these individuals did not testify – or why their statements were not submitted – at the complaint hearing.
17. Mr. Sandhu submitted a third written statement from Mr. Bhagwan Punia – who did testify at the complaint hearing – and this statement appears to be an attempt to supplement the evidence given by Mr. Punia at the complaint hearing. However, in light of *Davies et al.*, this evidence is not admissible on appeal. To the extent that his statement contains evidence that he gave at the complaint hearing, the statement is redundant. And to the extent that it includes evidence that was not provided at the hearing, I can only say that Mr. Punia should have provided his entire evidence at the complaint hearing and that it is now too late to engage in a *post-hoc* effort to rehabilitate or supplement the evidence that he provided at the complaint hearing.
18. Similarly, all of the other documents Mr. Sandhu submitted along with his Appeal Form could have been provided to the delegate at the hearing and, for that reason, are not admissible on appeal.
19. In my view, none of the arguments made by Mr. Sandhu in support of his appeal has any serious merit. The “new evidence” he has submitted is not admissible on appeal. In sum, this appeal has no reasonable prospect of succeeding and, accordingly, should be summarily dismissed.

**ORDER**

20. Pursuant to subsection 114(1)(f) of the *Act*, this appeal dismissed. Pursuant to subsection 115(1)(a) of the *Act*, the determination is confirmed as issued.

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**Kenneth Wm. Thornicroft**  
**Member**  
**Employment Standards Tribunal**