

An appeal

- by -

GMG Food Enterprises Ltd. carrying on business as Chimney Hill Pizza & Curry
(“GMG Food”)

- 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: David B. Stevenson

FILE No.: 2012A/15

DATE OF DECISION: May 8, 2012

DECISION

SUBMISSIONS

Kuldip Grewal	on behalf of GMG Food Enterprises Ltd. carrying on business as Chimney Hill Pizza & Curry
Navdeep Brar	on her own behalf
Emily K. Yao	on behalf of the Director of Employment Standards

OVERVIEW

1. This decision addresses an appeal filed under Section 112 of the *Employment Standards Act* (the “*Act*”) by GMG Food Enterprises Ltd. carrying on business as Chimney Hill Pizza & Curry (“GMG Food”) of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on January 30, 2012.
2. The Determination was made in respect of a complaint filed by Navdeep Brar (“Ms. Brar”), who alleged GMG Food had contravened the *Act* by failing to pay regular and overtime wages, vacation pay and statutory holiday pay.
3. The Director found GMG Food had contravened Part 3, section 18 and Part 7, section 58 of the *Act* in respect of Ms. Brar and ordered GMG Food to pay an amount of \$423.68, an amount which included wages and interest.
4. The Director also imposed administrative penalties on GMG Food under Section 29(1) of the *Employment Standards Regulation* (the “*Regulation*”) in the amount of \$1,000.00.
5. The total amount of the Determination is \$1,423.68
6. In this appeal GMG Food says the Director failed to observe principles of natural justice in making the Determination. GMG Food seeks to have the Determination varied by removing the administrative penalties.
7. The Tribunal, exercising its discretion and authority under section 103 of the *Act* and section 36 of the *Administrative Tribunals Act*, finds the matters raised in this appeal can be decided from the written submissions and the material on the section 112(5) “record”, together with the submissions of the parties and any additional evidence allowed by the Tribunal to be added to the “record”.

ISSUE

8. The issue in this case is whether there is any basis for cancelling the administrative penalties imposed by the Director on GMG Food.

THE FACTS

9. I need not dwell long on the facts. It suffices to say the Director received a complaint from Ms. Brar that GMG Food had not paid wages she alleged were owing to her, the Director conducted a complaint hearing, found Ms. Brar was entitled to wages that had not been paid and found GMC Food had contravened section 18 of the *Act* – the requirement to pay an employee all wages owed within 48 hours after the employee terminates – and had contravened section 28 of the *Act* – the requirement to records of the information set out in that provisions.
10. GMC Food does not dispute those findings in this appeal. Rather, GMG Food says only that the administrative penalties imposed are unfair in the circumstances. For reasons that follow, it is unnecessary to review those circumstances.

ANALYSIS

11. This appeal must be dismissed.
12. Section 98 of the *Act* provides that a person in respect of whom the Director makes a determination and imposes a requirement under section 79 is “subject to” a monetary penalty prescribed by the Regulations:
 - 1) In accordance with the regulations, a person in respect of whom the director makes a determination and imposes a requirement under section 79 is subject to a monetary penalty prescribed by the regulations.
 - (1.1) A penalty imposed under this section is in addition to and not instead of any requirement imposed under section 79.
 - ...
13. Section 29(1) of the *Regulation* sets out a schedule of monetary penalties for persons who have contravened requirements of the *Act* and provides for escalating administrative penalties. The amounts of the administrative penalties are fixed by the *Regulation*. The Tribunal has confirmed in several decisions that once a contravention of the *Act* has been found in a Determination, the imposition of an administrative penalty is mandatory (see, for example, *Virtu@lly Canadian Inc. operating as Virtually Canadian Inc.*, BC EST # D087/04, *Marana Management Services Inc. operating as Brother’s Restaurant*, BC EST # D160/04, and *Kimberly Dawn Kopchuk*, BC EST # D049/05. In the *Marana Management Services* decision, at page 5, the Tribunal stated:

Once the delegate finds a contravention, there is no discretion as to whether an administrative penalty can be imposed. Furthermore, the amount of the penalty is fixed by Regulation. Penalty assessments are mandatory . . .
14. Also, as the Tribunal noted in *Summit Security Group Ltd.*, BC EST # D133/04, administrative penalties under the *Act* are part of a larger scheme designed to regulate employment relationships in the non-union sector. The Tribunal determined that penalties are generally consistent with the purposes of the *Act*, and the design of the penalty scheme established under section 29 of the *Regulation* meets the statutory purpose of providing fair and efficient procedures for the settlement of disputes over the application and interpretation of the *Act*.
15. GMG Food argues the penalties are unfair in the particular circumstances of this case. However, in *Douglas Mattson*, BC EST # RD647/01, the Tribunal found that it could not ignore the plain meaning of the words of a statute and substitute its view of the legislative intent based solely on its judgement about what is “fair” or “logical”. Further, in *Acton Super-Save Gas Stations Ltd.*, BC EST # D067/04, the Tribunal concluded that the

Act provides for mandatory administrative penalties without any exceptions: “The legislation does not recognize fairness considerations as providing exceptions to the mandatory administrative penalty scheme.” This view has been consistently confirmed and applied in many decisions of the Tribunal.

16. The burden is on GMG Food to show a failure by the Director to observe principles of natural justice. That burden has not been met; the appeal neither demonstrates nor addresses an alleged failure by the Director to observe principles of natural justice.
17. In sum, the appeal does not show the Director made any error in imposing the administrative penalties and, accordingly, the appeal is dismissed.

ORDER

18. Pursuant to Section 115 of the *Act*, I order the Determination dated January 30, 2012, be confirmed in the total amount of \$1,423.68, together with any interest that has accrued under Section 88 of the *Act*.

David B. Stevenson
Member
Employment Standards Tribunal