

An appeal

- by -

Armando Arturo Espinosa Gomez
(“Mr. Espinosa”)

- 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.: 2015A/178

DATE OF DECISION: March 10, 2016

DECISION

SUBMISSIONS

Armando Arturo Espinosa Gomez on his own behalf

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), Armando Arturo Espinosa Gomez (“Mr. Espinosa”) has filed an appeal of a determination issued by a delegate of the Director of Employment Standards (the “Director”) on November 13, 2015 (the “Determination”).
2. In the Determination, the Director concluded that Mr. Espinosa’s complaint that he was owed wages from his employer, Straight Level Construction Ltd. (“Straight Level”), (the “Complaint”), was not made within the time limit specified in section 74 of the *Act*, and decided not to proceed with the Complaint, pursuant to section 76 of the *Act*. The Director also concluded that there was not enough evidence to prove the Complaint and, therefore, no further action would be taken on the Complaint.
3. Mr. Espinosa appeals the Determination on the sole ground that the Director failed to observe the principles of natural justice in making the Determination.
4. Mr. Espinosa seeks the Employment Standards Tribunal (the “Tribunal”) to change or vary the Determination, but does not explain how.
5. On December 22, 2015, the Tribunal acknowledged to the parties that an appeal had been received from Mr. Espinosa, requested production of the section 112(5) “record” (the “Record”) from the Director, and notified the parties, among other things, that no submissions were being sought from the other parties pending review of the appeal by the Tribunal and that following such review, all, or part, of the appeal might be dismissed.
6. On January 7, 2016, the Director provided the Record to the Tribunal, and a copy was sent to Mr. Espinosa on January 13, 2016.
7. On January 27, 2016, the Tribunal received Mr. Espinosa’s submissions objecting to the completeness of the Record. He states that the Record is missing two (2) emails he sent to a delegate of the Director, Barbara Shortt (“Ms. Shortt”), on February 18, 2014. He attaches both these emails. The first email is headed “Wages” and the second one “Pictures from Tang House”, and includes some pictures. He also attaches to his written submissions three (3) documents from Service Canada. The first two are letters, dated October 16, 2015, and they indicate that Mr. Espinosa voluntarily disclosed information about his earnings to Service Canada which led the latter to conclude that he had previously made a false representation in context of his employment insurance claim, but Service Canada decided not to prosecute him because his declaration was made voluntarily. The second document sets out Mr. Espinosa’s earnings from Straight Level from December 30, 2012 to May 19, 2013 as a result of Mr. Espinosa’s voluntary disclosure to Service Canada. The third document, dated October 24, 2015, is a Notice of Debt from Service Canada to Mr. Espinosa showing that he owes Service Canada \$6,259.00 on account of payment Service Canada made to him when he was employed. The balance of Mr. Espinosa’s submissions contains arguments on the merits of the Determination, which I will refer to later.

8. On January 28, 2016, the Tribunal disclosed Mr. Espinosa's objections to the completeness of the Record to the Director, and provided the Director an opportunity to respond.
9. On February 2, 2016, the Director responded acknowledging that the two (2) emails that Mr. Espinosa sent to Ms. Shortt on February 18, 2014, were, indeed, not included in the Record because the delegate was not able to find them. However, the Director submits that Exhibit #9 in the List of Documents, contained in the Record, identifies an email sent by Mr. Espinosa to the Employment Standards Branch (the "Branch") with the subject line "Pictures", dated February 18, 2014, that included the two (2) photos attached to one of the emails sent to Ms. Shortt. The Director states that this email was included in the documents Mr. Espinosa submitted for the purpose of exchange prior to the adjudication hearing and, therefore, the content of the email Mr. Espinosa sent to Ms. Shortt with the pictures is included in the Record. In the balance of the Director's submissions, the latter states that Mr. Espinosa is largely arguing the merits of the Determination, rather than omissions from the Record, or raising new evidence, or attempting to enter evidence not admitted by the adjudicator at the hearing.
10. I have concluded that the two (2) emails Mr. Espinosa sent to Ms. Shortt on February 18, 2014, with the subject headings "Wages" and "Pictures from Tang House" with attachments as presented by Mr. Espinosa in his submissions, should have been included in the Record, whether or not parts of those emails appear in a different email or form in the Record. Therefore, I find the two emails, dated February 18, 2014, with attachments, as presented by Mr. Espinosa, form part of the Record. However, I do not find the documents Mr. Espinosa has presented from Service Canada form part of the Record, as they were not before the Director at the time the Determination was made.
11. Having reviewed the appeal, including the submissions of Mr. Espinosa supporting the appeal, the Reasons for the Determination (the "Reasons"), and the Record, I have decided this appeal is an appropriate case for consideration under section 114 of the *Act*. Therefore, I will assess the appeal based solely on the Reasons, the appeal submissions of Mr. Espinosa, and my review of the Record that was before the Director when the Determination was being made. Pursuant to section 114 of the *Act*, the Tribunal has discretion to dismiss all or part of an appeal, without a hearing of any kind, for any of the reasons listed in subsection 114(1). If I am satisfied the appeal, or part of it, has some presumptive merit and should not be dismissed under section 114(1) of the *Act*, Straight Level will, and the Director may, be invited to file further submissions. On the other hand, if it is found the appeal is not meritorious, it will be dismissed under section 114(1) of the *Act*.

ISSUE

12. The sole issue to be considered at this stage is whether there is a reasonable prospect that Mr. Espinosa's appeal can succeed.

THE FACTS

13. Straight Level operated a construction business.
14. A BC Online: Registrar of Companies – Corporation Search, conducted on November 29, 2013, indicates that Straight Level was incorporated on February 4, 2012. Gary Sundeep Singh Reandy ("Mr. Reandy") is listed as its sole director and officer.
15. Straight Level employed Mr. Espinosa as a framer; however, the precise period of his employment is in dispute. In the Complaint, filed on November 21, 2013, with the Employment Standards Branch, Mr. Espinosa states that he started work for Straight Level on March 12, 2012, and his last day of

employment was May 27, 2013. He claims outstanding regular wages for the period December 27, 2012, to May 27, 2013, in the amount of \$12,110.00 and annual vacation pay for the period March 3, 2012, to May 27, 2013, in the amount of \$1,347.88.

16. The delegate of the Director conducted a hearing of the Complaint over two (2) days on May 1 and 2, 2014 (the “Hearing”), and issued the Determination on November 13, 2015.
17. Mr. Espinosa testified at the Hearing, together with his three (3) witnesses; namely, Hervir Kailey (“Mr. Kailey”), Prabhsharn Gill (“Mr. Gill”), and Kung Chea (“Ms. Chea”). Mr. Kailey and Mr. Gill were both workers with whom Mr. Espinosa worked for Straight Level at a construction project at 278 – 174A Street, Surrey, British Columbia (the “Surrey House”). Ms. Chea is the owner of a laneway house at 933 East 56th Avenue, Vancouver (the “East 56th Avenue House”) who contracted Straight Level to provide construction services.
18. Mr. Reandy testified at the Hearing on behalf of Straight Level, together with four (4) other witnesses; namely, John Reandy (“Mr. J. Reandy”), Parminder Rishi (“Mr. Rishi”), Kulwant Reandy (“Mrs. Reandy”) and Gurpreet Thandi (“Mr. Thandi”). Mr. J. Reandy and Mrs. Reandy are Mr. Reandy’s mother and father. Mr. Thandi is Mr. Reandy’s brother-in-law, and Mr. Rishi is a contractor in the construction industry who testified that he was the contractor who built the houses at 2597 East 2nd Avenue, Vancouver (the “East 2nd Avenue House”) and the East 56th Avenue House.
19. In the Reasons, the delegate notes that Mr. Espinosa testified that he was employed as a framer with Straight Level from March 12, 2012, to December 22, 2012, when Straight Level issued him a Record of Employment citing “shortage of work/end of contract or season”. However, after December 22, 2012, Straight Level re-hired him and he continued working with Straight Level until May 27, 2013.
20. Mr. Reandy, however, testified that Straight Level did not re-hire Mr. Espinosa after he was laid off on December 22, 2012 and, therefore, he did not perform any work for Straight Level thereafter, and is not owed any wages.
21. In the Reasons, the delegate notes that she considered the following issues at the Hearing:
 - Did Mr. Espinosa work for Straight Level after December 22, 2012?
 - If so, was the Complaint filed within the time period specified under the *Act*?
22. Having set out the issues, the delegate meticulously delineates the evidence of all witnesses, and then proceeds to consider the two issues above starting with the question of the timeliness of the Complaint. In concluding that Mr. Espinosa failed to file the Complaint within the time period specified in section 74 of the *Act*, the delegate reasons as follows:

The Complainant provided information on his complaint form that he worked until May 27, 2012 and that was his last day [of] employment with Straight Level. This issue was raised during cross examination when Mr. Reandy asked the Complainant about the relevance of a photograph that the Complainant had submitted. The Complainant testified that he had gone to the site and snapped the lines to prepare for concrete. Mr. Reandy questioned the Complainant who he performed that work for. The Complainant testified that he had performed work for Straight Line Construction. The Complainant stated he only worked one day on this task which was May 27, 2013. Mr. Reandy asked the Complainant whether he worked for Straight Line Construction. The Complainant responded that he did for that one day. There

was no evidence produced that the Complainant had been under the direction of Mr. Reandy to perform this task.

The Complainant did not provide any evidence that Mr. Reandy was involved with Straight Line Construction. A BC Online: Registrar of Companies – Corporation Search search indicates that Straight Line Construction is a partnership comprised of two individuals that does not include Mr. Reandy. There is no information that Straight Level or Straight Line Construction is affiliated in any way.

The evidence showed that the Complainant performed work for others during the time period that he claimed he worked for Straight Level. This included work at a church and a shed for Mr. John Reandy. I find that the Complainant performed work for others during the time that he stated he worked for Straight Level including Straight Line.

Based on the Complainant's allegations that he worked for Straight Level, he claimed his last day of employment for Straight Level was May 16, 2013. Accordingly, pursuant to s. 74 of the Act the Complainant was required to file his complaint by November 16, 2013, which he failed to do. As the complaint was not filed within the time period specified under the Act, I find it appropriate to dismiss the complaint.

23. Having concluded that the Complaint was filed outside of the time specified under the *Act*, the delegate decided that it was appropriate for her to dismiss the Complaint.

24. The delegate then continues, stating in the alternative, even if the Complaint were filed within the specified time limit, Mr. Espinosa failed to discharge the onus to prove, on a balance of probabilities, that “he was an employee of Straight Level during the time period he claimed, the length of his employment and the hours he worked for which he was not paid”. In reaching this conclusion, the delegate reviewed the evidence of the witnesses of both parties, and preferred the evidence of Straight Level's witnesses over the evidence of Mr. Espinosa and his witnesses. For example, in the case of Mr. Rishi's evidence, the delegate states:

I rely on the testimony of Parminder Rishi which I found to be forthright and credible. He testified that he built the house at 2597 East 2nd Avenue, Vancouver nine years ago and the laneway house in 2012. He testified that he did not award a contract to Straight Level to build the laneway house as Mr. Reandy was not available. Mr.[.] Rishi provided the name of the individual who had awarded the contract to, Mr. Sidhu.

Mr. Reandy's evidence was that he built some shelving and that was the total of his involvement with that project. Mr. Rishi confirmed that Mr. Reandy did not work on that project except for some shelving.

This is in contradiction to the form letter that the Complainant prepared that contained the information that he was employed as a framer on the construction of the above mentioned project.

25. The delegate also notes that while Mr. Espinosa worked for Straight Level, he also worked on other projects unrelated to Straight Level, including the project at the residence of Mr. J. Reandy and Mrs. Reandy (Mr. Reandy's parents) which was unrelated to his work for Straight Level. The delegate notes that Mr. Espinosa was paid, in full, \$9,000.00 for this project, but his evidence regarding the project was somewhat inconsistent and his conduct at the Hearing evasive:

There was testimony from four individuals that the Complainant was paid \$9,000.00 for work performed on a 20x30 two story building called the 'shed' located at 7211 – 149 A Street, Surrey, BC during the same period he alleged that he worked for Straight Level. I accept that the Complainant performed work on the shed based on the witnesses' testimony. Mr. John Reandy did not waiver from his evidence that the shed was built with the assistance of the Complainant. The Complainant asked Mr. John Reandy questions repeatedly about this issue and there were no inconsistencies.

Further, I accept that the Complainant was paid for this work. Along with the testimony of Mr. and Mrs. Reandy, I rely on the evidence of Mr. Thandi who when asked if he witnessed the exchange of funds, was believable. He never claimed to know how much money was given to the Complainant and secondly, his response to witnessing the money exchange with a joke to Mr. Reandy asking how he could get some cash is a statement that has the ring of truth to it. I find that it would be a normal response that a person may make in a circumstance like that.

Also, another reason that I find that the Complainant worked on the shed is once it was established that he had worked on the shed, he never raised an issue that he had not been paid nor did he file a complaint.

In the hearing Mr. Reandy asked the Complainant what about the \$9,000.00 cash. The Complainant replied that he was not given \$9,000.00, 'just a statement from the bank'. Although the Complainant denied receiving cash, he referenced a document acknowledging some type of exchange that occurred as a result of work performed on the shed.

Further, the Complainant was evasive about when he performed that work. He did not offer evidence regarding the dates that he performed work on the shed. While he initially testified that he worked only two days on the shed he later contradicted himself with statements that indicated he worked several days.

26. With respect to the documentation and evidence of Mr. Espinosa regarding the times he worked for Straight Level, the delegate found the evidence of Mr. Espinosa not particularly credible, stating as follows:

I do not find the Complainant's record of times worked by him is sufficiently credible to support a claim for wages under the Act. The Complainant submitted a handmade calendar he prepared that contained handwritten dates and hours. It is obvious that the entries were not created contemporaneously. After scrutinizing the calendar that the Complainant relied upon to show the hours worked, I am not convinced that sufficient information exists in those records to arrive at a reasonably accurate account of times worked by him. During the hearing, when asked specific questions regarding locations of where he worked and what work he performed the Complainant could not provide any details.

Further, when the Complainant was questioned about reporting information to Service Canada regarding his EI claim, the Complainant often stated one thing and contradicted himself several statements later. When asked if he recorded his hours he stated that he had. When pushed on this issue, he recanted. I find that there was a clear intent to work for cash and receive benefits that he was not entitled to.

The calendar the Complainant submitted contained a Service Canada stamp dated October 15, 2013. Based on the Service Canada stamp on the calendar, it appears that the document was created for the purpose of providing information to Service Canada not for the purpose of creating a contemporaneous record of hours.

27. With respect to the East 56th Avenue House of Ms. Chea on which Mr. Espinosa claimed he worked, and provided a form letter signed by Ms. Chea that he created, the delegate found this evidence rather deceiving, stating as follows:

The Complainant created a form letter that stated that he worked from May 2013 to June 2013 on a laneway house. He submitted a letter signed by Phong Chea stating that he had worked on the construction of 933 E. 56th Avenue, Vancouver and the laneway house when in fact, during cross examination he reported that he worked one or two days building a shelf. Nor did he know when those days were. It does not follow that he would approach a person and ask for a letter and know how many days he performed work or when. The form letter is deceiving in the information in the manner it was stated making it appear he had worked there for a period of time.

Ms. Chea was called as a witness to testify. Ms. Chea was very upset and stated that she only completed the form because the Complainant went to her home with his two children. He knocked on the door and asked Ms. Chea to complete a reference letter for him. He told Ms. Chea that he needed the letter because he was looking for work. He did not tell her the purpose of the letter that she signed. She

testified that that [sic] she had only seen him a couple of times at the work site and she completed the letter because she wanted to help him.

28. With respect to the Surrey House at 174A Street that Mr. Espinosa stated he worked on for Straight Level, the delegate, again, found the evidence of Mr. Espinosa, as well as his two (2) witnesses, not particularly reliable and lacking for the following reasons:

The Complainant testified that he finished the second house in Surrey sometime in April. He claimed hours worked. He never mentioned any other workers. Mr. Reandy stated that if there was only him and the Complainant framing the house at 174 A Street [the Surrey House] it would impossible to build a structure of that size with just the two of them. If they started framing in January and the other two workers were injured, it is hard to imagine as Mr. Reandy pointed out, how...they managed to build an entire house in the winter with just two framers as the Complainant claims. Mr. Reandy asked the Complainant if there were other workers where was [their] claims for wages. The Complainant did not provide a meaningful answer. He replied to ask the two guys, his witnesses.

The Complainants [sic] two witnesses Prabhsharn Gill and Hervir Kailey testified that they returned to work for Straight Level in January 2013. They gave inconsistent evidence when they returned to work in January 2013. Mr. Gill initially stated in his testimony that he returned to work January 4 or 5, 2013. He later stated he returned on January 5 or 6, 2013. In contrast, Mr. Kailey testified that he returned to work on January 1, 2013. Mr. Reandy questioned why any worker would be working on a Sunday or New Years Day.

...Although, I find it difficult to believe that the witnesses did not work for Straight Level in January 2013 at some point, I cannot ascertain based on the evidence provided by them, what those exact dates were. I give a small [amount] of weight to these witnesses' testimony as there was apparent motivation and economic interest for themselves.

In summary, I cannot find that the Complainant's evidence is sufficiently reliable to ascertain what hours he worked for Straight Level. There was sufficient evidence to show that the Complainant worked on the shed for Mr. John Reandy and that he worked at a church. There was also information that the Complainant worked at a townhouse project and other work sites, including Straight Line. The Complainant's records do not distinguish between work performed on these other locations and work for Straight Level.

I also found that the Complainant's evidence was not consistent. He provided statements that he later contradicted. Also, he did not provide details that were required in this matter.

29. In the result, the delegate concluded that the Complaint was filed out of time, and should be dismissed. The delegate also added that Mr. Espinosa, additionally, was unable to prove his claim, and, therefore, the Complaint should be dismissed "on that basis as well".

SUBMISSIONS OF MR. ESPINOSA

30. Mr. Espinosa makes two (2) separate written submissions in support of his appeal. His first set of submissions was submitted, together with his Appeal Form, on December 18, 2015, and his second set was submitted on January 27, 2016, and interspersed with his objections to the completeness of the Record. I have reviewed both submissions carefully and while I do not find it necessary to set them out verbatim here, I will briefly summarize them below as best I can, as some of the submissions are lacking clarity and coherence.
31. In his first set of written submissions, Mr. Espinosa asks for an extension of time to produce documentation from the Workers' Compensation Board ("WCB") pertaining to the claims of Mr. Gill and Mr. Kailey who worked at the Surrey House with him – a project on which Straight Level was contracted to provide

construction services. The purpose of this request, Mr. Espinosa indicates, is to establish that these men were credible witnesses at the Hearing.

32. He also submits that he was unsuccessful in his effort to obtain Tang Suk (“Mr. Suk”), the person in charge of the construction of the Surrey House, to attend as his witness. Mr. Espinosa states that Mr. Suk stated he did not want to be involved in the matter and that Mr. Reandy was already paid for Straight Level’s work on the Surrey House.
33. Mr. Espinosa also attaches a letter from the pastor of the church in Surrey where he carried out some renovation work on a voluntary basis in April 2013. He does not explain why he is producing this letter at this stage, or how this letter relates to his ground of appeal.
34. Mr. Espinosa next submits that the evidence of Mr. Rishi at the Hearing that he built both the East 2nd Avenue House and the East 56th Avenue House “creates confusion”. He insists that he worked at both locations for Straight Level and he was involved in the construction of a shelf at the first location and foundation and framing at the second location. He also submits that he did not “have any relation with the Straight Line company”.
35. Mr. Espinosa further submits that it was the suggestion of the delegate involved in the mediation of the Complaint that he obtain proof that he worked at both the East 2nd Avenue House and the East 56th Avenue House that led him to prepare the form letter he did, in order to have the owners of both these homes sign same. He states that the owners signed the form letters because they knew he worked at their homes. As for Ms. Chea, the owner of the East 56th Avenue House, he states that he did not know why she was upset at the Hearing, but she called him subsequently and told him she “had got [*sic*] problems with Mr[.] Parminder Rishi” after she signed the form letter.
36. As for the work he did on the property of Mr. J. Reandy and Mrs. Reandy, Mr. Espinosa states that he worked only two (2) days as “they were in a hurry to finish the shed that [*sic*] did not have the proper permits for construction”. He appears to dispute any submissions that he subcontracted directly with Mr. Reandy’s father, Mr. J. Reandy, on this project. He appears to suggest that he did work on the project as an employee of Straight Level. He also seems to question the delegate’s conclusion pertaining to the payment he received of \$9,000.00 for this project.
37. Mr. Espinosa concludes his submissions stating that during the period “December [2012] to May 2013”, he only worked for Straight Level and not for any other company. He indicates that if it was any other company he worked for during this period, then he was a victim of fraud.
38. In his second set of submissions, received by the Tribunal on January 27, 2016, interspersed with his objections to the completeness of the Record are his further submissions on the merits of the appeal. I have read these submissions in their entirety, and the part relating to the merits of the appeal, to a great extent, reiterate his first submissions filed with the Appeal Form and attempt to bolster those submissions. For the reasons set out in the section entitled “Analysis” below, I do not find it necessary to reiterate the second set of submissions here but I have, as indicated, reviewed them carefully.

ANALYSIS

39. The grounds of appeal are statutorily limited to those delineated in subsection 112(1) of the *Act*, which states:

Appeal of director’s determination

- 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 being made.

40. An appeal under the *Act* is intended to be an error correction process, with the burden in an appeal being on the appellant to persuade the Tribunal there is an error in the determination under one of the statutory grounds of appeal identified in section 112(1) of the *Act* as set out above. This burden requires the appellant to provide, demonstrate or establish a cogent evidentiary basis for the appeal.

41. Having said this, it should also be noted that the *Act* does not provide for an appeal based on errors of fact, and the Tribunal has no authority to consider appeals based on alleged errors in the findings of fact unless such findings raise an error of law (see *Britco Structures Ltd.*, BC EST # D260/03). In *Britco Structures Ltd.*, *supra*, the Tribunal noted that the test for establishing an error of law on this basis is stringent and requires the appellant to show that the findings of fact are perverse and inexplicable, in the sense that they are made without any evidence, that they are inconsistent with and contradictory to the evidence or they are without any rational foundation.

42. Mr. Espinosa has grounded his appeal in an allegation that the Director failed to observe the principles of natural justice in making the Determination. I have reviewed Mr. Espinosa's submissions, and do not find there is any basis on the facts of this case for alleging that the Director failed to observe the principles of natural justice in making the Determination. The Determination was primarily made on a finding by the Director that Mr. Espinosa's last day of employment with Straight Level was May 16, 2013, and applying subsection 74(3) of the *Act* to that finding to conclude that the Complaint was delivered outside of the time limited for making a claim against Straight Level for wages owing.

43. While Mr. Espinosa has not raised the "error of law" ground of appeal, I have considered it as well. More particularly, I note the Director relied on section 74(3) of the *Act*, which states:

- 74 (3) A complaint relating to an employee whose employment has terminated must be delivered under subsection (2) within six months after the last day of employment.

44. Neither the Director, nor the Tribunal, have authority to relieve against the mandatory time limits for filing complaints set out in the *Act*. In *Yvonne Padmore* (BC EST # D039/04), the Tribunal summarized the law on this point as follows:

The wording of section 74(3) of the *Act* is mandatory, and there is no discretion in either the Delegate or the Tribunal to relieve against time limits: *Burnham*, BC EST #D035/96, and *Director of Employment Standards (Re Bunger)*, BC EST #D301/98. While section 76(3) provides some discretion to refuse to accept, review, mediate, investigate, adjudicate a complaint, the Delegate only has this discretion with respect to complaints which are filed in time.

45. I find that the delegate correctly interpreted and applied section 74(3) of the *Act* in this case, and her conclusion that the Complaint was filed out of time has sufficient rational foundation in the evidence adduced at the Hearing. The delegate relied on Mr. Espinosa's own evidence that his last day of employment for Straight Level was May 16, 2013, and that after that date, on May 27, 2013, he worked for another

company, Straight Line. Mr. Reandy of Straight Level was not involved with Straight Line, and a BC Online: Registrar of Companies – Corporation Search, conducted by the delegate, indicated that Straight Line is a partnership consisting of two (2) individuals that do not include Mr. Reandy, and there was no evidence that Straight Level and Straight Line were affiliated in any way. In these circumstances, it was open for the delegate to conclude, as she did, that Mr. Espinosa should have filed the Complaint by November 16, 2013, and, therefore, the Complaint, was out of time.

46. With respect to the two (2) sets of submissions made by Mr. Espinosa relating to the merits of his appeal, I find that those submissions amount to no more than a challenge to the delegate's findings of fact. The delegate pointed out numerous inconsistencies in the evidence of Mr. Espinosa and his witnesses, and preferred the evidence of Straight Level and its witnesses. I am not prepared to interfere with the Delegate's assessment of the credibility of the parties' witnesses or evidence nor her conclusions of fact (which I find persuasive). As indicated previously, the *Act* does not provide for an appeal based on errors of fact, and the Tribunal has no authority to consider appeals based on alleged errors in findings of fact unless such findings raise an error of law which they do not in this case.
47. Lastly, I note that Mr. Espinosa, in his appeal submissions, denies that he ever worked for Straight Line, and it was only Straight Level that he worked for throughout his employment until May 27, 2013. The latter date would arguably bring him within the time limit set out in section 74(3) of the *Act* for filing the Complaint. However, at the Hearing, when cross-examined by Mr. Reandy (as set out at page 14 of the Reasons), Mr. Espinosa admitted that he worked for Straight Line on May 27, 2013. I do not find Mr. Espinosa's submission that he never worked for Straight Line credible in the circumstances. I do not find any reason to interfere with the delegate's conclusion that Mr. Espinosa's last day of work with Straight Level was May 16, 2013, and that on May 27, 2013, he worked for Straight Line.
48. In the result, I am satisfied that Mr. Espinosa's appeal has no presumptive merit and has no prospect of succeeding and, therefore, I dismiss it under section 114(1)(f) of the *Act*.

ORDER

49. Pursuant to section 115 of the *Act*, I order the Determination, dated November 13, 2015, be confirmed.

Shafik Bhalloo
Member
Employment Standards Tribunal