

An appeal

- by -

Belgrove Construction Ltd.
("Belgrove")

- 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: Carol L. Roberts

FILE No.: 2006A/30

DATE OF DECISION: April 24, 2006

DECISION

SUBMISSIONS

Shabir Dhanani

on behalf of Belgrove Construction Ltd.

Victor Lee

on behalf of the Director of Employment Standards

OVERVIEW

1. This is an appeal by Belgrove Construction Ltd. (“Belgrove”), pursuant to Section 112 of the *Employment Standards Act* (“the Act”), against a Determination of the Director of Employment Standards (“the Director”) issued February 16, 2006.
2. Joshua J. Turner worked as a carpenter for Belgrove, a building construction company, from April 10, 2004 until November 15, 2004. Belgrove ceased operations on or about November 30, 2004.
3. Mr. Turner filed a complaint alleging that he was owed vacation pay. Following an investigation, the Director’s delegate determined that Belgrove had contravened Section 18 of the *Employment Standards Act* in failing to pay Mr. Turner regular wages. He concluded that Mr. Turner was entitled to wages and interest in the total amount of \$816.43. The delegate also imposed a \$500 penalty on Belgrove for the contravention of the Act, pursuant to section 29(1) of the *Employment Standards Regulations*.
4. Mr. Dhanani contends that the delegate failed to observe the principles of natural justice in making the Determination. He contends that the Determination is wrong because the delegate ignored Belgrove’s evidence. He also alleges that the delegate failed to enable him to respond adequately to the complaint because he did not send all correspondence to Belgrove’s registered office.
5. This appeal is decided on the section 112(5) “record”, the submissions of the parties, and the Reasons for the Determination.

ISSUE

6. Did the delegate fail to observe the principles of natural justice in failing to allow Belgrove full opportunity to respond to the complaint?

FACTS AND ARGUMENT

7. The facts relevant to the appeal, as set out by the delegate, are as follows.
8. Mr. Turner cashed his final pay cheque in the amount of \$774.27, dated November 15, 2004, at Money Mart. That cheque was dishonoured by Belgrove’s bank when it was presented by Money Mart, and Money Mart sought recourse from Mr. Turner. The cheque represented Mr. Turner’s final pay rather than his vacation pay as he had originally claimed.

9. Although Mr. Dhanani advised the delegate that he had issued Mr. Turner a personal cheque to replace the dishonoured cheque, he provided no evidence he had done so to the delegate. On June 7, 2005, Money Mart confirmed that Mr. Turner's final pay cheque had been returned NSF.
10. Mr. Dhanani's telephone was disconnected on June 10, 2005. The delegate wrote to Mr. Dhanani asking for confirmation that he had made good on Mr. Turner's final pay cheque. The letter was returned "moved".
11. The delegate determined that Belgrove had failed to pay Mr. Turner's final wages.
12. Mr. Dhanani contends that Money Mart's dispute is with Belgrove, not Mr. Turner, and that Mr. Turner has not reimbursed Money Mart for the dishonoured cheque. Mr. Dhanani says that if Mr. Turner can produce evidence that he reimbursed Money Mart, he would pay that amount to Mr. Turner. He further submits that the delegate could have sent his letter to Belgrove's registered office, and did not. He says that the Determination is wrong and that any dispute is between Belgrove and Money Mart.
13. The delegate submits that Belmont and Mr. Dhanani had full opportunity to respond to the complaint. He says he spoke to Mr. Dahanai on April 27, 2005, and that Mr. Dhanani faxed him some information on that date. The delegate says he had another conversation with Mr. Dhanani on May 19, 2005, and asked him to submit evidence of payment to Money Mart. The delegate says he heard nothing further from Mr. Dhanani. He says Mr. Dhanani knew the complaint was unresolved, and did not contact the delegate. The delegate further says that it is not the practise of the Branch to copy letters to the registered and records office of a corporation.
14. Finally, the delegate says that the issue is whether Belmont paid Mr. Turner's wages, not whether Mr. Turner is a party to a dispute between Money Mart and Belmont. He says that the NSF cheque is evidence of non-payment of wages, and that wages remain outstanding. The delegate submits that the employer has not demonstrated a breach of natural justice.
15. In reply, Mr. Dhanani says that Mr. Turner in fact received cash from Money Mart, and thus has been paid. He argues that it is Money Mart that is owed money, not Mr. Turner.

ANALYSIS

16. Section 112(1) of the *Act* provides that a person may appeal a determination on the grounds that the director failed to observe the principles of natural justice in making the determination.
17. Principles of natural justice are, in essence, procedural rights that ensure that parties know the case being made against them, the opportunity to reply, and the right to have their case heard by an impartial decision maker.
18. I am not persuaded that the delegate failed to observe the principles of natural justice. Mr. Dhanani was given every opportunity to respond to Mr. Turner's complaint, and did not reply to the delegate's request for further information. Rather, it appears that he moved without notice to the delegate and without concern as to whether a decision would be issued against Belgrove. I find that Belgrove was given the opportunity to reply, and neglected or refused to take advantage of that opportunity.

19. With respect to Mr. Dhanani's contention that Mr. Turner has received full payment of his wages from Money Mart, the fact is that Money Mart has the right to recover the amounts paid out to Mr. Turner. As the Tribunal noted in *Paragon Custom Developments Ltd.* (BC EST #D157/01):

If an employer chooses to pay an employee by cheque, the writing of the cheque does not extinguish the employer's obligation to make good the cheque. While the cheque is a bill of exchange and can be negotiated (delivered), the wages cannot be considered to be "paid" until the cheque is accepted for payment by the employer's issuing financial institution. While an employee who is issued a bad cheque has recourse or can sue under the *Bills of Exchange Act*, this does not exclude the employee's right to proceed to enforce employment rights under the *Employment Standards Act*. It is clear that the employer has not paid wages, although it has issued cheques.

20. I find no basis to cancel or vary the Determination

ORDER

21. I Order, pursuant to Section 115 of the Act, that the Determination, dated February 16, 2006, be confirmed in the amount of \$1,316.43, plus whatever interest might have accrued since the date of issuance.

Carol L. Roberts
Member
Employment Standards Tribunal