

An appeal

- by -

Pannu Bros. Trucking Ltd.  
("Pannu Bros.")

- 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 Ann Hart

**FILE No.:** 2006A/22

**DATE OF DECISION:** May 3, 2006



hours, and was never asked to work more than 40 hours each week. Pannu Bros. submitted that the penalty assessment was inappropriate.

9. The Delegate wrote that Pannu Bros. had failed to deliver to the Tribunal a written request specifying the grounds for appeal under section 112 of the Act in support of its contention that the Director had failed to comply with the principles of natural justice in issuing the Determination.
10. It was submitted that Pannu Bros. was required to pay overtime wages after 8 hours worked in a day, as required under sections 35 and 40 of the Act. The Delegate noted that there was no dispute that the parties had not entered into a written averaging agreement pursuant to section 37 of the Act.
11. The Delegate further maintained that Pannu Bros. had not provided any evidence to support its contention that the statutory holiday pay entitlements were paid to Ms. Seal. The conclusion set out in the Determination that statutory holiday pay was owing was reached based on the evidence provided, which included the payroll records submitted by Pannu Bros.
12. The Delegate noted that the penalties for the two contraventions of the Act by Pannu Bros. were mandatory pursuant to section 98 of the Act, and not discretionary.

## ANALYSIS

13. Section 112(1) of the Act sets out the grounds upon which an appeal may be made to the Tribunal from a Determination of the Director. Section 112(1) provides as follows:

*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.*

14. The burden rests with the party alleging an error of natural justice, to demonstrate that error. An appeal to the Tribunal is not a re-investigation of the complaint. The purpose of the appeal is to decide whether there is any error in the Determination.
15. The Appeal Form, and a letter dated 15 February 2006 attached to the appeal, delivered by Pannu Bros. to the Tribunal challenges the Determination on the ground that the Director failed to observe the principles of natural justice. However, none of the information in that documentation indicates that there was a denial of natural justice. When a denial of justice is alleged, the appellant generally raises a procedural concern that the proceedings before the Delegate were in some manner conducted unfairly, resulting in the appellant's either not having an opportunity to know the case it was required to meet, or an opportunity to be heard in its own defence. Pannu Bros. did not allege that the Delegate had refused to consider their evidence or submissions, or was not an independent decision maker. There is nothing apparent on the record which persuades me that there was any such infringement of the principles of natural justice. The Delegate conducted an investigation, and both parties were provided with the opportunity to provide evidence and make submissions.

16. Clearly, Pannu Bros. takes issue with the findings which were made by the Delegate in the Determination. The Determination and the extensive evidence on the file show that there was evidence to support the findings and conclusions reached by the Delegate. There is no evidence of a denial of natural justice, and the appeal is therefore dismissed.

### **ORDER**

17. Pursuant to Section 115 of the *Act*, the Determination dated January 16, 2006 is confirmed together with any interest which may have accrued.

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**Carol Ann Hart**  
**Member**  
**Employment Standards Tribunal**