

An appeal

- by -

All Right Trucking – 99 Ltd.
(“ART”)

- 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/4

DATE OF DECISION: March 22, 2016

DECISION

SUBMISSIONS

Brad N. Cooke

counsel for All Right Trucking – 99 Ltd.

Amanda Clark

on behalf of the Director of Employment Standards

INTRODUCTION

1. On August 1, 2014, Baljinder S. Sidhu (“Mr. Sidhu”) filed an unpaid wage complaint against All Right Trucking – 99 Ltd. (“ART”) pursuant to section 74 of the *Employment Standards Act* (the “*Act*”). Mr. Sidhu, a truck driver, claimed approximately \$21,500 in unpaid wages against ART, a firm in the hauling and excavation business. The complaint was the subject of an oral hearing (conducted by teleconference) on March 19 and April 15, 2015, before a delegate of the Director of Employment Standards (the “delegate”). On November 25, 2015, the delegate issued the Determination now under appeal together with her “Reasons for the Determination” (the “delegate’s reasons”).
2. By way of the Determination, the delegate ordered ART to pay Mr. Sidhu the total sum of \$13,969.07 on account of unpaid wages and section 88 interest. Further, and also by way of the Determination, the delegate levied six separate \$500 monetary penalties against ART (see section 98 of the *Act*) based on its contraventions of sections 17 (failure to pay wages at least semimonthly), 18 (failure to pay wages on termination of employment), 45 (failure to pay statutory holiday pay), 46 (failure to pay premium pay for working on a statutory holiday) and 63 (failure to pay compensation for length of service) of the *Act* and section 37.3 (overtime pay for short haul truck drivers) of the *Employment Standards Regulation* (the “*Regulation*”). Thus, the total amount payable under the Determination is \$16,969.07.
3. The unpaid wage award made in Mr. Sidhu’s favour includes regular wages (\$2,717.00), overtime pay (\$7,284.75 calculated in accordance with section 37.3 of the *Regulation*), statutory holiday pay (\$920.61), vacation pay (\$516.09) and two weeks’ wages as compensation for length of service (\$1,980.00) together with section 88 interest (\$550.62).
4. On January 4, 2016, ART appealed the Determination to the Tribunal under subsection 112(1)(b) of the *Act* – the delegate failed to observe the principles of natural justice in making the Determination. ART’s appeal was predicated on the assertion that the delegate’s reasons were legally inadequate inasmuch as the reasons only set out a “global” amount with respect to each of the various components of the total Determination without providing the underlying calculations. ART’s legal counsel submitted that the delegate breached the principles of natural justice in that her decision was not transparent and that her calculations were not readily ascertainable or verifiable from her reasons: “... the Delegate failed to provide the basis for the calculations she made, the result of which, [sic] is that the Employer has no way of determining whether the delegate erred in her calculations and/or applied the wrong section of the Act or Regulation.”
5. On February 19, 2016, I issued interim reasons for decision in this appeal (BC EST # D033/16). Briefly, I was satisfied that the delegate’s reasons were incomplete (see para. 23):

In my view, the delegate’s decision, while for the most part thorough and comprehensive, does fall down in detailing how the various unpaid wage awards were calculated. In my view, the reasons in this regard are simply not transparent or intelligible. The delegate summarized the outcome of her underlying calculations without providing the actual calculations and relevant details. For example, on what days was

overtime pay earned? Was any weekly overtime pay earned and, if so, for what particular weeks? In a case such as this, where there were admitted errors in the records upon which the calculations were based, and in the absence of any detail as to the actual days worked and the number of hours worked each day, it is simply not possible to verify whether the delegate's calculations are accurate. In effect, the delegate's reasons leave ART (and Mr. Sidhu) simply having to trust that her calculations are accurate since they cannot be independently verified by the details provided in her reasons.

6. Accordingly, I issued the following directions and order (paras. 24 and 25):

In my view, the most efficient way to address this deficiency in the delegate's reasons is to refer this matter back to the Director for the purpose of preparing a report setting out the actual unpaid wage calculations in detail. I presume the delegate has already prepared such a report, at least in some fashion (perhaps a spreadsheet?), as it would have been a prerequisite to issuing the Determination. After the report has been filed with the Tribunal, ART and Mr. Sidhu will be given an opportunity to respond and, with all this further material in hand, I will then issue a final decision.

ORDER

Pursuant to subsection 114(2)(a) of the *Act*, this matter is referred back to the Director for the purposes of preparing a report detailing Mr. Sidhu's unpaid wage entitlement (\$13,969.07). The report shall be delivered to the Tribunal within 30 days after the issuance of these reasons. The Tribunal will then provide the report to ART and Mr. Sidhu for their response.

THE REFERRAL BACK PROCESS

7. On February 24, 2016, the Director provided a report including a copy of the electronically generated spreadsheet that was the basis for the unpaid wage awards set out in the Determination. The report is very detailed, setting out Mr. Sidhu's various entitlement on both a daily and weekly basis.
8. On March 1, 2016, the Tribunal's Appeals Manager mailed a copy of this report to ART's legal counsel and to Mr. Sidhu. The Tribunal's letter stated, in part: **"If the Appellant wants to make a reply submission, the submission must be in writing and delivered to the Tribunal by 4:00 p.m. on March 15, 2016"** (boldface in original text). The Tribunal's March 1 letter also indicated that a copy of ART's reply would be provided to the respondents (Mr. Sidhu and Director) for their response, and then a final right of reply would be granted to ART prior to a final decision being issued.
9. ART did not file any reply to the Director's report. The Tribunal's Registry Administrator contacted ART's legal counsel shortly after the March 15/4 PM deadline expired and was advised by counsel that ART would not be filing a submission in response to the Director's report.

FINDINGS AND DECISION

10. I issued a referral back order for the specific purpose of providing ART with the calculations underlying the unpaid wage award issued in Mr. Sidhu's favour. The only issue in this appeal was in regard to the sufficiency of the delegate's original reasons. With the calculations in hand, ART was afforded the opportunity to show where the delegate fell into error in calculating Mr. Sidhu's unpaid wage entitlement. Since ART has decided not to file any submission with respect to the Director's report, the Determination now stands wholly unchallenged. That being the situation, I see no basis for continuing the submission process and, accordingly, I am now issuing an order confirming the Determination.

ORDER

11. Pursuant to subsection 115(1)(b) of the *Act*, the Determination is confirmed as issued in the amount of \$16,969.07, together with whatever further interest that has accrued under section 88 of the *Act* since the date of issuance.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal