

An appeal

- by -

Jean Claude Nabalizi
(“Nabalizi”)

- 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.: 2011A/26

DATE OF DECISION: June 28, 2011

DECISION

SUBMISSIONS

Ros Salvador	counsel for Jean Claude Nabalizi
Pir Indar Sahota	counsel for Khaira Enterprises Ltd.
Karpal Singh	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 Jean Claude Nabalizi (“Nabalizi”) of part of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on February 4, 2011. In its entirety, the Determination applied to fifty-eight former employees of Khaira Enterprises Ltd. (“Khaira”), including Nabalizi. The appeal only relates to that part of the Determination relating to the Director’s finding of the wages owing to Nabalizi, and this decision applies only to that part of the Determination.
2. In respect of the relevant part of the Determination, the Director found that Khaira had contravened the *Employment Standards Act* (the “Act”) by failing to pay Nabalizi regular and overtime wages and vacation pay and ordered Khaira to pay Nabalizi an amount of \$2,969.55, an amount which also included interest under section 88 of the *Act*.
3. Counsel for Nabalizi says the Director failed to observe principles of natural justice in making the Determination.
4. The Tribunal has discretion whether to hold an oral hearing on an appeal. The Tribunal has decided the issues involved in this appeal can be decided from the submissions and the material on the section 112(5) Record.

ISSUE

5. The issue raised by the appeal is whether Nabalizi has shown the Director failed to observe principles of natural justice in making the Determination.

THE FACTS

6. The Determination indicates that Khaira does reforestation work throughout British Columbia, mostly through contracts from the BC Ministry of Forests. The work done by Khaira includes tree planting, brushing (clearing bushes and cut grass using hand tools around newly planted trees to allow growth) and other silviculture work. In 2010, up to mid-July, Khaira had contracts to do reforestation work on Texada Island and in Powell River, Kamloops, Salmon Arm, Revelstoke, and Golden.
7. Nabalizi was hired by Khaira as a brusher and was employed from June 17, 2010, to July 17, 2010. He worked in Revelstoke and Golden at an hourly rate of \$16.00 an hour. The Director found he worked 238.75 regular and overtime hours, had earned total wages in the amount of \$4,694.56, had been paid wages in the

amount of \$2,924.01 by Khaira and was entitled to a balance of wages owing in the amount of \$2,969.55, including interest under section 88 of the *Act*.

8. The appeal claimed the Director had not provided counsel with payroll records for Nabolizi. The Director says the payroll records for Nabolizi were provided to counsel on September 17, 2010, but when the Director created a summary of all the payroll information in November 2010, another employee's name was mistakenly substituted for Nabolizi's name, although the calculations in the summary were based on Nabolizi's records and were his calculations. He says counsel had been informed of that.
9. In her final submission on the appeal, dated May 19, 2011, counsel for Nabolizi has indicated she now has the "missing document" and Nabolizi's appeal is resolved.
10. That being the case, the appeal is dismissed.

ORDER

11. Pursuant to section 115 of the *Act*, that part of the Determination dated February 4, 2011, relating to the wage calculation for Nabolizi, is confirmed in the amount of \$2,969.55, together with an interest that has accrued under section 88 of the *Act*.

David B. Stevenson
Member
Employment Standards Tribunal