

An appeal

- by -

Farmand Transport Group Inc. carrying on business as Advance Towing
(“Farmand Transport”)

- 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.: 2012A/58

DATE OF DECISION: July 24, 2012

DECISION

SUBMISSIONS

Mohammad Shokri	on behalf of Farmand Transport Group Inc. carrying on business as Advance Towing
GholamReza Moghaddam	on his own behalf
Megan Roberts	on behalf of the Director of Employment Standards

INTRODUCTION

1. I have before me an appeal filed under subsection 112(1)(b) of the *Employment Standards Act* (the “*Act*”). The appellant, Farmand Transport Group Inc. carrying on business as Advance Towing (“Farmand Transport”), appeals a Determination issued on April 27, 2012, pursuant to which it was ordered to pay its former employee, GholamReza Moghaddam (“Moghaddam”), the sum of \$1,217.19 on account of unpaid wages and interest. Further, and also by way of the Determination, Farmand Transport was ordered to pay two separate \$500 monetary penalties levied pursuant to section 98 of the *Act*. Thus, the total amount payable by Farmand Transport under the Determination is \$2,217.19.
2. I am adjudicating this appeal based on the parties’ written submissions and, in that regard, I have brief submissions from each of Farmand Transport, Mr. Moghaddam and the delegate who issued the Determination. I have also reviewed the section 112(5) “record” that was before the delegate when she issued the Determination as well as the delegate’s “Reasons for the Determination” (the “delegate’s reasons”).

ISSUE

3. As noted above, the appeal is filed under subsection 112(1)(b) of the *Act* – the delegate failed to observe the principles of natural justice in making the Determination. Farmand Transport’s arguments supporting its appeal are set out in a one-page memorandum (consisting of 11 separately numbered points) that is attached to its Appeal Form. This is the only submission that Farmand Transport filed in this matter.
4. Although Farmand’s submission, at least to a degree, arguably speaks to the question of natural justice, for the most part, Farmand Transport’s arguments reflect a fundamental disagreement with certain of the delegate’s findings of fact. That said, I propose to deal, at least in a summary fashion, with all of the points raised by Farmand Transport in its submission.

BACKGROUND FACTS

5. Mr. Moghaddam filed an unpaid wage complaint alleging that he worked for Farmand Transport from October 22 to November 16, 2011, but was not paid any wages whatsoever. He did acknowledge receiving a \$28 payment to reimburse him for fuel charges incurred when he used his personal vehicle for work related purposes.
6. The delegate presided at a complaint hearing on April 17, 2012, at which Mr. Shokri (a Farmand Transport principal) and another employee, identified in the delegate’s reasons as Mr. Mehran Pourmomen Devani, testified on Farmand Transport’s behalf. Mr. Moghaddam testified on his own behalf.

7. There were two issues before the delegate. First, there was the question of Mr. Moghaddam's status. Farmand Transport argued that he was simply a volunteer learning how to become a tow-truck driver with the hope that he might be offered a job with the company. Mr. Moghaddam, of course, argued that he was an employee throughout his tenure with Farmand Transport. Second, assuming that Mr. Moghaddam was an "employee" as defined in section 1 of the *Act*, the delegate had to determine his wage rate and the number of hours he worked.
8. The delegate considered the evidence before her and determined that Mr. Moghaddam was an employee but she was not able to find a clear agreement regarding his wage rate. Accordingly, she fixed his unpaid wages based on the applicable minimum wage (\$8.75 per hour for the period from October 22 to 31, 2011, and \$9.50 per hour thereafter). She then determined that he worked a total of 126 hours during his relatively brief period of employment (October 22 to November 16, 2011; 18 days in all).

FINDINGS AND ANALYSIS

9. As previously noted, Farmand Transport's appeal submission consists of 11 separately numbered points set out in a one-page memorandum appended to its Appeal Form. Several of the points contest findings of fact made by the delegate. In particular, Farmand Transport maintains that Mr. Moghaddam's claim was "fabricated", "exaggerated" and that he "lied about everything". There is a simple response to these allegations. First, they do not raise issues of natural justice. Second, in a contested factual dispute such as the present case, the delegate was obliged to consider conflicting evidence and make a decision based on the most probable outcome. Many of the delegate's findings of fact were, in fact, corroborated by Farmand Transport's own witness, Mr. Devani. Finally, I have carefully reviewed the delegate's reasons and am satisfied that all of her findings of fact were supported by a proper evidentiary foundation.
10. I might add that if Farmand Transport was so certain that Mr. Moghaddam's evidence was not credible, I have to query why it refused to cross-examine Mr. Moghaddam at the complaint hearing – it was afforded the opportunity to do so at the complaint hearing.
11. Several of Farmand Transport's allegations may be reduced to a single argument, namely, that Mr. Moghaddam was never engaged as an employee but rather volunteered his services to the firm in an effort to obtain some practical training which could lead to a paid employment position. This assertion does not raise a natural justice issue (if anything, it raises an alleged error of law) and in any event is, on the evidence, wholly untenable. Mr. Moghaddam clearly falls within the section 1 definition of "employee" as he provided a whole host of services to Farmand Transport including marketing activities, janitorial and other sundry duties. Mr. Devani confirmed that Mr. Moghaddam was, on several occasions, taken out in a tow truck and was provided with some training. An "employee" is defined in the *Act* as, *inter alia*, "a person being trained by an employer for the employer's business".
12. There are only a couple of assertions that could be taken as arguments relating to natural justice issues. First, Farmand Transport asserts that the delegate "made up" evidence in the course of rendering her decision. This assertion misses the point that when the delegate found that she could not determine an agreed wage rate based on the conflicting evidence before her, she was obliged to render a decision based on the minimum wage for all hours worked. Similarly, the evidence before her regarding Mr. Moghaddam's actual working hours was not fully satisfactory. This, of course, was not entirely Mr. Moghaddam's fault – Farmand Transport was obliged under the *Act* to keep proper records regarding his working hours and it failed to do so. Mr. Moghaddam's own records were not fully reliable and so the delegate had to render a decision with the best evidence available to her. That is precisely what she did.

13. Second, Farmand Transport says that the delegate “failed to research [the] transportation industry circumstance and practice”. Presumably, this assertion is in support of Farmand Transport’s position that tow truck companies routinely do not pay for “training” hours. If that is the case (and there is no evidence whatsoever that this *is* the industry practice), all that can be said is that the industry is systematically violating the *Act*. However, this assertion is nonetheless irrelevant since the delegate was presiding at a complaint hearing; she was not conducting an investigation. Thus, it was incumbent on the parties to bring their evidence to the hearing – the delegate had no free-standing duty to independently gather evidence to supplement that provided to her by the parties at the hearing.
14. Finally, Farmand Transport says that “the hearing itself was so unprofessional and unreliable” but has not provided even one example to corroborate that assertion. I wonder why Farmand Transport, if it were so concerned about the hearing process, failed to file any sort of complaint with the Employment Standards Branch or any other authority immediately after the hearing. This complaint appears to have only come to light once a decision – adverse to Farmand Transport – was issued. In the circumstances, I consider this allegation to be a wholly unsubstantiated, petty and mean-spirited personal attack on the delegate’s integrity.
15. As there is absolutely no merit to this appeal, it will be dismissed and the Determination confirmed.

ORDER

16. Pursuant to subsections 114(1)(c) and 115(1)(a) of the *Act*, the appeal is dismissed and the Determination is confirmed as issued in the amount of \$2,217.19 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