

An appeal

- by -

A-Star Doors & Mouldings Ltd.
(“A-Star”)

- 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: Shafik Bhalloo

FILE No.: 2013A/54

DATE OF DECISION: September 25, 2013

DECISION

SUBMISSIONS

Harvir Singh Natt

on behalf of A-Star Doors & Mouldings Ltd.

OVERVIEW

1. Pursuant to section 112 of the Employment Standards Act (the “*Act*”) A-Star Doors & Moulding Ltd. (“A-Star”) has filed an appeal of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on July 5, 2013 (the “Determination”).
2. The Determination found that A-Star had contravened Part 3, section 17 (pay day); Part 5, sections 40 and 46 (overtime and statutory holiday pay); Part 7, section 58 (vacation pay); and Part 8, section 63 (compensation for length of service) of the *Act* in respect of the employment of Mandip S. Dhaliwal (“Mr. Dhaliwal”), and ordered A-Star to pay Mr. Dhaliwal an amount of \$1,889.23, an amount that included wages and interest under section 88 of the *Act*.
3. The Director also imposed administrative penalties on A-Star under section 29(1) of the *Employment Standards Regulation* (the “*Regulation*”) in the amount of \$2,500.00 for contraventions of sections 17, 58, 40, 45 and 63 of the *Act*.
4. The total amount of the Determination is \$4,389.23.
5. In its appeal, A-Star alleges the Director failed to observe the principles of natural justice in making the Determination and seeks the Tribunal to cancel the Determination pertaining to statutory holiday pay, compensation for length of service, accrued interest and penalties under the *Regulation*. A-Star does not dispute the Determination as concerns overtime wages and annual vacation pay.
6. This appeal is an appropriate case for consideration under section 114 of the *Act*. Pursuant to section 114 of the *Act*, the Tribunal may dismiss all or part of an appeal, without a hearing, for any of the reasons delineated in subsection 114(1)(a) to (h), which I have reproduced below:
 - 114 (1) At any time after an appeal is filed and without a hearing of any kind the tribunal may dismiss all or part of the appeal if the tribunal determines that any of the following apply:
 - (a) the appeal is not within the jurisdiction of the tribunal;
 - (b) the appeal was not filed within the applicable time limit;
 - (c) the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;
 - (d) the appeal was made in bad faith or filed for an improper purpose or motive;
 - (e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;
 - (f) there is no reasonable prospect that the appeal will succeed;
 - (g) the substance of the appeal has been appropriately dealt with in another proceeding;
 - (h) one or more of the requirements of section 112 (2) have not been met.

7. At this stage, the appeal is assessed based solely on the Determination, A-Star's written submissions and my review of the section 112(5) "record" that was before the Director when the Determination was being made.
8. If I am satisfied that the appeal, or a part of it, has some presumptive merit and should not be dismissed under section 114(1), Mr. Dhaliwal and the Director may be invited to file further submissions. Conversely, if it is found that the appeal is not meritorious, it will be dismissed under section 114(1) of the *Act*.

ISSUE

9. Did the Director err in making the Determination by failing to observe the principles of natural justice?

BACKGROUND

10. A-Star is in the business of supplying doors and mouldings to customers in British Columbia, and operates from its office in Surrey, British Columbia. A-Star employed Mr. Dhaliwal as a labourer from March 5, 2012, to October 31, 2012.
11. On January 24, 2013, Mr. Dhaliwal filed a complaint under section 74 of the *Act* alleging that A-Star contravened the *Act* by failing to pay him regular wages, overtime wages, statutory holiday pay, compensation for length of service and vacation pay (the "Complaint").
12. On June 7, 2013, the delegate conducted a hearing into the Complaint (the "Hearing"). Mr. Dhaliwal attended at the Hearing on his own behalf, and A-Star was represented by its Directors, Harvir Singh Natt ("Mr. Natt") and Mandhir Uppal ("Mr. Uppal"). At the Hearing, Mr. Dhaliwal testified that he and A-Star had verbally agreed to a wage rate of \$13.50 per hour for the first month of his employment with A-Star, \$15.50 per hour in the second month, and \$16.50 per hour commencing the third month.
13. Mr. Dhaliwal alleged that A-Star failed to pay him \$16.50 per hour starting in May 2012, but continued paying him at the rate of \$15.50 per hour. Therefore, Mr. Dhaliwal claimed that A-Star owed him an extra \$1.00 per hour for all hours worked from May 2012 to October 2012.
14. Mr. Dhaliwal also alleged that he was not paid fully for all hours he worked during the period of April and July, 2012. He described that A-Star had a punch-clock system for recording hours of work, and he would clock in and out on a daily basis, and he additionally maintained his own personal record of hours worked at home. He argued that his record matched A-Star's record except for the months of April and July, 2012.
15. Mr. Dhaliwal also testified at the Hearing that he was injured at work and went on approved medical leave commencing on October 1, 2012, and ending on October 21, 2012. When he returned to work on October 22, 2012, he worked until October 30, for a total of 26 hours. However, he claimed that A-Star failed to pay him wages for this period.
16. Mr. Dhaliwal also testified that his workplace injury necessitated further treatment and the Workers' Compensation Board sent him for treatments in November 2012. Subsequently, he inquired with A-Star about returning to work, but he was told that he was laid off. A-Star now had new employees and there was no work available for him. Mr. Dhaliwal, therefore, claimed compensation for length of service as he contended that A-Star terminated his employment at that time.
17. Mr. Dhaliwal also claimed overtime wages, statutory holiday pay and vacation pay for his entire period of employment with A-Star.

18. Mr. Natt, on behalf of A-Star, testified that A-Star agreed to pay Mr. Dhaliwal \$13.50 per hour during his first month of employment and, thereafter, at a rate of \$15.50 per hour. Mr. Natt argued that A-Star never agreed to pay Mr. Dhaliwal a wage rate of \$16.50 per hour.
19. Mr. Natt also denied that A-Star owed Mr. Dhaliwal wages for April and July, 2012. He stated that Mr. Dhaliwal was a part-time, casual employee who worked on an as-needed basis. While Mr. Dhaliwal worked from July 1 to 12, there was no work available for him from July 13 to July 31. Mr. Natt submitted that Mr. Dhaliwal did not work any more hours than documented on A-Star's punch-clock record for July, and that Mr. Dhaliwal never questioned A-Star about his pay for this period until he lodged his Complaint. The Complaint was the first time that A-Star discovered Mr. Dhaliwal's contention that he was not paid for the said period.
20. With respect to the 26 hours of work performed by Mr. Dhaliwal in October 2012, Mr. Natt stated that A-Star paid Mr. Dhaliwal \$15.50 per hour for a total of 30.25 hours of work in October. The payment was made by way of a cheque #377 for \$468.88. He produced a copy of the cheque in question and A-Star's bank statement showing Mr. Dhaliwal received the said payment.
21. Mr. Natt also submitted that at the end of October Mr. Dhaliwal left his employment with A-Star without providing any notice or medical reports. Mr. Natt also confirmed that A-Star did not contact Mr. Dhaliwal to inform him about any upcoming shifts nor requested that he report to work. A-Star simply did not contact Mr. Dhaliwal because A-Star discovered that Mr. Dhaliwal had started working for another company and, therefore, presumed that Mr. Dhaliwal had quit his employment at A-Star.
22. With respect to Mr. Dhaliwal's claim for overtime pay, Mr. Natt submitted that Mr. Dhaliwal did not agree to any overtime pay. According to Mr. Natt, Mr. Dhaliwal accepted \$15.50 per hour, which included \$2.00 per hour in lieu of overtime.
23. Mr. Natt also indicated that Mr. Dhaliwal was not paid any statutory holiday pay because he was a part-time employee, and A-Star only provided statutory holiday pay to full-time, regular employees.
24. Furthermore, Mr. Natt submitted that Mr. Dhaliwal was not paid vacation pay because he owed A-Star in excess of \$7,500 for materials he had purchased from A-Star. Mr. Natt produced A-Star's invoices in respect of the outstanding amounts owed by Mr. Dhaliwal.

THE REASONS FOR THE DETERMINATION

25. In the Reasons for the Determination (the "Reasons"), on the subject of Mr. Dhaliwal's claim for regular wages, the delegate concluded that Mr. Dhaliwal's allegation that A-Star agreed to pay him \$16.50 per hour starting in the third month of his employment lacked supporting evidence such as a written contract. The delegate therefore concluded that no regular wages were owed to him from May 2012 onwards.
26. Moreover, the delegate noted that there are limits to the amount of unpaid wages that may be recovered under the *Act*. In the case at hand, the delegate reasoned that the operative period for which Mr. Dhaliwal could claim under the *Act* was limited to the period beginning six (6) months before the termination of his employment, which, according to the delegate, spanned from May 1, 2012, to October 31, 2012. Therefore, Mr. Dhaliwal's claim for outstanding wages in April 2012, in any event, was outside of the six-month recovery period.

27. As for Mr. Dhaliwal's claim for unpaid wages in July 2012, the delegate observed that Mr. Dhaliwal was employed as a casual, part-time employee with A-Star and worked when work was available. This fact, according to the delegate, is supported in A-Star's payroll records. In particular, the delegate noted that in May 2012, Mr. Dhaliwal went for nine (9) consecutive days without any work, and in June 2012, he went 19 consecutive days without any work. In light of this evidence, the delegate reasoned that it was plausible that Mr. Dhaliwal did not work for A-Star from July 13 to July 31, because his services were not required during this period.
28. Further, the delegate noted that Mr. Dhaliwal provided little evidence to prove that his time cards were missing for the month of July 2012. Based on Mr. Dhaliwal's failure to adduce supporting evidence that he worked more hours in July than he was paid, combined with the discrepancy between Mr. Dhaliwal's own record-keeping and the records of A-Star for those months not in dispute, the delegate doubted the legitimacy of Mr. Dhaliwal's claim for unpaid time in July and chose to rely on A-Star's punch-clock record as a reliable source to dismiss Mr. Dhaliwal's claim for additional hours in July 2012.
29. With respect to Mr. Dhaliwal's claim for unpaid wages for the period October 22 to 30, 2012, the delegate noted that A-Star's payroll records showed that Mr. Dhaliwal was indeed paid gross wages of \$468.88 for this period, and there is a bank statement showing that Mr. Dhaliwal received and negotiated A-Star's cheque issued to him in the said amount. Therefore, the delegate rejected Mr. Dhaliwal's claim for unpaid wages in October 2012.
30. Having said this, the delegate nevertheless issued a mandatory administrative penalty against A-Star for contravention of section 17 of the *Act* because A-Star's payroll records indicated that, throughout his employment, it paid Mr. Dhaliwal wages on a monthly basis, and not "at least semi-monthly and within eight (8) days after the end of a pay period". The delegate set the contravention date as October 24, 2012, based on the final pay period, reasoning that A-Star should have paid Mr. Dhaliwal wages for the period October 1 to October 15 no later than October 23, 2012, the eighth day after the end of the pay period, but failed to do so.
31. With respect to Mr. Dhaliwal's claim for overtime pay, as indicated previously, A-Star does not dispute the Determination.
32. A-Star also does not dispute the Determination with respect to annual vacation pay.
33. However, A-Star disputes the delegate's Determination with respect to payment of statutory holiday pay. In the Reasons, the delegate found that Mr. Dhaliwal was not paid an average day's pay for three (3) statutory holidays, namely, Victoria Day (May 21, 2012), Labour Day (September 3, 2012) and Thanksgiving Day (October 8, 2012). The total statutory holiday pay awarded in the Determination is \$315.01.
34. The delegate also awarded Mr. Dhaliwal compensation for length of service, pursuant to section 63 of the *Act*, based on his finding that while Mr. Dhaliwal may have been a part-time, casual employee, there was no evidence to show that he was employed for temporary periods and had an option of accepting or rejecting work. Therefore, he was not exempted under section 65(1)(a) of the *Act* from compensation for length of service under section 63 of the *Act*. The delegate also reasoned that the right to quit employment is a personal right of an employee, and there must be clear and unequivocal evidence to support a conclusion that the employee has voluntarily exercised that right. Both the subjective and objective elements of quitting one's employment must be met before it can be said that the employee quit his employment. Subjectively, the employee must form the intent to quit, and, objectively, he must carry out an act inconsistent with further employment. In the case at hand, the delegate observed that A-Star failed to take any steps to advise

Mr. Dhaliwal of upcoming shifts or to inquire about his employment status. A-Star simply assumed that Mr. Dhaliwal quit because he may have been working for another business. According to the delegate, A-Star's assumption that Mr. Dhaliwal was working for another business and may have quit "does not amount to clear and unequivocal facts to support a conclusion" that he voluntarily quit his employment.

35. Moreover, noted the delegate, when Mr. Dhaliwal inquired with A-Star whether he could return to work, A-Star informed him that it no longer required his services because it had hired other employees, and there was not any more work available for him. According to the delegate, this was an act that was inconsistent with further employment and consistent with A-Star terminating Mr. Dhaliwal's employment. Therefore, Mr. Dhaliwal was entitled, in accordance with section 63 of the *Act*, to one week's compensation based on his length of service from March 5, 2012, to October 31, 2012, and the delegate so ordered in the Determination.

SUBMISSIONS OF A-STAR

36. As indicated in the previous section, A-Star does not dispute the awards of overtime wages and annual vacation pay in the Determination. A-Star only disputes statutory holiday pay, compensation for length of service, accrued interest and administrative penalties under the *Regulation* in its appeal.
37. With respect to statutory holiday pay, A-Star argues that it has already paid Mr. Dhaliwal for the three (3) statutory holidays, namely, Victoria Day (May 21, 2012), Labour Day (September 3, 2012) and Thanksgiving Day (October 8, 2012). A-Star has re-submitted time cards for the months of May, September, and October which were part of the record before the delegate when the latter was making the Determination.
38. With respect to the Victoria Holiday on May 21, A-Star points to the time card for the month of May, and notes that it paid Mr. Dhaliwal a total of 127.5 hours for the said month, which included eight (8) hours for the Victoria Day holiday. With respect to the Labour Day holiday on September 3, 2012, A-Star argues that Mr. Dhaliwal was paid, for the month of September, a total of 211.75 hours, which included 16 hours for statutory holiday pay. A-Star argues that, through inadvertence, it paid Mr. Dhaliwal two (2) days holiday instead of one (1). Therefore, although A-Star did not pay Mr. Dhaliwal for the Thanksgiving holiday on October 8, 2012, A-Star effectively argues it should be allowed to off-set the additional eight (8) hours it paid Mr. Dhaliwal inadvertently in the previous month for this holiday.
39. With respect to compensation for length of service, A-Star reiterates its argument that it hired Mr. Dhaliwal as a casual labourer on an "on call basis". A-Star argues that Mr. Dhaliwal worked when he had time and A-Star had extra work to give him. A-Star also contends that Mr. Dhaliwal was hired "on contract basis" and it had other full-time employees in its operations.
40. With respect to the interest payment on the outstanding wages awarded to Mr. Dhaliwal in the Determination pursuant to section 88 of the *Act*, A-Star argues that it should not have to pay any interest, and argues that A-Star only withheld overtime and vacation pay from Mr. Dhaliwal because the latter failed to pay for the materials he obtained from A-Star on credit. A-Star submits that it has now submitted its claim against Mr. Dhaliwal to a collections agency.
41. With respect to administrative penalties, A-Star states that it has always paid Mr. Dhaliwal on time, and that this is the first year of A-Star's operation, and it has made "its best efforts to comply [with] all the rules and regulations applicable". In withholding vacation and overtime pay from Mr. Dhaliwal, A-Star argues that it did so only because Mr. Dhaliwal had not paid A-Star for materials he obtained from A-Star.

ANALYSIS

42. Having reviewed the Determination, the Reasons, the section 112(5) “record” and the submissions of A-Star, I am able to dismiss some, but not all portions, of this appeal. I will set out my decision and supporting reasons under descriptive headings corresponding to the matters in the Determination A-Star is challenging under its appeal.
43. However, before proceeding with this task, it is noteworthy that A-Star has checked-off the “natural justice” ground of appeal in its Appeal Form. In *Imperial Limousine Service Ltd.*, B.C. EST # D014/05, the Tribunal explained the principles of natural justice, stating as follows:

Principles of natural justice are, in essence, procedural rights ensuring that parties have an opportunity to know the case against them; their right to present their evidence; and the right to be heard by an independent decision-maker. It has been previously held by the Tribunal that the Director and her delegates are acting in a quasi-judicial capacity when they conduct investigation into complaints filed under the Act and their functions must therefore be performed in an unbiased and neutral fashion. Procedural fairness must be accorded to the parties, and they must be given the opportunity to respond to the evidence and arguments presented by an adverse party: See *B.W.I. Business World Incorporated*, BC EST #D050/96.

44. In the case at hand, I do not find any argument in support of the natural justice ground of appeal in A-Star’s written submission. I also do not find any evidentiary basis for this ground of appeal in the Director’s “record” or the Reasons and, therefore, conclude that A-Star’s natural justice ground of appeal lacks any presumptive merit.

Compensation for Length of Service

45. Based on my review of the Reasons, I find the delegate correctly employed the legal test for determining whether Mr. Dhaliwal quit his employment. The delegate correctly concluded that simply because Mr. Dhaliwal may have been working for another business that did not “amount to clear and unequivocal” evidence that he voluntarily quit his employment with A-Star. Moreover, when he did contact A-Star for work after his medical leave, A-Star advised him that his services were no longer required because they had other employees working and no work was available for him. I find that the delegate was correct in concluding, based on the latter evidence, that Mr. Dhaliwal did not quit his employment, but A-Star terminated it.
46. I also find compelling and persuasive the delegate’s conclusion that Mr. Dhaliwal was not exempted from his entitlement to compensation for length of service under section 65(1)(a) of the *Act* as there was no evidence to show that Mr. Dhaliwal was employed for temporary periods and had an option of accepting or rejecting work.
47. While I note that A-Star appears to be arguing in its appeal that Mr. Dhaliwal had the option or discretion to accept or reject work from A-Star, this effectively is a challenge by A-Star of the delegate’s findings of fact. The Tribunal has no authority to consider appeals based on alleged errors in findings of fact, unless such findings raise an error of law (See *Britco Structures Ltd.*, BC EST # D260/03). To establish an error of law on the basis of errors in findings of fact, the appellant needs to show that the findings of fact are perverse and inexplicable, in the sense that they are made without any evidence, that they are inconsistent with and contradictory to the evidence, or they are without any rational foundation. I do not find that A-Star has satisfactorily established or attempted to establish such in this case.

48. A-Star is also suggesting in its written appeal submissions that Mr. Dhaliwal was working “on contract basis”. If by this, A-Star is now arguing that he was not an employee, but an independent contractor, although I do not find any evidentiary basis in A-Star’s submissions in support of this argument, the time for making such an argument was before the Determination was made and ideally at the Hearing of the Complaint, and not for the first time in the appeal of the Determination.
49. For the above reasons, I do not find there is any presumptive merit to A-Star’s appeal of the delegate’s Determination awarding Mr. Dhaliwal compensation for length of service and, therefore, I dismiss this part of the appeal under section 114(1) of the *Act*.

Interest Award

50. With respect to interest on outstanding wages awarded to Mr. Dhaliwal in the Determination, as indicated previously, A-Star is of the view that it should not have to pay any interest because it only withheld wages (vacation pay and overtime pay) from Mr. Dhaliwal because the latter failed to pay for the materials he obtained from A-Star on credit. In this regard, I note that section 21 of the *Act* provides that “an employer must not, directly or indirectly, withhold ... payment of all or part of an employee’s wages for any purpose” unless it is permitted or required by any enactment of British Columbia or Canada. “Any purpose” in section 21 includes the scenario in this case where the employer, A-Star, withheld Mr. Dhaliwal’s wages because it had not received payment for product Mr. Dhaliwal obtained from it. The proper course for A-Star is to pursue a civil claim against Mr. Dhaliwal, if there is any amount owing by Mr. Dhaliwal that A-Star has been unable to collect, but A-Star has no legal right to withhold wages to which Mr. Dhaliwal is entitled. Therefore, I find that the Director did not err in awarding Mr. Dhaliwal interest on outstanding wages, and I find, subject to my comments with respect to the statutory holiday pay award below, there is no presumptive merit to this part of A-Star’s appeal and it is dismissed under section 114(1) of the *Act*.

Administrative Penalties

51. Section 98 of the *Act* provides that a person in respect of whom the Director makes a determination and imposes a requirement under section 79 of the *Act* is “subject to” a monetary penalty prescribed by the *Regulation*. Section 29(1) of the *Regulation* sets out a schedule of monetary penalties. In the case at hand, the delegate, after concluding that A-Star contravened sections 17 (payday), 40 (overtime), 45 (statutory holiday pay), 58 (vacation pay) and 63 (compensation for length of service) of the *Act*, imposed a mandatory administrative penalty for each contravention in the amount of \$500.00, for a total of \$2,500.00. As stated by the Tribunal in *Marana Management Services Inc. operating as Brother’s Restaurant*, BC EST # D160/04:

Once the delegate finds a contravention, there is no discretion as to whether an administrative penalty can be imposed. Furthermore, the amount of the penalty is fixed by Regulation. Penalty assessments are mandatory and are thus not subject to mediation. Furthermore, penalty assessments do not constitute costs. This is not a matter that can be, as suggested by Brother’s counsel, ‘remitted back’ for mediation.

As the Tribunal recently noted in *Summit Security Group Ltd.* (BC EST #D059/04, Reconsidered BC EST #D133/04), administrative penalties under the *Act* are part of a larger scheme designed to regulate employment relationships in the non-union sector. The Tribunal determined that penalties are generally consistent with the purposes of the Act, and the design of the penalty scheme established under section 29 meets the statutory purpose of providing fair and efficient procedures for the settlement of disputes over the application and interpretation of the *Act*.

52. The argument of A-Star in the appeal is that this was the first year of its operation, and it tried “its best efforts to comply [with] all the rules and regulations” and, therefore, it should not have to pay administrative penalties. A-Star also appears to suggest in its written submissions that the administrative penalty with

respect to the annual vacation pay and overtime pay A-Star withheld from Mr. Dhaliwal should be cancelled because A-Star only withheld that payment because Mr. Dhaliwal owed A-Star monies for materials he obtained from A-Star, and Mr. Dhaliwal had not paid the amount owing to A-Star. I agree with the Tribunal in *Marana Management Services Inc.* that once a delegate has made a finding of contravention, there is no discretion as to whether or not an administrative penalty can be imposed. I find that once the delegate had made a determination that A-Star contravened various sections of the *Act*, the penalties imposed on A-Star were mandatory penalties, and I do not find any presumptive merit in this part of the appeal, and I dismiss this part of the appeal under section 114(1) of the *Act*, subject to my decision with respect to statutory holiday pay below.

Statutory Holiday Pay

53. In the Reasons, while the delegate notes that A-Star's payroll records show Mr. Dhaliwal qualified for statutory holiday pay for Victoria Day (May 21, 2012), Labour Day (September 3, 2012) and Thanksgiving Day (October 8, 2012) at the regular wage rate and A-Star contravened section 45 of the *Act* in failing to pay him for those statutory holidays, I find the delegate did not make any or sufficient analysis of the punch-clock records of A-Star for the periods covering these statutory holidays. I note that the Director's "record" contains, *inter alia*, the punch cards in question delineating hours Mr. Dhaliwal worked in May (p. 28), September (pp. 33-34) and October (p. 35) and these punch cards also contain handwritten totals of hours that Mr. Dhaliwal was purportedly paid by A-Star which appear to exceed the hours recorded by the punch clock; however, there is no analysis in the Reasons of these punch-clock records and/or explanation of what they show. Further, contained in the Director's "record" are photocopies of paycheques that A-Star issued to Mr. Dhaliwal and which cleared at the bank (pp. 36-37 of the "record"), however, the substantive content of the cheques is largely redacted and, therefore, it is impossible to decipher precisely what Mr. Dhaliwal was paid, although I note that, at page 38 of the "record", there appears to be some summary of three (3) cheques only.
54. A-Star, in its appeal submissions, has re-submitted the punch-clock records for May, September, and October, and argues that Mr. Dhaliwal was paid eight (8) hours extra for statutory holiday pay in May, and 16 hours extra in September. A-Star further argues that that the payment due to Mr. Dhaliwal for the statutory holiday in October is satisfied by the extra eight (8) hours that A-Star inadvertently, or mistakenly, paid Mr. Dhaliwal in September.
55. Having found the Reasons of the delegate in relation to the award of statutory holiday pay lacking because the delegate does not or does not sufficiently address in the Reasons the relevant punch cards that were before him when he was making the Determination, I find that there may be some basis to this aspect of the appeal and, therefore, I am not prepared to dismiss, at this stage, A-Star's appeal with respect to the statutory holiday pay and, relatedly, the appeal of the administrative penalty issued by the delegate for contravention of section 45. Instead, I invite both the Director and Mr. Dhaliwal to file submissions on this aspect of the appeal.

ORDER

56. Pursuant to subsection 114(1) of the *Act*, all elements of the appeal, apart from the matter of the entitlement of Mr. Dhaliwal to statutory holiday pay and the administrative penalty levied against A-Star in relation to that subject, are dismissed on the ground that there is no reasonable prospect that they will succeed. I order the appeal relating to the statutory holiday pay found to be owed to Mr. Dhaliwal to proceed under section 112 of the *Act*.

57. Mr. Dhaliwal and the Director, accordingly, are invited to file submissions on the matter of the entitlement of Mr. Dhaliwal to statutory holiday pay.

Shafik Bhalloo
Member
Employment Standards Tribunal