

An appeal

- by -

New Novelty Restaurant and Sweet 2005 Ltd.
(“New Novelty”)

- 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 L. Roberts

FILE No.: 2017A/79

DATE OF DECISION: July 19, 2017

DECISION

SUBMISSIONS

Surjit Bhandal

on behalf of New Novelty Restaurant and Sweet 2005 Ltd.

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), New Novelty Restaurant and Sweet 2005 Ltd. (“New Novelty”) has filed an appeal of a Determination issued by the Director of Employment Standards (the “Director”) on May 3, 2017. In that Determination, the Director found that New Novelty had contravened sections 17, 18, 40 and 58 of the *Act* in failing to pay Manpreet Kaur regular and overtime wages and annual vacation pay. The Director determined that Ms. Kaur was entitled to \$981.92 in wages and interest. The Director also imposed three administrative penalties in the total amount of \$1,500 for the contraventions, for a total amount owing of \$2,481.92.
2. New Novelty appeals the Determination contending that the delegate failed to observe principles of natural justice in making the Determination.
3. This decision is based on the appeal submissions, the section 112(5) “record” that was before the delegate at the time the decision was made, and the Reasons for the Determination.

FACTS AND ARGUMENT

4. New Novelty operates a restaurant of which Mr. Bhandal is one of two directors. Ms. Kaur was employed as a server from February 2 to March 2, 2017. On March 13, 2017, Ms. Kaur filed a complaint with the Director alleging that her employer refused to pay her for her hours worked.
5. On March 28, 2017, a delegate of the Director spoke with Mr. Bhandal regarding the complaint. Mr. Bhandal explained that Ms. Kaur came in for some “training shifts” and that he decided not to hire her. He agreed that Ms. Kaur had not been paid for the training period. The delegate explained that Ms. Kaur was entitled to be paid for work performed while training. Mr. Bhandal declined to attend a mediation.
6. On March 31, 2017, the Director informed New Novelty that a complaint hearing would be held on April 28, 2017, and issued a Demand for Employer Records. New Novelty received the notices both by registered mail and e-mail. New Novelty was also provided with Ms. Kaur’s evidence in advance of the hearing.
7. New Novelty was not represented at the hearing and submitted no records in response to the Demand.
8. Ms. Kaur’s evidence was that she entered the restaurant on February 2, 2017, to ask for a job, and was hired as a server on that day. Mr. Bhandal created a work schedule and told Ms. Kaur when she was to work. Ms. Kaur entered her hours of work on her cellular telephone on a contemporaneous basis, a copy of which was provided to the delegate. She informed the delegate that she did not take any breaks because she was the only employee at the front of the restaurant. On March 2, 2017, after working a full shift, Ms. Kaur gave Mr. Bhandal a letter of resignation, effective one week later. After receiving the letter, Mr. Bhandal immediately terminated Ms. Kaur’s employment.

9. After the hearing concluded, Mr. Bhandal contacted the Branch, informing the delegate that he believed the hearing started at 4 p.m., rather than the 9:00 a.m. – 4 p.m. time set out in the Notice of Hearing. Mr. Bhandal was informed that the hearing had concluded and that he would receive a copy of the Determination by mail.
10. The delegate determined that New Novelty had reasonable notice of the hearing and the opportunity to respond to the complaint allegations. The delegate determined that, in the absence of any evidence from New Novelty, that Ms. Kaur had not been paid wages or vacation pay, and that New Novelty had contravened sections 17, 18, 40, 58 and 18 of the *Act*, and section 46 of the *Employment Standards Regulation* (the “*Regulation*”).

Argument

11. New Novelty set out the following “objections” to the Determination:
 - Ms. Kaur did not work overtime;
 - Ms. Kaur wanted to be paid in cash, without any statutory deductions, and refused to provide the employer with her SIN, address or date of birth for payroll purposes.
12. New Novelty also objected to the imposition of the penalties, stating that they were always willing to cooperate with the delegate but was unable to do so within the time period. New Novelty also stated there was a “mis-understanding” in the timing of the hearing.

ANALYSIS

13. Section 112(1) of the *Act* provides that a person may appeal a determination on the following grounds:
 - the director erred in law;
 - the director failed to observe the principles of natural justice in making the determination;
 - evidence has become available that was not available at the time the determination was being made.
14. The burden is on an appellant to demonstrate a basis for the Tribunal to interfere with the decision. I conclude that New Novelty has not met that burden.

Failure to observe the principles of natural justice

15. Natural justice is a procedural right which includes the right to know the case being made, the right to respond and the right to be heard by an unbiased decision maker. There is nothing in the appeal submission that establishes that New Novelty was denied natural justice. New Novelty was provided with Ms. Kaur’s allegations, and notified of the complaint hearing by both e-mail and registered mail. A delegate of the Director spoke with Mr. Bhandal prior to the hearing and informed him of the possibility of mediating the dispute. New Novelty submitted no evidence prior to the hearing, as it was required to do, and did not appear at the hearing. Although New Novelty now suggests there was a misunderstanding about the hearing date, there is no evidence the delegate failed to comply with the principles of natural justice.

16. In my view, New Novelty's appeal is an attempt to present evidence and arguments it was obliged to present before the delegate. As the Tribunal has said on many occasions, an appeal is not an opportunity to present, for the first time, evidence that ought to have been presented before the delegate at a hearing.
17. I conclude that New Novelty has not met the burden of establishing any of the statutory grounds of appeal.
18. The appeal is dismissed.

ORDER

19. Pursuant to section 115 of the *Act*, I Order that the Determination, dated May 3, 2017, be confirmed in the amount of \$2,481.92 together with whatever further interest that has accrued under section 88 of the *Act* since the date of issuance.

Carol L. Roberts
Member
Employment Standards Tribunal