

An appeal

- by -

Super Choice Enterprises Ltd.  
(“Super Choice”)

- 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.:** 2015A/87

**DATE OF DECISION:** July 24, 2015

## DECISION

### SUBMISSIONS

Amandeep Kaur Mann

on behalf of Super Choice Enterprises Ltd.

### OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), Super Choice Enterprises Ltd. (“Super Choice”), has filed an appeal of a Determination issued by the Director of Employment Standards (the “Director”) on June 3, 2015.
2. Amarjit Sidhu and Tarsem Sidhu (the “Employees”) filed complaints with the Director of Employment Standards alleging that Super Choice had contravened the *Act* in failing to pay them regular wages and in requiring them to pay costs of Super Choice’s business.
3. Following an investigation, a delegate of the Director concluded that Super Choice had contravened sections 18 and 58 of the *Act* in failing to pay the Employees wages, and ordered Super Choice to pay a total of \$22,915.38 in wages, vacation pay and interest. The Director also imposed two \$500 administrative penalties for each of the contraventions, for a total amount payable of \$23,915.38.
4. Super Choice says that the Director’s delegate erred in law and failed to observe the principles of natural justice in making the Determination, and seeks to have the Determination varied or cancelled.
5. This decision is based on the submissions of the parties, 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

6. The Employees were employed as labourers by Super Choice, a landscaping business, from March 2013 until July 18, 2014, when they quit their employment. Super Choice provided the delegate with payroll records, which the Employees agreed accurately represented their days of work and wages earned.
7. The Employees contended that they had not been paid wages for the months of January, May, June or July of 2014. The Employees also alleged that they had lent money to Super Choice to purchase materials and that the money had not been repaid. The Employees submitted no documentary evidence in support of those allegations.
8. Super Choice’s accountant, Daljit Dhanoa (“Mr. Dhanoa”), provided the delegate with cashed cheques recording wages paid for the months of February, March and April, and contended that Super Choice paid the Employees in cash for the months of January, May, June and July. Mr. Dhanoa submitted copies of bank statements indicating that cash withdrawals in an amount equivalent to the wages owed to the Employees had been made for those months. Further, on January 22, 2014, each of the Employees received a cheque in the amount of \$5,000 which was stated to be for “payroll.” Mr. Dhanoa indicated these amounts represented an advance against wages and that the Employees verbally agreed to repay these amounts from their wages. Super Choice did not receive written authorization from either Employee for those deductions.

9. The delegate found that Super Choice had contravened section 17 of the *Act* in failing to pay the Employees at least semi-monthly, and within eight days of the end of each pay period.
10. The delegate found no evidence connecting the cash withdrawals to the Employees' wages, either by way of written confirmation or receipt or any other acknowledgement of payment. The delegate also noted that Mr. Dhanoa provided no explanation as to why the payments had been made in cash for those months.
11. The delegate also found that the Employees earned far less than \$5,000 during the month of January and there was no information connecting the cheques issued in that month to their wages. The delegate said that even if he accepted that the payment represented an advance on the Employees' wages, Super Choice would not be entitled to deduct those amounts from future wages without the Employees' written consent, which Mr. Dhanoa confirmed was not obtained.
12. The delegate concluded that Super Choice had not paid the Employees' wages for the months of January, May, June or July 2014. He noted that the payroll records confirmed that Super Choice had paid annual vacation pay on each paycheque until November 2013, after which no annual vacation pay was paid. He determined that the Employees were entitled to 4% vacation pay on all wages earned after November 2013.
13. On appeal, Amandeep Mann, the sole director of Super Choice, says that on January 22, 2014, each of the Employees requested a \$5,000 advance on their pay for emergency purposes. Ms. Mann asserts that the cheques were given on trust and were used for "advance wage payments." Super Choice asks that these amounts be applied to outstanding wages.

## ANALYSIS

14. Section 114(1) of the *Act* provides that 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 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.
15. Section 112(1) of the *Act* provides that a person may appeal a determination on the following grounds:
  - (a) the director erred in law;
  - (b) the director failed to observe the principles of natural justice in making the determination;
  - (c) evidence has become available that was not available at the time the determination was being made.
16. The Tribunal has consistently said that the burden is on an appellant to persuade the Tribunal that there is an error in the Determination on one of the statutory grounds set out in section 112. This burden requires the

appellant to provide, demonstrate or establish a cogent evidentiary basis for the appeal. Having reviewed the section 112(5) record and Super Choice's submissions, I find that there is no reasonable prospect the appeal will succeed.

17. There is nothing in the appeal submission that is substantively different than what was provided to the delegate. Super Choice takes no issue with the delegate's conclusion that the Employees had not been paid wages for January, May, June or July of 2014, or vacation pay after November 2013. Super Choice contends only that the delegate erred in not applying a \$5,000 cash advance towards outstanding wages.
18. Sections 21 and 22 of the *Act* prohibit an employer from making any deductions from an employee's wages, except as permitted by the *Act* or the *Employment Standards Regulation* (the "*Regulation*"), and provides for the written assignment of wages. Super Choice's accountant acknowledged that Super Choice did not have the Employees' written permission to deduct any portion of the "advance" from future wages. I find no error of law in the delegate's conclusion on this issue.
19. There is nothing in Super Choice's appeal submission relating to the ground of appeal that the Director failed to comply with the principles of natural justice, and I find nothing supporting that ground in the record.
20. I dismiss the appeal.

## **ORDER**

21. I Order, pursuant to section 115 of the *Act*, that the Determination, dated June 3, 2015, be confirmed, together with whatever interest may have accrued since the date of issue.

---

**Carol L. Roberts**  
**Member**  
**Employment Standards Tribunal**