

An appeal

- by -

J.E. Palag Enterprises Inc. carrying on business as Subway  
(“Palag”)

- 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.:** 2014A/92

**DATE OF DECISION:** September 15, 2014

## DECISION

### SUBMISSIONS

Jennifer Palag on behalf of J.E. Palag Enterprises Inc. carrying on business as Subway

### OVERVIEW

1. On June 26, 2014, a delegate of the Director of Employment Standards (the “delegate”) issued a Determination against J.E. Palag Enterprises Inc. carrying on business as Subway (“Palag”) under section 79 of the *Employment Standards Act* (the “*Act*”) pursuant to which she ordered Palag to pay the total sum of \$2,275.70 on account of unpaid wages owed to a former employee and three \$500 administrative penalties.
2. Palag now appeals the Determination on the sole ground that the delegate failed to observe the principles of natural justice in making the Determination (subsection 112(1)(b)). In my view, this appeal has no reasonable prospect of succeeding and, accordingly, I am summarily dismissing it under subsection 114(1)(f) of the *Act*. In reaching this conclusion, I have reviewed the record that was before the delegate, the delegate’s “Reasons for the Determination” (the “delegate’s reasons”) and Palag’s written submissions filed in support of its appeal.

### BACKGROUND FACTS

3. Palag operates a “Subway” sandwich restaurant franchise on Dundas Street in Vancouver. Ms. Janice Yang (“Ms. Yang”) worked in the restaurant as a sandwich maker from June 15 to September 29, 2013 (when she quit). Ms. Yang filed a complaint under section 74 of the *Act* alleging that she had not been paid any wages for her “training period”, was not paid at least the minimum wage, was not paid any vacation pay, and had not been paid for all hours worked.
4. The delegate investigated this complaint and ultimately determined that Palag had only paid Ms. Yang \$9 per hour rather than the applicable \$10.25 per hour minimum wage and had not paid Ms. Yang all of the wages to which she was entitled under the *Act*.
5. The delegate issued a Determination in favour of Ms. Yang for \$775.70 on account of unpaid wages and section 88 interest. In addition, the delegate levied three separate \$500 monetary penalties (see section 98) against Palag based on the latter’s contraventions of sections 16 (failure to pay at least the minimum wage), 17 (failure to pay wages at least semimonthly) and 18 (failure to pay earned wages following termination of employment). Thus, the total amount payable under the Determination is \$2,275.70.
6. Palag only paid Ms. Yang \$9 per hour and did not pay her any wages at all for the 36 hours during which she was being trained despite the fact that “employee” is defined in section 1 of the *Act* as including “a person being trained by an employer for the employer’s business”. Accordingly, a person must be paid for the time spent being trained by their employer (see *Sate Express Foods Inc.*, BC EST # D007/07; reconsideration refused: BC EST # RD028/07). Further, Palag never paid Ms. Yang for at least 30 minutes each working day when she was supposedly “on break” but, in fact, Ms. Yang, typically being the only employee on duty during her scheduled shifts, was simply unable to take an uninterrupted 30-minute break. Finally, Palag never paid or accrued any 4% vacation pay for Ms. Yang.

7. Palag failed to produce proper payroll records covering Ms. Yang's entire employment tenure despite being requested to do so. Accordingly, the delegate accepted Ms. Yang's evidence regarding her hours worked since it was "reasonable, credible and compelling given her details of hours worked, her explanation of the five hour scheduled shift and why it was recorded as 4 ½ hours, her statement regarding partial wages already received and that she recorded the one day she was away due to sickness" (delegate's reasons, page R4).

## FINDINGS AND ANALYSIS

8. As noted earlier in these reasons, Palag appeals the Determination on the sole ground that the delegate failed to observe the principles of natural justice (subsection 112(1)(b)). Ms. Jennifer Palag (the company's sole director and officer) prepared a 1-¼ page letter, dated July 8, 2014, that she appended to Palag's Appeal Form. This document is identical to that appended to another appeal form dealing with another employee's unpaid wage claim.
9. Palag's material does not raise any credible natural justice argument. For example, there is no allegation of bias on the part of the delegate other than to suggest that the delegate should not have found against Palag and that it was "one sided" and not "fair" for Palag to have been found liable for any unpaid wages.
10. The delegate's natural justice obligations toward Palag are, in part, codified in section 77 of the *Act* ("If an investigation is conducted, the director must make reasonable efforts to give a person under investigation an opportunity to respond") and the record before me clearly shows that Palag was given a fair and full opportunity to present its evidence and argument to the delegate.
11. The record before me indicates that the delegate wrote to Palag on January 16, 2014, regarding Ms. Yang's complaint and this letter set out in detail the various aspects of Ms. Yang's claim. Ms. Palag replied by way of a letter dated January 22, 2014, in which she claimed that Ms. Yang was a "volunteer" not an employee; she also claimed that Ms. Yang did not work all of the hours she claimed to have worked but no corroborating evidence was submitted. On February 1, 2014, Ms. Palag issued a cheque to Ms. Yang for \$37.13 representing what Ms. Palag believed to be Ms. Yang's unpaid wage entitlement but this cheque could not be negotiated since the account on which it was drawn was closed. On March 5, 2014, the delegate wrote to Palag and indicated that there were still a number of unresolved issues and that if they could not be resolved, the delegate would proceed to issue a determination. On March 11, 2014, Ms. Palag indicated by letter to the delegate that she would issue a new cheque but she never did so. Failing resolution, the delegate issued the Determination on June 26, 2014. In light of this chronology, I am fully satisfied that the delegate complied with her section 77 obligations.
12. Ms. Palag's July 8 letter, appended to the Appeal Form, raises several other points, none of which is particularly salient. I shall briefly review her assertions. Ms. Palag says that Ms. Yang was a "volunteer" – an assertion that is not supported by any evidence and which stands in marked contrast to the fact that Palag *actually paid* Ms. Yang, albeit at a wage rate less than the minimum wage. The assertion that Ms. Yang was a volunteer is completely untenable. Ms. Palag says that Ms. Yang "agreed" to work for \$9 per hour (so much for her "volunteer" assertion) but even if there were such an agreement, the simple fact is that a non-union employer cannot lawfully "agree" with its employees that they will work for less than the minimum wage (see section 4). At a later point in her letter, Ms. Palag then reverses course and says that she is "owning" her "mistake" for not paying minimum wage but that the balance of the unpaid wage award (training wages, vacation pay and section 88 interest) is "irrelevant" but does not explain why that would be so. Finally, she says that her business is not doing well and has financial troubles but that is not a proper basis for setting aside the Determination. In sum, there is nothing in Ms. Palag's letter that raises any sort of *bona fide* issue with respect to the correctness of the Determination.

**ORDER**

13. Pursuant to subsection 114(1(f) of the *Act*, this appeal is dismissed. Pursuant to subsection 115(1)(a) of the *Act*, the Determination is confirmed as issued in the amount of \$2,275.70 together with whatever further interest that has accrued under section 88 since the date of issuance.

---

**Kenneth Wm. Thornicroft**  
**Member**  
**Employment Standards Tribunal**